



# Regulation of retail food businesses

## Operating protocols for enforcement agencies

May 2024

## **Regulation of retail food businesses: Operating protocols for enforcement agencies**

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## Scope

These operating protocols were developed by the NSW Food Authority (Food Authority) in consultation with the Food Regulation Forum and apply to enforcement agencies that regulate retail food businesses.

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## Responsibility

The responsible officer for the operating protocols is the General Manager of a local council (for local councils), the Secretary of the Department of Climate Change, Energy, the Environment and Water (for Kosciuszko National Park) and the Lord Howe Island Board (for Lord Howe Island).

## 1. Appointing authorised officers

### Purpose

To provide guidance to enforcement agencies when appointing authorised officers under the NSW *Food Act 2003* (the Act).

*Part 9, Division 3, Food Act 2003*

### Procedure

- 1.1 An enforcement agency may appoint a person to be an authorised officer if it considers the person has appropriate qualifications or experience to exercise the functions of an authorised officer.

*Section 114(1), Food Act 2003*

*A person may demonstrate their knowledge through the completion of a relevant qualification, such as a tertiary degree in Environmental Health or equivalent qualification that would allow membership of Environmental Health Australia (EHA) or an equivalent professional body.*

*A person with a related health or regulatory qualification and transferable skills may improve their knowledge through completion of the Food Authority's Authorised Officer Food Surveillance Training Course.*

*Experience can be obtained through prior work in food regulation or a period of induction and mentoring by an enforcement agency.*

- 1.2. Appointment considerations should include demonstration that the person has sufficient knowledge and experience in the core competencies (see table at Appendix 1A) prior to appointment as an authorised officer.
- 1.3. An enforcement agency is to prepare and maintain a list of appointed authorised officers.

*Section 114(2), Food Act 2003*

- 1.4. Unless revoked, the appointment of an authorised officer ceases to have effect if the enforcement agency ceases to operate as an enforcement agency.

*Section 114(3), Food Act 2003*

- 1.5. An enforcement agency must provide each authorised officer with a certificate of authority in accordance with the requirements detailed in the Act. A template for the certificate of authority is provided at Appendix 1B.

*Sections 115(1), 115(2), 115(3), Food Act 2003*

- 1.6. An authorised officer is required to produce the certificate of authority if requested to do so by the proprietor of a food business whose premises are entered by the authorised officer, or by any person whom the authorised officer requires to produce anything or answer any question.

*Section 115(4), Food Act 2003*

- 1.7. The inspection and seizure powers of authorised officers are outlined in the Act.

*Part 4, Food Act 2003*

## 2. Penalty notices

### Purpose

To outline the process for issuing a penalty notice under the Act.

*Section 120, Food Act 2003*

*Schedule 2, Food Regulation 2015*

### Procedure

#### 2.1 Issuing a penalty notice

2.1.1 A penalty notice may be issued to an individual or corporation that has committed an offence under the Act as specified in Schedule 2 of the Food Regulation 2015 (the Regulation).

2.1.2 A penalty notice can be issued:

- when escalating a breach that has not been rectified in accordance with a graduated enforcement approach, or
- for a serious food safety breach.

##### ***Examples of when to issue a penalty notice:***

- *a business that has not addressed matters in an improvement notice or warning letter within a prescribed timeframe*
- *a serious food safety breach, such as a pest infestation or widespread cleaning issues.*

2.1.3 Before issuing a penalty notice an authorised officer must collect sufficient evidence to prove the elements of the offence and ensure they obtain all the proofs required to obtain a conviction in a court.

2.1.4 A penalty notice must be issued to the correct legal entity, ensuring correct given name and surname for an individual or correct company name for a corporation (refer to [www.search.asic.gov.au](http://www.search.asic.gov.au)).

2.1.5 An authorised officer must only issue a notice on a single legal entity, either an individual or corporation, who/which is the subject of the offence. In most cases the entity will be the proprietor of the business, however offences under Standard 3.2.2 Division 4, Subdivision 1 can only be served on the food handler who committed the offence.

2.1.6 Penalty notices can be issued to an individual food handler where they have responsibility under a particular breach clause. This should be considered carefully as the proprietor has general duties responsibility.

##### ***Example***

*Where a food handler is smoking in the kitchen a penalty notice can be issued to the food handler under Standard 3.2.2 cl 15 (1)(g) or issued to the food business proprietor under Standard 3.2.2 cl 18 (3)(c).*

2.1.7 Penalty notice fields need to be accurately and fully completed. Any required information that is unable to be placed in or is additional to the required fields (such as a trading name) should be provided in the notes section at the bottom of the penalty notice. This information should include:

- Trading name (for example, 'trading as ABC Restaurant')

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- Nature of the business (such as restaurant, café, takeaway, bakery, grocery store)
- Company details – include the full name of the individual or entity (including Pty Ltd, Limited, etc) noting that trusts and trustees are NOT legal entities and should not be subject to legal action.
- ABN or ACN where relevant (this information can be provided in the notes section at the bottom of the penalty notice).
- Legislation that has been breached, including offence section or clause, for example, *Section 21(1) Food Act 2003*.
- Offence description, for example, *Fail to comply with the Food Standards Code*.
- Detail of the offence, for example, *Food Standards Code, Standard 3.2.2 clause 19(1)(c) maintain food premises – accumulation of waste*.
- A notation if previous warnings have been given.

It is crucial to ensure all penalty notices fully comply with the *Fines Act 1996* by ensuring the 'offence' is identified clearly and without ambiguity on the notice itself.

Two examples of a correctly completed penalty notice are provided at Appendix 2.

## 2.2 Register of penalty notices

### **About the register**

*The Food Authority publishes on its website a register of penalty notices related to the handling or sale of food. The register is also known as the "Name and Shame" register. The register is compiled from penalty notice information received from Revenue NSW and then assessed against the Food Authority penalty notice publication criteria.*

### **Food Authority Publication Criteria for Penalty Notices**

- 2.2.1 Where the Food Authority requires further information to make its publication assessment, it will contact the issuing officer with a 14-day request for further information.
- 2.2.2 If a response is not received the Food Authority may follow up with the appropriate manager of the issuing authority.
- 2.2.3 Whether or not to publish a penalty notice will be assessed based on the available information; if there are omissions which do not affect the assessment or identification of the premises, the penalty notice will be published using the available information. Adhering to these timeframes ensures that penalty notices are published in a timely manner.
- 2.2.4 The date of the Food Authority's request for further information, and whether it was responded to, will be noted on the assessment record. Any requests for details by a third party (such as the media) after publication will be directed to the issuing enforcement agency.
- 2.2.5 Any changes to the register are to be made by way of an 'application to change'. Details explaining the process to apply for a change are available on the Food Authority website. An application can only be made once the penalty notice is published and can only be made by the person who is listed on the register or who has an interest in the business.

*If an officer becomes aware of information on the register that is inaccurate, contact the Food Authority as soon as possible at [food.contact@dpi.nsw.gov.au](mailto:food.contact@dpi.nsw.gov.au) or 1300 552 406.*

## 3. Reporting

### Purpose

To outline enforcement agency reporting obligations to the Food Authority in relation to the exercise of functions under the Act.

*Section 113, Food Act 2003*

### Procedure

#### 3.1 Activity reporting

- 3.1.1 Enforcement agencies must provide at minimum annual activity reports to the Food Authority in relation to their food regulation activities.
- 3.1.2 The reporting period is 1 July to 30 June each year, and reports must be submitted electronically via the Food Regulation Partnership activity report submission platform by 28 July following the completion of each reporting period.
- 3.1.3 All questions on the activity form must be completed, and information entered should be approved by the responsible officer or their delegate.
- 3.1.4 The Food Authority will analyse the data to monitor enforcement agency performance and may provide written feedback to an enforcement agency. The enforcement agency will be provided an opportunity to respond to this feedback.
- 3.1.5 The Food Authority may publish summary reports of enforcement agency activities.

#### ***The use of regulatory software platforms for reporting on food regulation activities***

*It is recognised that enforcement agencies may decide to utilise specialised regulatory software to record relevant information about food regulation activities. In these circumstances, the Food Authority encourages more frequent and detailed reporting by enforcement agencies.*

*Section 113(1), 113(2) and 113(3), Food Act 2003*

#### 3.2 Legal proceedings reporting

***legal proceeding*** includes all legal proceedings instituted for failure to comply with the requirements of the Act (and associated Australia New Zealand Food Standards Code), or the Food Regulation 2015. Legal proceedings instituted by way of a Court Attendance Notice (CAN) are required to be reported. This includes court elected Penalty Notices for which CANs are issued, however penalty notices are not considered to be legal proceedings for offences under the Act.

***finally dealt with*** means the date after any relevant appeal period has lapsed, normally 28 days, or where an appeal has been heard, the date of the final order which affirms a conviction. The enforcement agency must confirm in writing at that time that no further appeal has been made.

- 3.2.1 The enforcement agency must submit the following documentation to the Food Authority electronically via [food.contact@dpi.nsw.gov.au](mailto:food.contact@dpi.nsw.gov.au) within 21 days of any legal proceedings under the Act being finally dealt with:
  - a completed Reporting form for legal proceedings (Reporting Form) – replicated at Appendix 3
  - a verified copy of the Court Attendance Notice



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- a verified judgement record or the letter of confirmation with judgement details, including details of penalties and any awarded costs
- confirmation that no appeal has been lodged by the defendant or, if there has been an appeal, confirmation of an order affirming the conviction. Confirmation of a conviction and any penalty imposed may be provided in the form of a Certificate of Conviction under section s.178 of the *Evidence Act 1995*.

3.2.2 All submitted documents must be verified by the enforcement agency's responsible officer, their delegate or legal representative.

The Reporting Form and verified documentation form the basis for the enforcement agency meeting its obligations to report proceedings under the Act.

#### **Section 113(4), Food Act 2003**

Following the receipt of the Reporting Form, the Food Authority will assess whether information regarding an offence is eligible for publication.

#### **Section 133, Food Act 2003**

## 4. Food complaint management

### Purpose

To outline enforcement agency responsibilities to manage food complaints and explain the food complaint referral process between enforcement agencies and the Food Authority.

#### *Section 136A, Food Act 2003*

**food complaint** is an allegation that there may be a breach of the Act, Food Regulation 2015 or Australia New Zealand Food Standard Code (the Code). For example, the matter may be about a product (whether manufactured in NSW or another jurisdiction or country), a food business or an event.

### Procedure

#### 4.1 Determining responsible agency for food complaint

4.1.1 Step 1 – determine if the complaint is about food for sale.

- Meaning of food - *Section 5, Food Act 2003*
- Definition of sell - *Section 4, Food Act, 2003*

Food for sale includes food sold by notified businesses, prizes, tastings, giveaways and services provided (for example food in hospitals and correctional centres).

If the complaint is about food for sale, proceed to Step 2 (see below for referral of food complaints not about food for sale).

4.1.2 Step 2 – determine if food complaint is the responsibility of the enforcement agency.

Enforcement agencies are responsible for dealing with:

- food complaints within their specified area (such as a local government area) which are not matters for the Food Authority or another agency
- allergen complaints related to the service of a meal that was required to be allergen-free but which nevertheless contained an allergen
- labelling complaints in connection with food premises they regulate in their area (for example a retail premises selling food past its use-by date, or not declaring allergens for food it prepares)
- single incident/household foodborne illness (FBI) complaints (see *management of complaints* below).

All other food complaints should be referred to the appropriate agency.

#### 4.2 Complaint referrals

4.2.1 Matters for the Food Authority

The following matters should be referred to the Food Authority:

- a complaint relating to a business licensed by the Food Authority
- a complaint involving a primary producer, exporter, importer, manufacturer or wholesaler
- a complaint about compositional standards in packaged food or food otherwise produced by licensed businesses or manufacturers
- a labelling complaint relating to a manufacturer/wholesaler or licensed business regulated by the Food Authority

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- a multiple incident foodborne illness (FBI) complaint. FBI complaints about 2 or more cases from unrelated individuals, households or groups for the same food premises are to be directed immediately to the Food Authority's helpline on 1300 552 406 or by email at [food.contact@dpi.nsw.gov.au](mailto:food.contact@dpi.nsw.gov.au). As part of its investigation process, the Food Authority may ask the relevant enforcement agency to review processing and hygiene practices at the food business or relay recent inspection history following a multiple incident FBI complaint and advise the Food Authority if any significant compliance issues are identified.
- urgent food safety matters. These matters must be immediately reported to the Food Authority. Urgent food safety matters are those where there is an imminent threat to the safety of the food supply, whether accidental (such as a foodborne illness outbreak, natural disaster, urgent food recall) or deliberate (for example, bioterrorism, sabotage, extortion). In the event of an urgent food safety matter the Food Authority may invoke an urgent food safety response. *See also - Urgent food safety matters in this document.*
- complex issues. Complex issues include those that may require a consistent approach by multiple enforcement agencies (for example, practices or policies of a business or franchise of a large organisation that operates across multiple local government areas), issues that cannot be resolved satisfactorily by the relevant enforcement agency or are complex in nature.

Such issues should be referred to the Food Authority for advice in the first instance. This can be achieved by lodging an enquiry with the Food Authority or raising the matter through the Regional Food Group or State Liaison Group frameworks.

*See also - Consultation and engagement in this document.*

The Food Authority will liaise with enforcement agencies and communicate outcomes of any action taken as appropriate to the matter referred.

### 4.2.2 Food complaints not about food for sale

Food complaints that do not involve food for sale may be referred to another agency:

- Complaints about changes to the Code may be referred to Food Standards Australia New Zealand
- Complaints about customer service or product warranties may be referred to NSW Fair Trading
- Complaints about weights and measures may be referred to the National Measurement Institute
- Complaints regarding nutrition and healthy eating may be referred to the NSW Ministry of Health
- Complaints about liquor licensing may be referred to Liquor and Gaming NSW
- Complaints about medicines and therapeutic goods may be referred to the Therapeutic Goods Administration.

## 4.3 Privacy considerations

4.3.1 Enforcement agencies are empowered to provide certain information to each other and to NSW Health under certain conditions:

- If the enforcement agency considers the provision of the information is necessary to enable the relevant authority to exercise its functions under the *Public Health Act 2010*. A 'relevant authority' for the purpose of this section is defined as the Secretary of the Ministry of Health and a public health organisation within the meaning of the *Health Services Act 1997*.

*Section 136A(1)(a) and 136A(4), Food Act 2003*

- If the enforcement agency providing the information considers the provision of the information is necessary to enable the other enforcement agency to exercise its functions under the Act.

**Section 136A(1)(b) Food Act 2003**

- 4.3.2 Information may be provided, in accordance with the above requirements, despite any prohibition in, or the need to comply with any requirement of, any Act or law (in particular, the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*).

**Section 136A(3) Food Act 2003**

- 4.3.3 A relevant authority is also authorised to provide information to an enforcement agency necessary to the exercise of its functions under the Act. *Note: The Food Authority is an enforcement agency under the Act.*

**Section 136A(2) Food Act 2003**

**Section 4 Food Act 2003**

- 4.3.4 The Food Authority can provide advice about any specific matters where an enforcement agency may be uncertain.

**4.4 Management of complaints**

- 4.4.1 It is expected that food complaints will be managed in accordance with an enforcement agency's complaint handling and investigation procedures. It is recommended that an enforcement agency develop a food complaint management policy.
- 4.4.2 Information to collect from complainants should include: complainant's name and contact details; date and time of complaint received; description of the issue; purchase details; product or article details and whether these need to be collected as evidence; if suspected food poisoning has occurred: time and date food was consumed, what was eaten and time and date any illness began with symptoms and severity.
- 4.4.3 A risk assessment should be undertaken to prioritise the complaint. Factors to be considered may include possible effects on consumer health, exposure of vulnerable persons (for example the elderly, children), how widely the product is distributed, timeframe over which the problem has occurred, and compliance history of the food business.

**Complaint handling prioritisation guide**

*The following classifications are provided as a guide, with suggested timeframes in line with NSW DPI Biosecurity and Food Safety practices.*

**URGENT – Investigate as soon as possible (within 24 hours)**

*Has caused, or has the potential to cause, serious harm or injury to the consumer (for example pest infestation, unsanitary premises, interrupted water supply, possible foodborne illness).*

**HIGH – Investigate within one week (commence within 4 days)**

*Will not cause serious physical harm to a consumer (for example: foreign matter detected in food that could result in minor injury).*

**MEDIUM – Investigate within one month (commence within 10 days)**

*More than one complaint about a food business regarding poor hygiene, poor handling practices, unsound structures of premises or incorrect labelling.*

**LOW – Inspect at a convenient time**

*A single report of poor hygiene, poor handling or food quality related issues (for example, handling money and food using the same hand, untidy waste area).*

#### 4.4.4 Single incident/household FBI complaints

FBI complaints relating to a single person or a single household should be dealt with by the relevant enforcement agency under its internal policies and protocols and do not need to be reported to the Food Authority. An enforcement agency is not expected to investigate all single incident/household FBI complaints, nor obtain food samples.

Incidents or complaints impacting more than one household or group will be reviewed by the Food Authority to determine whether further investigation is warranted. In some circumstances, Council may be asked to assist by completing an inspection on the implicated food business.

If the enforcement agency thinks it is necessary to obtain samples, it should discuss this with the Food Authority before taking any action and must follow the Protocol on submitting food samples.

*See also – Submitting food samples for testing in this document.*

## 4.5 Administration

4.5.1 Each enforcement agency must provide the Food Authority with up-to-date details of its complaint referral/customer service Helpline, and it is recommended that this be a generic email address and contact number, not an individual officer.

4.5.2 The Food Authority will refer complainants to the appropriate enforcement agency by providing the enforcement agency's contact details to the complainant or by transferring the complainant via phone to the enforcement agency. If the decision to refer the complaint cannot be made immediately, then a written referral with the complaint details will be forwarded to the enforcement agency via email. Unless the complainant is anonymous, they will be advised of the referral by the Food Authority and given the appropriate enforcement agency's contact details.

Enforcement agencies may refer relevant complaints to the Food Authority's helpline, via:

**Telephone** 1300 552 406

**Email** [food.contact@dpi.nsw.gov.au](mailto:food.contact@dpi.nsw.gov.au)

**Mail** Helpline, NSW Food Authority, PO Box 6682, Silverwater NSW 1811

*See also Submitting food samples for testing & Urgent food safety response in this document*

## 5. Urgent food safety response

### Purpose

To outline enforcement agency roles and responsibilities in the event of an incident requiring an urgent food safety response.

*Urgent food safety matters are those where there is an imminent threat to public health and safety, or the health of an individual in connection with food. Urgent matters may be:*

- *accidental (for example foodborne illness outbreak, urgent food recall);*
- *the result of natural event (for example fire, flood, cyclone); or*
- *deliberate (for example bioterrorism, sabotage, extortion).*

**imminent** - *if the threat is likely to occur at any moment or is impending.*

**threat** – *indication of probable harm to come or something that gives indication of causing harm.*

*Urgent food safety matters may require an immediate on the ground response to reduce the risk of further illness or injury and in regional and remote areas. Enforcement agency authorised officers can usually be onsite more quickly than the Food Authority.*

#### **Examples of an imminent food safety threat**

- *flooding, extended power loss or a fire that is likely to affect food businesses*
- *food tampering*
- *urgent food recall*
- *multi-household foodborne illness outbreak*
- *a marine biotoxin incident*
- *a truck carrying potentially hazardous food that rolls over.*

### Procedure

#### 5.1 Assessment of urgent food safety matters

5.1.1 Urgent food safety matters should be immediately reported to the Food Authority for assessment and guidance as to the nature of the response required. If in doubt as to whether a situation constitutes an urgent food safety matter, advice should also be sought from the Food Authority.

5.1.2 The Food Authority may request enforcement agencies to:

- provide relevant information, such as current or historical premises inspection records,
- inspect specific retail food businesses, including to gather appropriate evidence such as images, food samples or conduct interviews and make it available to the Food Authority upon request, and/or
- take enforcement action such as issuing an improvement notice to address food safety breaches, or prohibition orders to stop food handling activities or supply of food.

## 5.2 Additional considerations for natural disasters

*Natural disasters or other major events may impact an enforcement agency's ability to provide food surveillance activities or increase the risk to food safety. These events may include:*

- *bushfires, floods, severe weather (such as cyclones)*
- *major disasters.*

5.2.1 In the event of a natural disaster affecting its geographical area, an enforcement agency may need to initiate immediate action. Responses may include one or more of the following actions:

- identification of affected foods along both directions in the supply chain
- communicating with food businesses about issues to consider, including information about what do to with food which is spoiled or has the potential to be spoiled
- communicating with residents of affected areas
- pick up and temporary secure storage of affected food for safe disposal
- disposal of food.

## 5.3 Food recalls

*A **food recall** is action taken to remove, from sale and distribution, foods which pose a public health and safety risk to consumers.*

*The manufacturer or importer of the product are ultimately responsible for its recall. Most food recalls are initiated by businesses when food production monitoring has identified a fault or in response to public complaints.*

*The Food Authority may also initiate food recalls following the investigation of foodborne illness incidents or food safety complaints. If a concern is serious enough to warrant the recall of a food, the Food Authority's recall coordinator will work with the manufacturer to ensure the recall is effectively conducted, and other jurisdictions and local authorities to prevent the food from being distributed and sold.*

*Food Standards Australia New Zealand (FSANZ) coordinates the recall of foods at a national level. The Food Authority coordinates food recalls within NSW and can also mandate a food recall, if required (see below).*

### **Types of food recall**

*The type of recall is dependent on the type of food product, where it is sold and the reason for the recall. There are several types of recalls:*

- **trade level recall** – *involves recovery of the product from distribution centres and wholesalers. It may also involve recovery of product from hospitals, restaurants and other major catering establishments, including manufacturers and retail outlets*
- **consumer level recall** – *involves recovery of the product from all points in the production and distribution chain, including from consumers*
- **mandatory recall** – *where the Chief Executive Officer of the Food Authority directs a business to recall its food product.*

*In some instances, companies may conduct a product withdrawal as a precaution while waiting for further information, such as test results or photos. If additional information confirms a potentially serious issue, companies may escalate a withdrawal to a formal recall.*



**NOTE:** Not all food recalls are notified to enforcement agencies. Details of recent consumer level food recalls can be found on the FSANZ food recall webpage. The FSANZ website also provides contact information for all state and territory recall coordinators.

- 5.3.1 Enforcement agencies are responsible for providing food safety response contact details to the Food Authority and providing updates if those details change. This includes after hours and mobile numbers.
- 5.3.2 The Food Authority will email an enforcement agency under the heading 'Urgent for Action' if the recalled food is being retailed in that jurisdiction and the Food Authority requires assistance to remove the product from sale. In some situations, enforcement agencies may also be contacted directly by phone, such as when the recall involves a serious threat to public health or when large quantities of product have been sold through small retail outlets. The Food Authority will provide specific details as to the assistance sought and will include contact details for clarification and the nature and extent of feedback to be provided. If an enforcement agency is unable to undertake the recommended action it must notify the Food Authority immediately.

#### **NSW Government emergency management**

*In NSW, response to and recovery from major emergencies is undertaken under the NSW State Emergency Management Plan, known as EMPLAN. NSW food safety emergencies are dealt with in accordance with the Food Industry Emergency sub plan, which sits under EMPLAN. The Food Authority leads NSW food emergency responses.*

*All Australian jurisdictions and the Australian Government also collaborate under the National Food Incident Response Protocol which provides for a collective national response to multi-jurisdictional food safety risks.*

*NSW Police also become involved where a NSW food safety emergency involves criminal action.*

*Most urgent food safety issues would not trigger declaration of an emergency under EMPLAN but may involve enforcement agencies assisting in a response (such as a foodborne illness incident linked to a retail food business).*

*Availability of enforcement agency food regulatory personnel to help address urgent incidents is critical to protecting consumers.*



## 6. Food Premises Assessment Report (FPAR)

### Purpose

To provide guidance to authorised officers on the use of the Food Premises Assessment Report (FPAR) and encourage consistency in food inspections across all local government areas.

### Procedure

#### 6.1 Completion of the FPAR

The FPAR should be completed in accordance with the *How to complete a Food Premises Assessment Report* at Appendix 4.

*The FPAR is divided into 9 sections that relate to compliance with the food safety standards of the Australia New Zealand Food Standards Code.*

*The sections relate to hygiene and food safety and focus on the most important foodborne illness risk factors that have been identified in numerous studies, including inadequate cooling and cold holding temperatures, food prepared ahead of planned service, inadequate hot holding temperatures, poor personal hygiene and infected (sick) food handlers, inadequate reheating and inadequate cleaning and sanitising of equipment and premises.*

*Each of the sections contains several questions that have been phrased to provide answers about compliance or non-compliance. The questions are based on the requirements of the food safety standards and are weighted based on risk.*

## 7. Risk-based regulation of fixed food premises

### Purpose

To assist enforcement agencies to determine suitable inspection frequencies for fixed premise food businesses.

### Procedure

#### 7.1 Risk based inspections

7.1.1 An enforcement agency should complete a risk-based inspection program for retail food businesses (see *inspection model* at Appendix 5).

7.1.2 Risk classification of food businesses will depend on the size of the business, whether the food for sale is potentially hazardous food, the profile of consumers (such as vulnerable populations), previous inspection outcomes and compliance history.

7.1.3 Inspections for new food businesses should be more frequent until a compliance history is established.

*Definition of 'potentially hazardous food', see [Section 106, Food Act 2003](#)*

#### 7.2 Assessing risk (excluding home-based food businesses)

7.2.1 Low risk – do not require routine inspection

Food businesses which are unlikely to cause a foodborne illness outbreak are considered low risk and do not require routine inspection. Examples include:

- businesses that only handle packaged foods (such as service stations, newsagents, bars and liquor stores)
- businesses that only handle non-potentially hazardous foods (such as confectionary stores)
- vehicles used to transport food between retail business premises or from a retail premises to a customer (such as a takeaway delivery vehicle, or vehicle used to move food between a preparation kitchen or market stall)
- childcare (including family day care) not preparing potentially hazardous food.

7.2.2 Medium risk – inspection frequency should be risk based

Medium risk businesses may include cafes, restaurants, takeaways, supermarkets and mobile food vending vehicles that prepare and sell potentially hazardous food. The risk classification of most hospitality-type retail food premises will be 'medium'.

7.2.3 High risk – inspection frequency should be risk based

A high-risk business is one which undertakes any of the following high-risk activities:

- prepares or supplies to vulnerable populations (such as a childcare facility that prepares food on site for children including home-based childcare preparing potentially hazardous foods)
- undertakes high risk processes/activities (such as raw egg products, smoking meats, sous vide)
- large scale operation (such as a function centre/large restaurant that employs more than 10 FTE food handlers).

#### 7.3 Medium and high-risk businesses that do not require regular inspection

There are a range of retail food premises that may handle potentially hazardous food but do not require regular inspection. These premises are not associated with foodborne outbreaks or are regulated by other means, including:

- international cruise ships (operate under international quality assurance schemes)

- vending machines supplying potentially hazardous food (vending machine inspection are impractical to control risk)
- boarding houses and group homes (low volumes of food prepared)
- government institutions, such as correctional facilities and armed forces bases (there are Commonwealth/state government audit schemes in place).

#### 7.4 Inspection of home-based businesses

Authorised officers do not have automatic powers of entry to residential homes when undertaking inspections of home-based food businesses. An enforcement agency must firstly obtain evidence that a food business is in operation at the residential home and in which parts food handling is occurring. Access must be voluntarily provided by the resident.

An enforcement agency should exercise extreme caution before pursuing entry where access is not voluntarily offered by the householder. For serious matters, such as a suspected foodborne illness investigation, where access is denied but is necessary to establish the existence of a food business in operation, enforcement agencies should consider applying for a search warrant to gain access.

When strong evidence has already been obtained and reveals serious breaches committed by a food business at a residential premises, the enforcement agency should seek specific advice from the Food Authority about the merits in pursuing access when denied by the householder.

#### Section 39, Food Act 2003

#### 7.5 Assessing risk for home-based food businesses

Home-based businesses typically use a home (domestic) kitchen to prepare food for sale directly to the public (for example, preparing and storing food for sale at local markets, online). All food businesses, including home-based businesses, must comply with the relevant parts of the Food Standards Code (the Code). These requirements are largely outcome-based and there are exemptions for home-based businesses in the Code. For example, the requirement to have a dedicated hand wash basin can be waived by an enforcement agency for businesses that operate in private dwellings.

Food Standards Australia New Zealand has developed practical guidance for home-based businesses and enforcement agencies on how home-based food businesses can demonstrate compliance with parts of the Code where there is no exemption, such as providing suitable hand wash facilities, managing pests and other animals, and separating foods for the family from those to be sold.

#### A Guide to the Food Safety Standards, FSANZ (particularly Chapter 10)

##### 7.5.1 Low risk – do not require routine inspection

Home-based food businesses are considered low risk if they are handling only non-potentially hazardous food or packaged food. A home-based food business may also be classified as low risk if meets all the following criteria:

- it does not handle food that has a high level of inherent risk (for example raw egg foods such as aioli and mayonnaise)

***inherent risk*** relates to the possibility for a food to contain a hazard that could be present at levels that could cause human illness whether due to the nature of the food itself, or the processing and handling it undergoes.

- it does not supply food to vulnerable populations or businesses that service vulnerable populations (such as a childcare facility, care home)

## Regulation of retail food businesses: Operating protocols for enforcement agencies

- it has at least one certified Food Safety Supervisor appointed by the business (if required)

### Division 3, Part 8, Food Act 2003

- it produces less than 10kg of food for sale per week from the domestic kitchen (equivalent to forty 250g serves).

The Food Authority will periodically review the low-risk home-based food businesses criteria in consultation with enforcement agencies to ensure it remains fit for purpose.

#### Examples of assessing risk for home-based businesses, based on volume:

- *A new food business contacts its local enforcement agency intending to sell homemade cookies at a local market. They are unsure how much food they will prepare at home, but they estimate it will be far less than 40 serves a week.*

The enforcement agency should treat the business as low risk. The agency should inform the business that if sales grow and they want to prepare more than 10kg (40 serves) of food per week in their domestic kitchen, the business must notify the agency about this change to the nature of its business before the change occurs.

#### Clause 4(3), Standard 3.2.2, Australia New Zealand Food Standards Code

- *A business notifies their local enforcement agency that they will begin preparing ingredients (for example, cooking meats and chopping salads) at a local domestic residence for use in meals sold at markets. The business has been trading for a few years and attends markets each week in the summer and periodically through winter and on average sells around 60 serves at each market.*

Based on volume of food, the local enforcement agency should treat this business as medium risk and undertake an initial inspection of the business at a pre-arranged appointment time when food is being prepared at the home.

- *An enforcement agency becomes aware of a business based at a domestic residence in its area that is selling frozen meals online. It is possible to order more than 40 serves (10kg of food) from this business online for delivery.*

Based on the likely volume of food being prepared, the enforcement agency should arrange an initial inspection of the business.

#### 7.5.2 Medium risk and high-risk – inspection frequency should be risk-based

A home kitchen may not be suitable for high-volume 'medium' or 'high' risk retail operations. A home-based food business is considered at least medium risk if it does not meet one or more of the low-risk home-based businesses criteria, or if a significant non-compliance with the Code is identified at an inspection following a food safety complaint or foodborne illness investigation.

### 7.6 Assessing compliance history

The Food Premises Assessment Report (FPAR) allows the food safety inspection to yield a point score or star rating (based on demerits against a breach of the food safety standards) which objectively indicates the business's food safety outcome at that point in time. The outcome is expressed as a point or star rating, with low points (demerits) and high star rating indicating an optimal outcome:

- 0-3 demerit points = 5 star rating
- 4-8 demerit points = 4 star rating
- 9-15 demerit points = 3 star rating
- 15 demerit points = no stars (requires enforcement action)

### **Regulation of retail food businesses: Operating protocols for enforcement agencies**

These inspection result measures have been incorporated into the risk-based inspection frequency table at Appendix 6. For further information on the FPAR please see the relevant operating protocol.

*See also – Food Premises Assessment Reports (FPAR) in this document.*

## 8. Risk based regulation of mobile and temporary food businesses

### Purpose

To provide guidance on the regulation of mobile and temporary food businesses.

A mobile food vending vehicle is any means of transport, whether self-propelled or not, which is moved from place to place and used for selling food, whether on land, water or air.

Mobile food businesses include vans, trucks, caravans and trailers as well as boats fitted out for the handling and sale of food directly to consumers, such as coffee vans, ice cream vans, sandwich trucks and boats including ferries and cruise ships. The vehicles may also have additional food processing areas outside of the vehicle. Each vehicle is considered a separate food premises.

A temporary food business trades at temporary premises (for example, a tent, stall or marquee) on an occasional basis, such as at fetes, markets, festivals and agricultural shows. The business may prepare food at a fixed premises before the event or prepare food at the event.

*'food transport vehicle', 'premises', 'sell', 'vehicle', [Section 4, Food Act 2003](#)*

*'food business', [Section 6, Food Act 2003](#)*

*'mobile catering business', 'temporary premises', [Section 106, Food Act 2003](#)*

### Procedure

#### Home jurisdiction rule

The home jurisdiction is generally applied in relation to the regular inspection of mobile food vehicles and the risk-based inspection of temporary food businesses in the enforcement agency's designated area.

For mobile food businesses - the home jurisdiction rule recognises the enforcement agency in whose area the vehicle is ordinarily garaged as the home jurisdiction, even if the business does not intend to trade in this area.

For temporary food business - where food is prepared off-site at a fixed premises, the home jurisdiction rule recognises the enforcement agency in whose area that fixed premises is located as the home jurisdiction.

#### 8.1 Role of the home jurisdiction

The home jurisdiction should:

- 8.1.1 Conduct the primary annual inspection of the mobile food business vehicle and any associated fixed premises where food is prepared. The vehicle inspection should ideally be conducted whilst trading under operational conditions.
- 8.1.2 Conduct the primary inspection for a temporary food business at the fixed premises using a risk-based approach.

*See also - [Risk-based inspection frequency in this document](#).*

- 8.1.3 Provide food safety information about the business to other enforcement agencies as required.

*[Section 136A, Food Act 2003](#)*

#### 8.2 Role of the non-home jurisdiction

8.2.1 The non-home jurisdiction should only inspect mobile food vehicles and businesses trading at temporary events in situations where there is a perceived risk to food safety and public health. The non-home jurisdiction should not inspect a mobile food business unless one of the following factors applies:

- a food safety complaint is made against the business, or
- business has lack of access to relevant services (such as potable water, refrigeration, electricity), or
- business has a poor compliance history, or
- business fails to produce a satisfactory recent inspection report (within the last 12 months), or an inspection report completed under operational conditions (for example for mobile food vehicles) or
- an authorised officer observes instances of poor food handling, a potential for food contamination or non-compliance.

8.2.2 If an inspection is undertaken by a non-home jurisdiction, an inspection fee may be charged. Inspection results should be provided to the home jurisdiction.

### **8.3 Inspection of temporary events**

8.3.1 Enforcement agencies should undertake a risk assessment of temporary events in their area to determine whether the food businesses at these events should be inspected (for example small events selling low risk food may not need to be inspected, in contrast with food businesses at larger events).

Factors to be considered include:

- the number of food businesses trading at the event and their compliance history,
- whether those businesses can, in advance, provide evidence of a satisfactory inspection by their home jurisdiction or other enforcement agency, either of the stall or associated fixed premises,
- whether there have been food safety complaints made against food businesses trading at the event,
- type of food being sold at the event (such as high-risk potentially hazardous food),
- estimated number of visitors to, and duration of, the event, and
- businesses' access to facilities and services (potable water, refrigeration, electricity).

### **8.4 Fees and charges**

Fees and charges should be applied in accordance with this operating protocol.

*See also- Fees and charges in this document  
Guidelines for mobile food vending vehicles*

## 9. Submitting food samples for testing

### Purpose

To outline the process for enforcement agencies submitting food samples to the Food Authority for testing by its National Association of Testing Authorities (NATA) accredited food testing laboratory.

### Procedure

#### 9.1 Food Authority requests for testing

- 9.1.1 As part of foodborne illness investigations, the Food Authority may request another enforcement agency to obtain food samples on its behalf.
- 9.1.2 The Food Authority will coordinate sampling and provide clear instructions about sampling procedures, the transport of samples, and the submission process.
- 9.1.3 The enforcement agency's authorised officer must inform the proprietor of the food business or, if not available, the person in charge of the food business of the intention to have the sample analysed.

#### *Section 67, Food Act 2003*

- 9.1.4 The local council enforcement agency must offer payment to the proprietor for any food samples taken, and the Food Authority will cover the cost of these samples.

#### *Section 68, Food Act 2003*

#### *Clause 12, Food Regulation 2015*

- 9.1.5 Food sampling undertaken as part of evidence gathering should be carried out in accordance with the Act.

#### *Sections 69, 70, 71 and 72, Food Act 2003*

- 9.1.6 The Food Authority will provide the local council enforcement agency with general support, copies of reports and assistance with interpretation of the results.

#### 9.2 Enforcement agency-initiated requests for testing

- 9.2.1 Enforcement agencies may seek testing of food or articles as part of their food surveillance activities, for example in relation to a specific complaint, an investigation or participation in a Food Authority survey. All enforcement agency-initiated requests for the testing of food samples or examination of foreign matter are to be referred to the Food Authority in the first instance by completing the *Request from enforcement agency for approval of sample analysis* (see Appendix 6). This request form is to be submitted to the Food Authority via email at [food.contact@dpi.nsw.gov.au](mailto:food.contact@dpi.nsw.gov.au).
- 9.2.2 Examples of tests include: presence or absence of certain substances in the food (nutrients, allergens, pathogens), presence of foreign objects.
- 9.2.3 The Food Authority will assess each request and advise the outcome within 48 hours. Assessment includes the validity, necessity and overall merit of the requested testing, along with laboratory capabilities and capacity to test. For urgent matters, approval should be sought by calling the Food Authority in the first instance on 1300 552 406.
- 9.2.4 The approved laboratory will provide reports to the Food Authority, which will be shared with the relevant enforcement agency together with advice on interpretation.

#### 9.3 Food surveys



### **Regulation of retail food businesses: Operating protocols for enforcement agencies**

Enforcement agencies are invited to participate in Food Authority initiated food surveys on a voluntary basis. The costs associated with sampling for surveys will be agreed by participating enforcement agencies at project initiation.

## 10. Fees and charges

### Purpose

To detail enforcement agency obligations on imposing fees and charges for food regulatory activities.

#### **Prescribed fee**

*The prescribed fee (\$330) covers the cost of preparing and serving an improvement notice on the food business proprietor. It is recommended that this fee also cover the cost of one re-inspection, however, a local council enforcement agency may still charge an inspection fee under section 608 of the Local Government Act 1993 for re-inspection.*

### Procedure

#### **10.1 Improvement Notice Fee**

- 10.1.1 The enforcement agency may extend the time given for payment of the fee or reduce or waive payment of the fee.
- 10.1.2 A person who is given an improvement notice by an authorised officer or an enforcement agency must pay the fee prescribed within 28 days if the notice contains a requirement to do so. Failure to do so is an offence and incurs a penalty.

*Section 66AA(1) Food Act 2003*

*Clause 11, Food Regulation 2015*

#### **10.2 Inspection fees**

- 10.2.1 An enforcement agency may charge a fee to retail food business for any inspection undertaken under Section 37 of the Act.
- 10.2.2 The inspection fee is to be calculated in accordance with the Regulation.
- 10.2.3 The enforcement agency may reduce or waive payment of an inspection fee.

*Section 37, Food Act 2003*

*Clause 14, Food Regulation 2015*

#### **10.3 Annual administration charge**

- 10.3.1 An enforcement agency may impose an annual administration charge on a food business that is not required to be licensed under the Act.
- 10.3.2 This administration charge is to be calculated in accordance with the Regulation (see example in Table 1 below)
- 10.3.3 The enforcement agency must issue written notice of the charge specifying the amount of the charge, the period to which it relates and the period in which it must be paid.
- 10.3.4 If the enforcement agency does not carry out at least one inspection of the food business during the 12-month period to which the charge relates, the charge must be refunded.
- 10.3.5 The enforcement agency may extend the time for payment or reduce or waive payment of the charge.

*Section 139(2B)(d), Food Act 2003*

*Clause 15, Food Regulation 2015*

### Annual Administration Charge (AAC) calculation

## Regulation of retail food businesses: Operating protocols for enforcement agencies

Calculation of the AAC is based on the number of full-time equivalent (FTE) food handlers working at the premises. A food handler is a person who directly engages in the handling of food. Staff involved solely in administrative tasks are not considered food handlers. Additionally, staff who are solely on register duties or only serve customers (e.g. take plates or drinks to tables) without being directly engaged in the handling of food should not be considered food handlers for the purpose of determining the AAC.

Table 1: Calculating Annual Administration Charge

<b>Number of FTE food handlers working at the premises</b>	<b>Maximum charge per premises</b>
<i>Up to and including 5</i>	\$ 390
<i>More than 5 but not more than 50</i>	\$ 800
<i>More than 50</i>	\$3,500

### **Example AAC Calculation:**

*A small mixed business selling pre-packaged food and general merchandise employs 3 staff who each spend approximately 13 hours a week on food handling activities, the remainder of their time is spent on non-food related matters. (Note: The award for retail food premises employees generally involves 38 hours/week.)*

*The number of full-time equivalent food handlers =  $\frac{\text{No. food handlers} \times \text{No. hours/week handling food}}{38 \text{ hours}}$*

*In this case:*

$$\frac{3 \times 13 \text{ hours}}{38 \text{ hours}}$$

**= approximately 1 FTE food handler, with an AAC of = \$390.**

## 11. Seeking regulatory assistance

### Purpose

To provide guidance to enforcement agencies when requiring assistance from the Food Authority where there are unforeseen circumstances or conflicts of interest that prevent enforcement agencies from undertaking their food regulation role.

### Procedure

*Enforcement agencies have primary responsibility for the regulation of retail food businesses in their area and should develop a contingency plan to ensure food regulation continuity in circumstances where there may be a workforce shortage. Options include:*

- *re-prioritising routine work,*
- *deploying contingency resources within enforcement agencies,*
- *engaging another enforcement agency's resource, or*
- *employing a contractor.*

*However, there may be situations where enforcement agencies have difficulty undertaking their role due to unforeseen circumstances or conflicts of interest. Examples of these are:*

#### **Unforeseen circumstances**

*Unforeseen circumstances may include:*

- *an unexpected event, or series of events, that prevents an enforcement agency from undertaking its food regulation role (for example, disasters such as power loss, fire, flood or earthquake),*
- *a sudden and prolonged loss of staff through resignation, serious accident or illness,*
- *inability to recruit staff over an extended period (for example, six months), or*
- *urgent priorities which temporarily overtake food regulation functions.*

*An unforeseen circumstance does not include situations that should be effectively managed internally by enforcement agencies, such as short-term staff vacancies or planned leave by enforcement agency staff.*

#### **Conflicts of interest**

*The term 'conflict of interest' refers to situations where a conflict arises between public duty and private interest that could influence the performance of official duties and responsibilities.*

*Conflicts of interest can involve pecuniary (financial) interests, other material benefits or costs, or non-pecuniary interests. It can involve the interests of the public official, members of the official's immediate family or relatives (where these interests are known), business partners or associates, or friends.*

*Hostility as well as friendship can give rise to an actual or perceived conflict of interest. Other conflicts of interest may include where a premises is owned or operated by the enforcement agency (for example, a council operated childcare facility).*

*Enforcement agencies are encouraged to seek alternative solutions for managing conflicts of interest. These include using another enforcement agency to undertake the activity or employing an independent contractor.*

- 11.1 The Food Authority should only be approached for assistance in dealing with an unforeseen circumstance or where there is a perceived or actual conflict of interest when all other options have been exhausted.

## **Regulation of retail food businesses: Operating protocols for enforcement agencies**

- 11.2 Any urgent request for assistance due to a disaster event (such as power loss, fire, flood or earthquake) where immediate food safety action is required should be made via the Food Authority's helpline on 1300 552 406.
- 11.3 All requests (urgent and non-urgent) for assistance should be confirmed in writing (via email) to the Chief Executive Officer of the Food Authority as soon as practicable.
- 11.4 The request should include the background, including:
- the series of events that constitute the unforeseen circumstance or conflict of interest, and its effect on the enforcement agency's ability to fulfil its food safety functions,
  - the names, addresses and history (where possible) of affected food businesses,
  - the relationship between the food business(es) and enforcement agency or affiliated parties (in the case of conflicts of interest), and
  - information about alternative avenues explored by the enforcement agency and the outcomes.
- Together with a description of support requested, including:
- specific actions or assistance being requested of the Food Authority,
  - estimated commencement date and duration of the support being requested.
  - proposed liaison and communication channels.
  - proposed costs and funding of the activity, including the administrative funding arrangement (enforcement agency to seek funding from a particular source; the Food Authority to invoice the enforcement agency for the service).
  - advice in relation to the enforcement agency's plan for addressing future similar occurrences.
- 11.5 The Food Authority will consider all requests for assistance based on the information provided. In urgent situations, the Food Authority will attempt to respond promptly. In non-urgent situations, the Food Authority will consult with the enforcement agency and confirm its response in writing as soon as is reasonably practicable.

## 12. Consultation and engagement

### Purpose

To set out the engagement and consultation processes for the Food Regulation Partnership.

### Procedure

- 12.1 An enforcement agency must make authorised officers available to regularly participate in networking meetings and undertake professional development.
- 12.2 The meetings will be conducted in accordance with the agreed procedures outlined in Appendix 6. This includes the procedures for the operation of the Regional Food Group, State Liaison Group and Manager's Forum.

*Under the **NSW Food Regulation Partnership (FRP)** model, the Food Authority supports and assists enforcement agencies to undertake coordinated food regulation across the state.*

*The **Food Regulation Forum** is a membership group appointed under the Act to provide expert advice and assistance to the Food Authority*

*The **Food Authority's Local Government Unit (LGU)** provides dedicated stakeholder engagement and professional development programs for enforcement agencies and their authorised officers, to enhance the consistency of food inspections and enforcement action, and to improve food safety outcomes for consumers.*

*The **Regional Food Groups (RFGs)** are the business essential interface for all enforcement agencies and their authorised officers under the FRP model. It consists of a complementary professional development training session provided by LGU and a networking meeting to provide support and assistance. There are 16 RFGs and the meetings are held three times per year. Each RFG selects a person to represent the collective view of the group at the **State Liaison Group (SLG)** meetings and to be the conduit back to the RFG.*

*The SLG provides a platform for representatives from the RFGs and the Food Authority to consult and discuss regulatory matters at a state level, and to actively explore food safety solutions to common issues across the state.*

*The **Managers' Forum (MF)** is a dedicated meeting between the Food Authority and enforcement agencies' decision makers, regarding food safety matters.*

## NSW Retail Food Regulation



### Related resources

- Consultation and engagement – meeting procedures
- Regulation of retail food businesses overview
- Guideline for the appointment of enforcement agencies

### Further information

If an enforcement agency requires additional guidance on any information provided in this document, contact the Food Authority's helpline on 1300 552 406 or email: [food.contact@dpi.nsw.gov.au](mailto:food.contact@dpi.nsw.gov.au).

### Revision summary

Version	Date Issued	Authorised by
1.0	XXX	CEO, NSW Food Authority

## Appendix 1A: Core competencies for an authorised officer

Competency	Evidence of knowledge or experience
<b>Knowledge of enforcement agency responsibilities:</b> <ul style="list-style-type: none"> <li>Enforcement agency instrument of appointment</li> <li>Food Regulation Partnership (FRP) protocols</li> <li>FRP advisory guidelines</li> <li>Food legislative framework</li> </ul>	Demonstrated knowledge of duties and powers under the NSW <i>Food Act 2003</i> , instrument of appointment, FRP protocols and familiarity with content of advisory guidelines
<b>Inspecting food businesses:</b> <ul style="list-style-type: none"> <li>Food Premises Assessment Report (FPAR)</li> <li>Inspection equipment</li> <li>Risk assessment</li> <li>Consistency in inspections</li> </ul>	Demonstrated familiarity with the scoring guidelines, and experience using the FPAR in conducting effective risk-based food inspections: <ul style="list-style-type: none"> <li>Assessing food risk</li> <li>Assessing skills and knowledge</li> <li>Identifying high risk products and processes</li> </ul>
<b>Enforcement policy and regulatory tools:</b> <ul style="list-style-type: none"> <li>Warnings</li> <li>Improvement Notices</li> <li>Prohibition Orders</li> <li>Seizures</li> <li>Penalty Notices</li> <li>Consistency in enforcement action</li> </ul>	Demonstrated knowledge of enforcement tools and their correct application in support of an escalatory and risk-based compliance model
<b>Food science:</b> <ul style="list-style-type: none"> <li>Key pathogens related to food</li> <li>Food science and microbiology</li> </ul>	Demonstrated knowledge of common foodborne illnesses, causes and related food types and processes (including methods to reduce risk e.g. guidelines for raw egg products, sushi)
<b>Food Standards Code:</b> <ul style="list-style-type: none"> <li>Food Safety Standard 3.2.2, Standard 3.2.2A and Standard 3.2.3</li> <li>Chapter 1 Part 1.2 Labelling and other information requirements (including allergens)</li> </ul>	Demonstrated knowledge of: <ul style="list-style-type: none"> <li>The Food safety standards and related guidelines</li> <li>Legal obligations of food businesses in regard to food labelling including allergens.</li> </ul>
<b>Investigations:</b> <ul style="list-style-type: none"> <li>How to investigate food complaints</li> </ul>	Demonstrated knowledge of complaint inspections and circumstances where a food issue would be referred to another agency.



## Appendix 1B: Template Certificate of Authority for an authorised officer

Template Certificate of Authority for an Authorised Officer of an enforcement agency (Section 115, Food Act 2003)

### Front side of Certificate of Authority

#### Certificate of Authority

Authorised Officer of *[name of council]*

Food Act 2003

**Photograph of  
Authorised Officer**

.....  
**[Authorised Officer's signature]**

**[Authorised Officer's name]**

Expiry: **[date]**

**[Council seal]**

This Certificate of Authority continues on the reverse side of this card.

### Reverse side of Certificate of Authority

#### Certificate of Authority as an Authorised Officer of *[name of council]*

This Certificate of Authority (which comprises both this and the reverse side of this card) is issued under s. 115 of the *Food Act 2003* to **[Authorised Officer's name]** who has been appointed as an authorised officer by **[name of Council]** on **[date]**. The Authorised Officer's photograph and signature are displayed on the front of this card.

**Limitations:** The Authorised Officer may only exercise the functions of an authorised officer under the *Food Act 2003* within **[Name of relevant local government area, part of local government area or other area]** ("the Area") in respect of: (a) an imminent threat to: (i) public health and safety, or (ii) the health of any individual; in connection with food; and (b) a retail food business\* within "the Area".

**Conditions:** The Authorised Officer's authority is not subject to conditions *{amend as required}*

Expires on: **[date]**.

Issued on **[date]** by:

..... **[Signature of issuer]**

**[Name and capacity of issuer]**

\* means a food business at a premises, and vehicles used to transport food, within "the Area": (a) where the principal food-related activity is one or both of: (i) the handling of food intended for sale directly to consumers from any premises by that business, or (ii) the sale of food directly to consumers; and (b) which is not a food business, or part of a food business, that is required to be licensed under the *Food Act 2003*.

## Appendix 2: Examples of penalty notices

### Example 1 – electronic version

#### Part A

#### ELECTRONIC PENALTY NOTICE

**Inf. Type:** GENERAL CLIENT

**Infringement No:** 1234567890

<b>Surname:</b>	CITIZEN	<b>Given Name:</b>	JOSEPH	<b>Sex:</b>
<b>Organisation Name:</b>				
<b>Address Line1:</b>	123 PARADISE ROAD	<b>Address Line2:</b>	PARADISE	
<b>Address Line3:</b>		<b>Address Line4:</b>		
<b>Address Line5:</b>	NSW	<b>Postcode:</b>	2202	
<b>Date Of Birth:</b>		<b>Licence No:</b>		<b>Licence State:</b>

<b>Vehicle Registration:</b>	<b>State Of Registration:</b>	<b>Rego Plate Type:</b>
<b>Between Times:</b>	<b>Offence Time:</b> 0900am	<b>Offence</b> Mon <b>Offence Date</b> 26062023
<b>Between Streets:</b>	<b>Street Of Offence:</b>	123 MAIN STREET
<b>Car Park Name:</b>	<b>Suburb Of Offence:</b>	PARADISE

<b>Offence Code:</b> 11338	<b>Short Title Of Offence:</b> Fail to comply with Food Standards Code - Individual		
<b>Regulation Code:</b> MEZ			
<b>Penalty Amount:</b> 440			
<b>Client Code:</b> 7007007	<b>Client Edit Code:</b> XY	<b>Operations Code:</b>	C
<b>Issuing Officer Number:</b> 007	<b>Issuing Officer Name:</b>		JACK BLACK
<b>Beat Number:</b>	<b>Ticket Machine No:</b>	<b>Issuing Authority:</b>	PARADISE CITY COUNCIL

<b>Receipt Number:</b>	<b>Expiry Date:</b>	<b>Make:</b>	<b>Type:</b>
<b>Colour:</b>	<b>Driver Spoken To:</b>	Section 21(1) Food Act 2003, Food Standards Code, Standard 3.2.2,	
<b>Signs Clear:</b>	<b>Chalk Mark Clear:</b>	clause 19(1)(c) – maintain food premises - accumulation of food waste	

**Notes:** During an inspection of food premises trading as YUMMY FOOD RESTAURANT, I observed accumulation of food waste throughout the food premises. This is a breach under the NSW Food Act 2003 Section 21(1) and Food Standards Code, Food Safety Standard 3.2.2 clause 19(1)(c) - maintain food premises – accumulation of waste. Previous warnings given.

## Example 2 – handwritten version

**PART A**  
**CCP 007**

**GENERAL PENALTY NOTICE**

PENALTY NUMBER  
1234567890

Rego. No. [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]

☐ 1. PARKING ☒ 2. GENERAL ☐ 3. TRAFFIC

DATE POSTED  
18/08/23

SURNAME/COMPANY NAME (block letters) CITIZEN SEX M

GIVEN NAMES (block letters) JOSEPH

who furnished place of residence/business as 123 PARADISE ROAD PARADISE, NSW Postcode 2202

D.O.B. [ ] [ ] [ ] [ ] [ ] [ ] Licence No. [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] Class [ ] [ ] State of Issue [ ] [ ] [ ] [ ]

It is alleged that at [ ] : [ ] hrs to [ ] : [ ] hrs on Monday (day) 26/08/23 date at 12 main Street (street) between and suburb paradise the following offence was committed

(1) you drove/stood motor bearing plates [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] State of Registration [ ] [ ] Registration Plate Type: Motorcycle ☐ Other ☐

(2) in relation to Section 21(1) Food Act 2003, Food Standards code standard 3.2.2 clause 19(1)(c) - maintain food premises - accumulation of waste

OFFENCE CODE		SHORT TITLE OF OFFENCE	
11338		Fail to comply with Food Standards	
REGULATION CODE	ME2	code-individual	
PENALTY AMOUNT	\$440		

Issuing authority paradise city council Demerit offence? YES / ☒ NO

COMPLETE BOXES 1, 2 AND 3 ON PART C and SERVE NOTICE BEFORE COMPLETING HEREUNDER				
RECEIPT No.	EXPIRY DATE	MAKE	TYPE	COLOUR
Driver Spoken To YES/ NO	One Way Street YES/ NO	Side of Street	Signs Clear YES/ NO	
Chalk Marks Clear YES/ NO	Loading Observed YES/ NO	Tyres Inflated YES/ NO	Photograph YES/ NO	
NAME (please print)		ISSUING OFFICER NUMBER	MACHINE NUMBER	
JACK BLACK		007		
CLIENT CODE	123456	CLIENT EDIT CODE	JB	BEAT NUMBER

DESCRIPTION OF OFFENCE MUST BE COMPLETED and if applicable, COMMENTS OF OFFENDER

During an inspection of food premises trading as Yummy Food Restaurant, I observed accumulation of food waste throughout food premises. This is a breach of Section 21(1) Food Act 2003, Food Standards code standard 3.2.2 clause 19(1)(c) - maintain food premises - accumulation of waste. Previous warnings given.

ABN: 51 824 735 656

DO NOT WRITE BELOW THIS POINT

OPERATION CODE C

## Appendix 3: Reporting form for legal proceedings

This form must be completed in full including approval by the Food Authority or enforcement agency bringing the prosecution, whether the prosecution was successful or not successful.

In the case of a successful prosecution, the details supplied are eligible be published by the Food Authority.

Note: *NSW enforcement agencies* - Please refer to the Protocol '*Reporting legal proceedings*' to ensure correct procedure is followed and all supporting documentation is attached as required.

### Details to be published on website:

<b>Trade name of product or premises:</b>		Summary table & details page
<b>Name of convicted:</b> <i>i.e. defendant</i>		
<b>Suburb:</b> <i>Place of business where offence occurred</i>		
<b>Council area:</b> <i>In which offence occurred:</i>		
<b>Date of offence:</b> <i>YYYY-MM-DD</i>		
<b>Decision</b> <i>e.g. Guilty, conviction recorded / OR Guilty, no conviction recorded under Section 10A of the Crimes (Sentencing Procedure) Act 1999</i> <i>Indicate individually if decision varies per offence</i>		Details page only
<b>Notes (to be published, if any):</b> <i>Full text of all annotations, e.g. where satisfied that a business has subsequently changed owners</i>		
<b>Address at which offence was committed:</b> <i>Full Street address, including suburb</i>		

<p><b>Nature and circumstances of offence:</b></p> <p><i>Short description of offence, with section(s) of Act or Code breached</i></p>	<p><b>EXAMPLE:</b></p> <ol style="list-style-type: none"> <li>1. The defendant was convicted for the offence under section 21(1) of the Food Act 2003, failure to comply with the Food Standards Code, namely: Food Safety Standard 3.2.2 Clause 19(1). Failure to maintain food premises to the required standard of cleanliness. The floor areas throughout the facility contained accumulated food waste, dirt, dust and other visible matter.</li> <li>2. The defendant was convicted for the offence under section 21(1) of the Food Act 2003, failure to comply with the Food Standards Code, namely: Food Safety Standard 3.2.2 Clause 19(2). Failure to maintain fixtures, fittings and equipment to the required standard of cleanliness. The noodle manufacturing equipment, packaging equipment, shelving and food storage containers contained accumulated food waste and other visible matter.</li> </ol>
<p><b>Date of decision:</b></p> <p>YYYY-MM-DD</p>	
<p><b>Court:</b></p> <p><i>Proper title of court</i></p>	
<p><b>Penalty:</b></p> <p><i>\$ amount for each breach</i></p>	
<p><b>Decision details:</b></p> <p><i>e.g. No web link available / OR</i>  <i><a href="http://link.address.at.Lawlink">http://link.address.at.Lawlink</a> / OR</i>  <i>Title of PDF to publish with prosecution</i></p>	
<p><b>Prosecution brought by or for:</b></p> <p><i>Enforcement agency name / OR</i>  <i>NSW Food Authority</i></p>	

**For NSW enforcement agencies:**

**Verifying documentation attached:**

*Please list*

**Signature of General Manager or delegate:**

**Date:**

**NSW Food Authority processing:**

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Entry type: <i>e.g. New listing / OR Amendment</i>	
If amendment, specify details of changes:	
New listing <b>must not</b> be before: YYYY-MM-DD <i>i.e. final judgement date + 28 days</i>	
Take-down <b>must be</b> on or before: YYYY-MM-DD <i>i.e. final judgement date + 28 days + 2 years</i>	

Approved for upload by Manager Compliance Investigations Unit:	
Date approved:	

Online Services use:

Proofing approval: <i>Manager Customer Service &amp; Engagement</i>	
Date:	
Date uploaded: <i>Online Services Administrator</i>	

## Appendix 4: Completing a Food Premises Assessment Report (FPAR)

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## **7. Enforcement Tools**

Suggested compliance strategy

### **Appendix A - FPAR version 8**

#### **Appendix B – FPAR Explanatory notes and definitions**

Food Standards Code Chapter 3, Standards 3.2.2 and 3.2.3

Food handling controls

Health and hygiene requirements

Cleaning and sanitising

Design and construction



## 1. Introduction

The Food Premises Assessment Report, or FPAR (see Appendix 4A), is a checklist used by authorised officers<sup>1</sup> when conducting inspections of food businesses. The FPAR highlights issues that have been identified during an inspection. It generates an outcome score that provides a measure of overall compliance with relevant food safety standards. It also is a tool for food businesses to better understand their inspection outcome or improve their inspection score. This guide assists authorised officers in consistently assessing and scoring businesses' compliance with the Food Safety Standards and *Food Act 2003*.

This guide also provides information on enforcement options, completing the FPAR for raw egg products, the obligations of food businesses regarding allergens and guidance on assessing the provision of potable water from private water supplies.

References to relevant factsheets and resources are included in this guide and the full suite of factsheets can be accessed from the Food Authority's website.

The Food Authority has many training webinars on the *FRP Portal* to assist authorised officers in undertaking their food safety inspection duties, including how to complete the FPAR.

Authorised officers requiring further information or training on the FPAR should contact the NSW Food Authority's (Food Authority's) Local Government Unit on 1300 552 406 or at [food.contact@dpi.nsw.gov.au](mailto:food.contact@dpi.nsw.gov.au).

## 2. Food Premises Assessment Report

The Food Premises Assessment Report (FPAR) is divided into nine sections that relate to compliance with the Food Safety Standards and Part 1.2 (relating to labelling of food for retail sale) of the Australia New Zealand Food Standards Code (FSC), the Food Regulation 2015 and NSW *Food Act 2003*.

Further guidance is provided in *Safe Food Australia: A guide to the Food Safety Standards (4th Edition, February 2023)* published by Food Standards Australia New Zealand. This guide interprets the requirements of the Food Safety Standards.

The nine sections of the FPAR relate to hygiene and food safety as follows:

- i. General requirements
- ii. Food handling controls
- iii. Health and hygiene requirements
- iv. Cleaning and sanitising
- v. Temperature measurement, single use items
- vi. Animal and pests
- vii. Design and construction of food premise,
- viii. Maintenance
- ix. Miscellaneous

Each of the nine sections contains questions designed to provide answers on compliance or non-compliance. Gathering information about each question at inspection will rely on:

- observation by the authorised officer,
- statements given by the proprietor or food handler,
- time of inspection,

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<sup>1</sup> Authorised officers are responsible for ensuring that all persons and organisations meet their food safety obligations and requirements under the *Food Act 2003*.

- product or food risk, e.g. raw egg sauce production,
- types of activity undertaken (e.g. high risk processing methods such as sous vide), and
- compliance history of the business.

## **2.1 Risk weighting and scoring**

The questions in each of the nine sections have been weighted based on their risk of causing food contamination and foodborne illness. These risk factors include:

- inadequate cooling and cold holding temperatures,
- food prepared ahead of planned service,
- inadequate hot holding temperatures,
- poor personal hygiene and infected (sick) food handlers,
- inadequate reheating, and
- inadequate cleaning and sanitising of equipment and premises.

Non-compliance with individual questions attract a risk weighting of 1, 4 or 8 (known as a breach scores). Scores are dependent on the presence of circumstances such as:

- the risk to food safety and how likely it is to occur,
- whether the breach is administrative in nature, or
- how widespread the problem is within the premises, and whether there is a systemic breakdown in procedures.

If a non-compliance is found, start with the lowest score and do not escalate it, unless there is evidence indicating a more serious breach. If the matter is borderline, select the less severe breach score.

Once all individual questions from all nine sections are answered (ticked for compliance or crossed for non-compliance), a total score can be calculated.

## **2.2 Breach score 1 point**

The following circumstances should be considered when issuing a breach score of 1 point:

- breach is unlikely to result in the production of unsafe or unsuitable food,
- breach does not directly impact on food safety,
- breach may be administrative in nature, and
- breach is generally isolated in nature, there is no systemic breakdown in procedures and a risk to food safety is unlikely.

## **2.3 Breach score 4 points**

The following circumstances should be considered when issuing a breach score of 4 points:

- breach is likely to impact on food safety,
- breach is not administrative in nature,
- breach is generally not isolated in nature; there may be a systemic breakdown in procedures, and
- if breach is isolated in nature, it is likely to result in the production of unsafe or unsuitable food.

## **2.4 Breach score 8 points**

The following circumstances should be considered when issuing a breach score of 8 points:

- breach is very likely or has impacted directly on food safety,

- breach is not administrative in nature, and
- breach is generally not isolated in nature; systemic breakdown in procedures has occurred.

A breach score of 8 means critical issues have been identified, which are highlighted on the FPAR. This will prompt the authorised officer to consider follow up action required to rectify the non-compliance (see Enforcement tools).

## 2.5 Variable breach score option

Some questions have an option for a variable breach score. This is where the authorised officer can select a 1, 4 or 8- point breach. For these questions, determining the breach score is at the authorised officer's discretion and should be based on risk to food safety. If a non-compliance is found, start with the lowest score and do not escalate the score higher, unless there is evidence indicating a more serious breach (see Guidance on variable breach score items).

## 2.6 Scoring multiple breaches of the same item

Where there are two or more breaches of the same checklist item, and where there is no variable breach score option, that item should be crossed only once (to indicate non-compliance) and the relevant breach score should be allocated only once.

For example, if a number of food handlers are observed not washing their hands thoroughly during the inspection, FPAR item 14 should be crossed once and a 4-point breach allocated. It should be noted, however, that this non-compliance can itself result in further non-compliances (see below – Breaches having a knock-on effect).

For checklist items where there is a variable breach score option and where multiple breaches are observed, for example, multiple cleaning issues (FPAR item 22), then a score of 1, 4 or 8 can be allocated in an escalatory manner depending on severity.

## 2.7 Breaches having a knock-on effect

Some identified non-compliance issues may result in other breaches, which will increase the score on the FPAR. For example, if there are inaccessible hand washing facilities (FPAR item 20 with a 1-point breach), this could result in food handlers not washing their hands (FPAR item 14 with a 4-point breach) and that there may be a contamination risk when processing food (FPAR item 8 with a 4-point breach). All three scores are tallied to give a total of 9 points.

However, authorised officers cannot assume that a particular non-compliance is causing further non-compliances, there must be evidence to support this. In the example above, inaccessible hand washing facilities may not result in food handlers not washing their hands or their hands being a contamination risk if there is an alternate hand washing facility available.

## 3. Guidance on variable breach score items

### 3.1 FPAR Item 3 – Food handler's skills and knowledge

Food handlers have skills and knowledge to handle food safely.

**Relevant offence provision: General requirements, Standard 3.2.2, clause 3.**

See:

- Food Safety: Skills and knowledge for food businesses (FSANZ)
- Guideline to Food Safety Supervisor (FSS) Requirements (NSW Food Authority).

Point score	Item 3 – Food handlers have skills and knowledge to handle food safety
1	<p><b>When to issue</b> – Following observation and questioning, one food handler has been deemed to lack appropriate skills and knowledge. However, this is limited to one individual and one task and is not an issue across the business.</p> <div data-bbox="239 403 628 692" data-label="Image"> </div> <p><b>Example</b> – A food handler was not aware he needed to wash his hands after taking out the rubbish and returning to food preparation duties. Upon observation and questioning the authorised officer is satisfied this was limited to one individual and this particular issue.</p>
4	<p><b>When to issue</b> – Where there is a lack of skills and knowledge generally across the business resulting in numerous non-compliances with good food handling controls; or one individual food handler is unable to show any level of skills and knowledge in handling food safely.</p> <div data-bbox="236 824 740 1099" data-label="Image"> </div> <p><b>Example</b> – During the inspection, none of the food handlers present could demonstrate how to correctly make up and use the sanitising solution.</p>

### 3.2 FPAR Item 3a – Food handler's skills and knowledge – food safety training

A food business that processes and sells unpackaged potentially hazardous ready-to-eat food must ensure that each food handler who engages in a prescribed activity has, before engaging in that activity:

- completed a food safety training course; or
- skills and knowledge of food safety and hygiene matters commensurate with that specific prescribed activity.

If the authorised officer is not satisfied with the food handler's skills and knowledge, it is recommended that the risk-rating and scoring principles (see section 2.1 in this document) are applied in relation to the relevant food handling activities.

For the purposes of Standard 3.2.2A a 'prescribed activity' is the handling by the food business of any unpackaged potentially hazardous food that:

- is used in the preparation of ready-to-eat food to be served to a consumer; or
- is ready-to-eat food intended for retail sale by that business.

**Relevant offence provision:** *General requirements, Standard 3.2.2A, clause 8 or 9.*




### 3.3 FPAR Item 5 – Protecting food from contamination

Food protected from the possibility of contamination during food receipt, storage, preparation, display and/or transport.

**Relevant offence provision:** *Food Handling Controls, Standard 3.2.2, clauses 5, 6, 7, 8 and 10.*

See:

- Protecting food from contamination (NSW Food Authority)
- Health and Hygiene Requirements of Food Handlers (NSW Food Authority)
- Skills and knowledge for food handlers (FSANZ)

Point score	Item 5 – Food protected from the possibility of contamination	
1	<p><b>When to issue</b> – Food is generally protected from contamination. However, there is a minor isolated instance where food is not satisfactorily protected but is not likely to impact food safety.</p>  <p><b>Example</b> – There are bags of open sugar in the dry goods store. Other products in the premises are adequately protected.</p>	
4	<p><b>When to issue</b> – Multiple instances where food is not adequately protected across the premises and has the capacity to result in unsafe or unsuitable food.</p> <p><b>Examples</b> – Raw meat being stored in non-food grade plastic bags on the freezer floor (left photo) and ready-to-eat potato birds' nests are being stored in a cardboard box (right photo).</p>  	
8	<p><b>When to issue</b> – Multiple non-compliances across the premises where food is not adequately protected, or a single severe instance of non-compliance where either is very likely to result in unsafe or unsuitable food.</p> <p><b>Example</b> – In the coolroom there are bags of raw meat stored on the top shelf above ready to eat food (strawberries, yoghurt, cheese and cooked chicken). You observe blood dripping</p>	



Point score	Item 5 – Food protected from the possibility of contamination
	 <p>from the bag of raw meat onto the ready to eat food which is very likely to impact food safety directly.</p>

### 3.4 FPAR Item 7 – Temperature control of potentially hazardous food

Potentially Hazardous Food (PHF) is under temperature control during receipt, storage, display and transport; less than 5°C and above 60°C. Frozen food is hard frozen.

**Relevant offence provision: Food Handling Controls, Standard 3.2.2, clauses 5, 6, 8 and 10.**

See:

- Potentially hazardous foods (NSW Food Authority)
- Guidance on the 4-hour/ 2-hour rule (NSW Food Authority)
- Temperature danger zone (NSW Food Authority)

Note: If a core temperature measurement has been taken and the product is potentially hazardous food and time is not being monitored, breach point scores should be issued in accordance with the table below.

Point score	Item 7 – Potentially Hazardous Food (PHF) is under temperature control
1	<p><b>When to issue</b> – Temperature control is generally satisfactory, but a minor temperature non-compliance is observed (between 1-2°C above or below requirements) and is isolated in nature.</p> <p><b>Example</b> – The temperature of diced chicken in a sandwich shop's under bench fridge is between 6-7°C during the lunch time trade. Other products in the premises are under adequate temperature control.</p>

Point  
score

Item 7 – Potentially Hazardous Food (PHF) is under temperature control



4

**When to issue** – Isolated instances of temperature non-compliance across the premises, ranging between 5-10°C above or below requirements.

**Examples** – Pies in a bain marie are at 54°C (left photo) and food in the coolroom is at 8°C (right photo).



8

**When to issue** – Multiple non-compliances across the premises that are significant (between 5-10°C), or a single severe instance of non-compliance (in excess of 10°C) above or below requirements.



**Example** – Isolated significant incident of butter chicken being held at 38.3°C in the bain mair.

### 3.5 FPAR Item 8 – Safe processing of foods

Processing of foods; take all practical measures to process only safe and suitable food; prevent the likelihood of food being contaminated; use a process step if necessary.


**Relevant offence provision: Food Handling Controls, Standard 3.2.2, clause 7.**

See:



- Eggs: Food safety guideline for the preparation of raw egg (NSW Food Authority)
- Eggs: Safe preparation of raw egg (NSW Food Authority)
- Eggs: Egg stamping for cafes, restaurants and takeaways (NSW Food Authority)
- Eggs: Egg stamping information for councils (NSW Food Authority)
- Hamburger food safety (NSW Food Authority)
- Food safety guidelines for the preparation and display of sushi (NSW Food Authority)
- Sous vide: food safety requirements (NSW Food Authority)
- Sous vide: precautions for restaurants
- Eggs: Raw egg products (video - (NSW Food Authority)

See:

Tips for filling in the FPAR for raw egg products in this document.

Point score	Item 8 – Processing of foods; take all practical measures to process only safe and suitable food; prevent the likelihood of food being contaminated; use a process step if necessary
4	<p><b>When to issue</b> – Single incidence of non-compliance identified during the processing stage (particularly regarding high-risk products or activities such as using raw eggs, undercooked burgers or sushi) that is likely to result in foodborne illness. However, all other food processing controls are in place.</p> <p><b>Example 1</b> – A food business cannot provide records to demonstrate that they are producing raw egg mayonnaise in accordance with the NSW Raw Egg Product Guidelines. They are making the sauce correctly and measuring pH, but they are not keeping records as evidence that all practicable measures are being taken to process this high-risk product safely.</p> <p><b>Example 2</b> – A food business is using unstamped eggs or dirty eggs (photo below).</p> 
8	<p><b>When to issue</b> – Two or more non-compliances are identified during the processing stage, particularly regarding high-risk products or activities such as processing food contain raw</p>



Point score	Item 8 – Processing of foods; take all practical measures to process only safe and suitable food; prevent the likelihood of food being contaminated; use a process step if necessary
	<p>eggs (batters, mousse or quiche) or foods containing raw or lightly cooked meat (burgers, kebabs or pate) that are very likely to cause foodborne illness or one significant non-compliance that is very likely to result in unsafe or unsuitable food.</p> <p><b>Example 1 (single significant non-compliance)</b> – A food business is keeping pH records for its acidified raw egg butter, but they are keeping the food for longer than 24 hours. The business is not taking all practical measures to process only safe and suitable food (left photo).</p> <p><b>Example 2 (single significant non-compliance)</b> – A local bistro is cooking and serving its burgers rare unless customers specifically request otherwise. The internal temperature of the burgers is not sufficiently high enough (i.e. 71°C) to kill any bacteria that may be present. The business is not taking all practical measures to ensure they process only safe and suitable food, and they are not using a process step (kill step) to achieve the microbiological safety of the food (right photo).</p> <div style="display: flex; justify-content: space-around;">   </div>

### 3.6 FPAR Item 9 – Cooking and thawing of potentially hazardous food

Cooked potentially hazardous food (PHF) is cooled rapidly (2–4-hour rule); items thawed correctly; processed quickly.

*Relevant offence provision: Health and Hygiene, Standard 3.2.2, clause 7(2), (3) and (4).*

See:

- FSANZ Temperature control for potentially hazardous food
- Temperature danger zone (NSW Food Authority)

Point score	Item 9 – Cooked PHF is cooled rapidly (2+4-hour rule); items thawed correctly; processed quickly.
4	<p><b>When to issue</b> – Any incidence of food left cooling for unknown or extended periods or food being prepared for prolonged periods in the temperature danger zone which is likely to permit the growth of bacteria. For cooling, consideration needs to be given to the volume of food and the cooling capacity of the fridge/coolroom.</p> <p><b>Example</b> – Barbecue chickens have been left on racks in the hot kitchen to cool before being placed in the fridge. After an hour, the outside of the food is below 60°C but the core temperature is still above 60°C. The barbecue chickens must be cooled rapidly and placed under temperature control as soon as they reach 60°C.</p>

**Point score**    **Item 9 – Cooked PHF is cooled rapidly (2+4-hour rule); items thawed correctly; processed quickly.**



**8**    **When to issue** – A large volume of food is left to cool, but due to the large capacity of the container cooling it in compliance with the 2-4 hour rule is impossible. The extended period in the temperature danger zone is very likely to permit the growth of bacteria.

**Example** – A 25 litre pot of beef stew is left cooling in the coolroom. It is still at 40°C two hours later.



### 3.7 FPAR Item 10a – substantiation of food safety management in relation to prescribed provisions

A food business that processes unpackaged potentially hazardous ready-to-eat food (Category 1) must ensure, if they engage in an activity relating to prescribed provisions, make a record to substantiate compliance with FPAR items (7) to (10), and retain that record for a period of 3 months.

Alternatively, the food business can demonstrate to the reasonable satisfaction of an authorised officer on request that the business is actively monitoring and maintaining compliance with the each of the 'prescribed activities' without the need to retain records.

If the authorised officer is not satisfied with the food business's substantiation of activities in relation to prescribed provisions, it is recommended that the risk-rating and scoring principles (see section 2.1) are applied in relation to the relevant prescribed provision. The 'prescribed provisions' are those in Clause 12(4) of Standard 3.2.2A:

- (a) subclause 5(3) – food receipt (potentially hazardous food);
- (b) paragraph 6(2)(a) – food storage (potentially hazardous food);
- (c) paragraph 7(1)(b)(ii) and (2) – food processing;

- (d) subclause 7(3) - processing (cooling cooked potentially hazardous food);
- (f) subclause 7(4)- processing (reheating potentially hazardous food);
- (g) paragraph 8(5)(a) – displaying (potentially hazardous food);
- (h) paragraph 10(b) – transportation (potentially hazardous food); and
- (i) clause 20 – cleaning and sanitising specific equipment.

**Relevant offence provision: General requirements, Standard 3.2.2A, clause 12.**

See:

- Standard 3.2.2A food safety management tools – templates (NSW Food Authority)

### 3.8 FPAR Item 21 – Hand washing facilities are appropriately equipped

Hand washing facilities have warm running water through a single spout and single use towels and soap are provided.

**Relevant offence provision: Health and Hygiene, Standard 3.2.2, clause 17.**

Hand washing facilities that are not part of the premises (e.g. centre management facilities) should not be considered within the scope and scoring of the inspection.

Whilst air dryers are not prohibited, authorised officers should observe hand washing and drying behaviour to make sure hands are being effectively washed and dried (FPAR item 14). Proprietors can be advised that the use of air dryers is discouraged because of the potential cross contamination risk.

See:

- Hand washing in food businesses (NSW Food Authority)

Point score	Item 21 – Hand washing facilities have warm running water through a single spout and single use towels and soap are provided
4	<p><b>When to issue</b> – When hand washing facilities are present but one of the following is not available:</p> <ul style="list-style-type: none"><li>• warm running water through single spout,</li><li>• single use towels (or air dryer), or</li><li>• soap.</li></ul> <p>If more than one of the above items is not present a breach score of 8 is to be given.</p> <p><b>Example</b> – A bakery has warm running water and single use towels, but soap dispenser is empty.</p>

**Point score**   **Item 21 – Hand washing facilities have warm running water through a single spout and single use towels and soap are provided**



**8**   **When to issue** – If there are no hand washing facilities present within a premises requiring them (including dedicated facilities for toilets), or if more than one of the following is not present:

- warm running water through a single spout,
- single use towels or air dryers, and
- soap.

**Example** – A newly renovated café has installed a knee operated hand washing facility, but the paper towel and soap dispenser are empty.



### 3.9 FPAR Item 22 – Appropriate level of cleanliness

Premises, fixtures, fittings and equipment maintained to an appropriate standard of cleanliness.




**Relevant offence provision:** *Cleanliness, Standard 3.2.2, clause 19.*

This item is intended to capture unclean premises, fixtures, fittings and equipment, but does not cover unclean food contact surfaces. This should be covered under item 23.

See:

- Cleaning and sanitising in food businesses (NSW Food Authority)



Point score	Item 22 – Premises, fixtures and equipment maintained to an appropriate standard of cleanliness
1	<p><b>When to issue</b> – If any part of the premises, fixtures, fittings or equipment (non-food contact surface) is in an unclean condition. This may include unclean storage areas. Issue if this has occurred in an isolated instance.</p> <p><b>Example</b> – The shelving below the wash-up sink in a restaurant is in an unclean condition, the general cleaning standards throughout the rest of the premises are satisfactory.</p> 
4	<p><b>When to issue</b> – Multiple cleaning issues involving non-food contact surfaces (note: for food contact surfaces, issue under item 23).</p> <p><b>Examples</b> – A bakery has multiple cleaning issues including unclean walls, benches and shelving.</p>  
8	<p><b>When to issue</b> – Widespread cleaning issues involving non-food contact surfaces (note: for food contact surfaces, issue under item 23),</p> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>• exposed food is handled in the vicinity of unclean surfaces, and</li> <li>• there are no documented procedures in place regarding cleaning, and</li> <li>• circumstances generally warranting the issuing of a 24-hour improvement notice or prohibition order e.g. ongoing risk of food becoming contaminated.</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>• poor cleaning standards are contributing to a pest problem within the premises.</li> </ul> <p><b>Examples</b> – Very poor cleaning standards observed throughout a café including walls, floors and under equipment. Build-up of dirt and grease over a significant period of time observed.</p>

**Point score**   **Item 22 – Premises, fixtures and equipment maintained to an appropriate standard of cleanliness**



**3.10 FPAR Item 23 – Food contact surfaces and utensils are clean and sanitised**

Food contact surfaces, eating and drinking utensils are in a clean and sanitary condition and an appropriate sanitising method is in use (e.g. chemicals or dishwasher).

***Relevant offence provision: Cleaning and sanitising, Standard 3.2.2, clause 20.***

Food contact surfaces include items such as chopping boards, knives and other utensils, meat slicers, blades and guards on meat slicers, food containers and trays, cutlery, glassware. It may include equipment such as can openers, mincers, mixers and blenders.



This item focuses on food contact surfaces; non-food contact surface issues should be covered under item 22.

See:

- Cleaning and sanitising in food businesses (NSW Food Authority)

**Point score**   **Item 23 – Food contact surfaces, eating and drinking utensils are in a clean and sanitary condition and an appropriate sanitising method is in use**

**1**   **When to issue** – In isolated instances of a food contact surface not being cleaned or sanitised.

Point score	Item 23 – Food contact surfaces, eating and drinking utensils are in a clean and sanitary condition and an appropriate sanitising method is in use
	<p><b>Example</b> – A restaurant has glasses intended for service with food residue present. However, general cleaning and sanitising practices and procedures are satisfactory.</p> 
4	<p><b>When to issue</b> – If multiple food contact surfaces, eating or drinking utensils are in an unclean and unsanitary condition within the premises OR if the business does not have an appropriate sanitising method in use (e.g. non-food grade product, incorrect dilution or has exceeded the recommended shelf-life).</p> <p><b>Example</b> – The food preparation areas within a pub are in a clean condition but the business has not implemented a method to sanitise food contact surfaces (i.e. no dishwasher or chemicals are in use).</p> 
8	<p><b>When to issue</b> – If widespread unclean food contact surfaces are found, <b>AND</b></p> <ul style="list-style-type: none"> <li>• exposed food is handled near unclean surfaces, and</li> <li>• no documented procedures are in place regarding cleaning, and</li> <li>• there is no evidence of appropriate sanitising method in use within the premises, and</li> <li>• circumstances generally warranting the issuing of a 24-hour improvement notice or prohibition order e.g. ongoing risk of food becoming contaminated.</li> </ul> <p><b>Examples</b> – Multiple food contact surfaces within a café are unclean and unsanitised, including a meat slicer (left photo). The blade of the slicer has not been dismantled and cleaned for several days.</p>

**Point score**   **Item 23 – Food contact surfaces, eating and drinking utensils are in a clean and sanitary condition and an appropriate sanitising method is in use**



### 3.11 FPAR Item 23a – substantiation of food safety management of prescribed activities

A food business that processes and sells unpackaged potentially hazardous ready-to-eat food (Category 1) must ensure, if they engage in a prescribed activity, make a record to substantiate compliance with FPAR item (23), and retain that record for a period of 3 months.

Alternatively, the food business can demonstrate to the reasonable satisfaction of an authorised officer on request that the business is actively monitoring and maintaining compliance with the each of the 'prescribed provisions' without the need to retain records.

'Prescribed provisions' are those referenced in Clause 12(4) of Standard 3.2.2A:

- (a) subclause 5(3) – food receipt (potentially hazardous food);
- (b) paragraph 6(2)(a) – food storage (potentially hazardous food);
- (c) paragraph 7(1)(b)(ii) and (2) – food processing;
- (d) subclause 7(3) - processing (cooling cooked potentially hazardous food);
- (f) subclause 7(4)- processing (reheating potentially hazardous food);
- (g) paragraph 8(5)(a) – displaying (potentially hazardous food);
- (h) paragraph 10(b) – transportation (potentially hazardous food); and
- (i) clause 20 – cleaning and sanitising specific equipment.

**Relevant offence provision: General requirements, Standard 3.2.2A, clause 12.**

See:

- Standard 3.2.2A food safety management tools – templates (NSW Food Authority)

### 3.12 FPAR Item 29 – Insect infestation or rodent activity

Signs of insect infestation or rodent activity in premises.

**Relevant offence provision: Animals and Pests, Standard 3.2.2, clause 24.**

See:

- Pest control in food businesses (NSW Food Authority)



**Point  
score****Item 29 – Signs of insect infestation or rodent activity in premises**

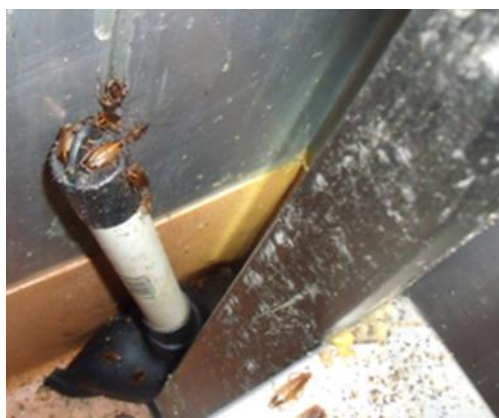
- 1**      **When to issue** – Sighting of a small number of cockroaches during an inspection. No evidence of infestation, breeding or excreta. Steps have been taken to control pest infestation, such as having a pest control program in place.

**Example** – A couple of dead cockroaches are sighted within a restaurant kitchen. A pest program is in place (documents sighted) and storage, maintenance and cleaning practices are satisfactory.



- 4**      **When to issue** – Multiple pest sightings and no effective pest control program in place.

**Example** – Numerous live and dead cockroaches are observed along with excreta within the kitchen of a club. The club has not had a pest inspection completed for six months.



- 8**      **When to issue** – Evidence of a high-level active pest infestation and activity within the premises which may include:

- evidence of harbourage (nesting),
- evidence of breeding (different life cycles),
- failure to prevent entry of pests (access points),
- inadequate or no pest control program, or
- evidence of droppings, smears etc. within food storage or food handling areas.

**Point score**    **Item 29 – Signs of insect infestation or rodent activity in premises**

**Examples** – Evidence of mouse activity in and around food storage and handling areas of a takeaway shop. Many droppings and signs of gnawed packaging, access points and potential harbourage. No active pest control measures in place.



## 4. Guidance on non-variable breach point score items

### 4.1 FPAR Item 12 – Food wraps and containers

Food wraps and containers will not cause contamination.

*Relevant offence provision: Food Handling Controls, Standard 3.2.2, clause 9.*

Ice cream containers may be reused for storage of food if the item is not cracked or damaged.

See:

- Food grade packaging (NSW Food Authority)

**Point score**    **Item 12 – Food wraps and containers will not cause contamination**

**1**    **When to issue** – An isolated instance that results in low level potential contamination. If widespread contamination or more severe contamination exists, consider scoring under item 5, which has a 1, 4 or 8 point breach score available.

**Examples** – A tea towel is being used for covering food (left photo). An example of widespread contamination which may need to be scored under item 5 is the use of damaged ice cream containers to store ingredients (right photo).




### 4.2 FPAR Item 13 – Food for disposal is stored separately

Food for disposal is identified and separated from normal stock.

**Relevant offence provision: Food Handling Controls, Standard 3.2.2, clause 11.**

Generally, food that has been recalled or removed from sale because it is damaged or deteriorated should be treated as food for disposal and needs to be properly separated, identified and disposed of. This would include out of date product removed from sale.

Point score	Item 12 – Food for disposal is identified and separated from normal stock
1	<p><b>When to issue</b> – If food for disposal has not been properly separated, identified and disposed of.</p> <p><b>Example</b> – Out-of-date stock is taken off display and put in the coolroom without identification and mouldy, unsuitable food which needs to be thrown out, is kept in the coolroom without identification (photo below).</p> 

### 4.3 FPAR Item 15 – Avoiding unnecessary contact with food


Food handlers avoid unnecessary contact with ready to eat food or food contact surfaces by use of utensils, a gloved hand, food wraps, etc.

**Relevant offence provision: Health and Hygiene, Standard 3.2.2, clauses 15 and 18.**

Use of gloves is not mandated under clause 15 of the Food Safety Standards 3.2.2. If used correctly, gloves can achieve this outcome. Other practicable measures may also be applied to minimise preventable unnecessary contact with ready-to-eat-food. This includes the use of tongs, inverted bags or other utensils.

See:

- Health and hygiene requirements of food handlers (NSW Food Authority)
- Protecting food from contamination (NSW Food Authority)

Point score	Item 15 – Food handlers avoid unnecessary contact with ready to eat food or food contact surfaces
1	<p><b>When to issue</b> – If food handlers are observed having unnecessary contact with food.</p> <p><b>Example</b> – A food handler in a café is observed serving cake with unnecessary hand contact.</p> 

## 5. Guidance on completing the FPAR for raw egg products

Information is available on the FRP Portal.

See:

- Guidance on completing the FPAR for raw food products (NSW Food Authority)

## 6. Guidance on completing the FPAR for allergens

### 6.1 FPAR Item 45 – Knowledge of obligations regarding allergens

Food business is aware of their duty to provide information about food allergens in food if requested by a customer.

Food businesses are under no obligation to cater for 'allergen free' or specific dietary requests. However, communication is key and food businesses should make it clear to customers if they do not or cannot fulfil specific allergen free food requests.

Once a food business has agreed to provide an allergen free food, the food business must be able to manage the risk posed by food allergens.

Allergens that are present in an allergen free food are considered as a **contaminant** and make the food unsuitable. Standard 3.1.1 clause 2(4)(d) states a food is not suitable if it contains a biological agent that is foreign to the nature of the food.

The exact nature of how each food business manages allergens will vary greatly since it will need to reflect the specific needs of the food businesses operations. For example, managing allergens in a food shop buying in and selling gluten free pastries will be less complex than for a manufacturer where allergens need to be managed across all aspects of the food business from food receipt, food storage, food processing and food transport.

#### WHERE ARE THE LEGISLATIVE PROVISIONS IN RELATION TO ALLERGENS?

6.1.1 The breach clause for supplying allergens in an allergen free meal:

**Section 19, NSW Food Act 2003: Sale of food not complying with the purchasers demands**

This requirement applies to all food ordered by customers and not just requests for allergen free meals.

6.1.2 The process control requirements for allergens:

**Refer to the Australia and New Zealand Food Standards Code, Chapter 3 Food Safety Standards, Standard 3.2.2 Food Safety Practices and General Requirements**

Labelling and other information requirements, including the declaration of allergens is set out in Food Safety Standard 1.2

6.1.3 The breach clause for falsely describing food can be found in:

**Refer to Section 15, NSW Food Act, 2003: False description of food**

For example, this breach clause could be used where allergens are not declared on a label or on a menu.

6.1.4 The breach clause for providing misleading information relating to food:

**Refer to Section 18, NSW Food Act 2003: Misleading conduct relating to sale of food**

For example, this breach clause could be used where a menu incorrectly identifies a food as gluten free.

See:

- Allergies: Be prepared. Be allergy aware (brochure – NSW Food Authority)
- Allergy aware checklist (A3 poster – NSW Food Authority)

- Allergies: Declaring allergens (factsheet – NSW Food Authority)
- Allergies: Food allergy and intolerance (consumer brochure – NSW Food Authority)
- Allergies: The usual suspects (A2 poster – NSW Food Authority)
- Allergies: Allergy information for food businesses (video – NSW Food Authority)

## 6.2 Legal basis for the declaration of allergens

### 6.2.1 Section 19 of the Food Act 2003 – Sale of food not complying with purchaser's demand

- A person must not, in the course of carrying on a food business, supply food by way of sale if the food is not of the nature or substance demanded by the purchaser.
- For the purposes of this section, it is immaterial whether the food concerned is safe.

### 6.2.2 When does it apply?

Use FPAR item 45 to check that a food business is aware of their duty to provide information about food allergens in food if requested by a customer. Non-compliance occurs if the food business does not provide this information when requested by a customer or if the customer was specifically told a food did not contain a particular allergen, but it did.

FPAR item 42 – Food labelling complies with the Food Standards Code Chapter 1.2 – should be used where a food does not comply with the labelling requirements including where allergens are not declared on a packaged food.

When the purchaser makes a specific request regarding a food, such as in a restaurant-type setting, the purchaser must be given what he/she requested, unless the food business makes it clear they cannot accommodate the request.

For example, where a customer asks for no peanuts in their meal and the restaurant confirms the order but the customer receives the meal contaminated with peanuts (either directly or through cross contamination during preparation), this is a breach of s.19 of the *Food Act 2003*. This breach allows for a Penalty Notice option.

There is no breach score for this item on the FPAR. If a food business does not have good handling practices (e.g. from food receipt to service) to prevent cross contact between allergens and other food products or surfaces, then the individual non-compliances can be scored on the FPAR under the appropriate section, such as:

- FPAR item 5 – food protected from contamination at receipt, storage, preparation, display or transport,
- FPAR item 8 – when processing food take all necessary steps to prevent the likelihood of food being contaminated,
- FPAR item 11 – self serve bar is supervised, has separate utensils and a sneeze guard,
- FPAR item 12 – food wraps and containers will not cause contamination,
- FPAR item 13 – food for disposal is identified and separated from normal stock,
- FPAR item 17 – food handlers take all practical measures not to contaminate food/surfaces, or
- FPAR item 23 – food contact surfaces are in a clean and sanitary condition.

Note: Information on 'Advice for food businesses' can be found on the FRP Portal.

## 7. Guidance on filling in the FPAR for potable water

### 7.1 FPAR Item 31 – Supply of potable water



Food Safety Standard 3.2.3, clause 4 requires a food business to use potable water for all activities that use water in the premises, including drinking water, unless the business can demonstrate the use of non-potable water for a purpose will not adversely affect the safety of the food handled by the food business.

Potable water is water that is acceptable for human consumption, i.e. complies with the Australian Drinking Water Guidelines 1996. Food businesses not connected to a reticulated (town) water supply are private suppliers of water and like all food businesses, the water supply must be potable (i.e. safe).

## 7.2 Guidance for assessing private water supplies and potable water

The *Public Health Act 2010* requires suppliers of drinking water to establish and adhere to a Quality Assurance Program (QAP) which addresses the relevant elements of the Framework for Management of Drinking Water Quality in the *Australian Drinking Water Guidelines*. The Framework provides a preventive risk management approach to ensure risks are adequately managed through all stages of supply. This approach overlaps with concepts also found in the Hazard Analysis and Critical Control Point (HACCP) model.

Figure 1: Assessment of private water supply can be used as a guide for authorised officers when undertaking an inspection of a food business to determine whether it is a private water supply and if the water provided is safe. This guidance provides a consistent approach to assess the safety of drinking water at food businesses with private water supplies as developed in consultation with NSW Health.

## 7.3 Scoring and enforcement of private water supply issues

Upon inspection and in accordance with the flowchart below, where a supply of potable water or 'safe' water is not being used in connection with the food business, the item is crossed on the FPAR Item 31 and a breach score of 1 allocated.

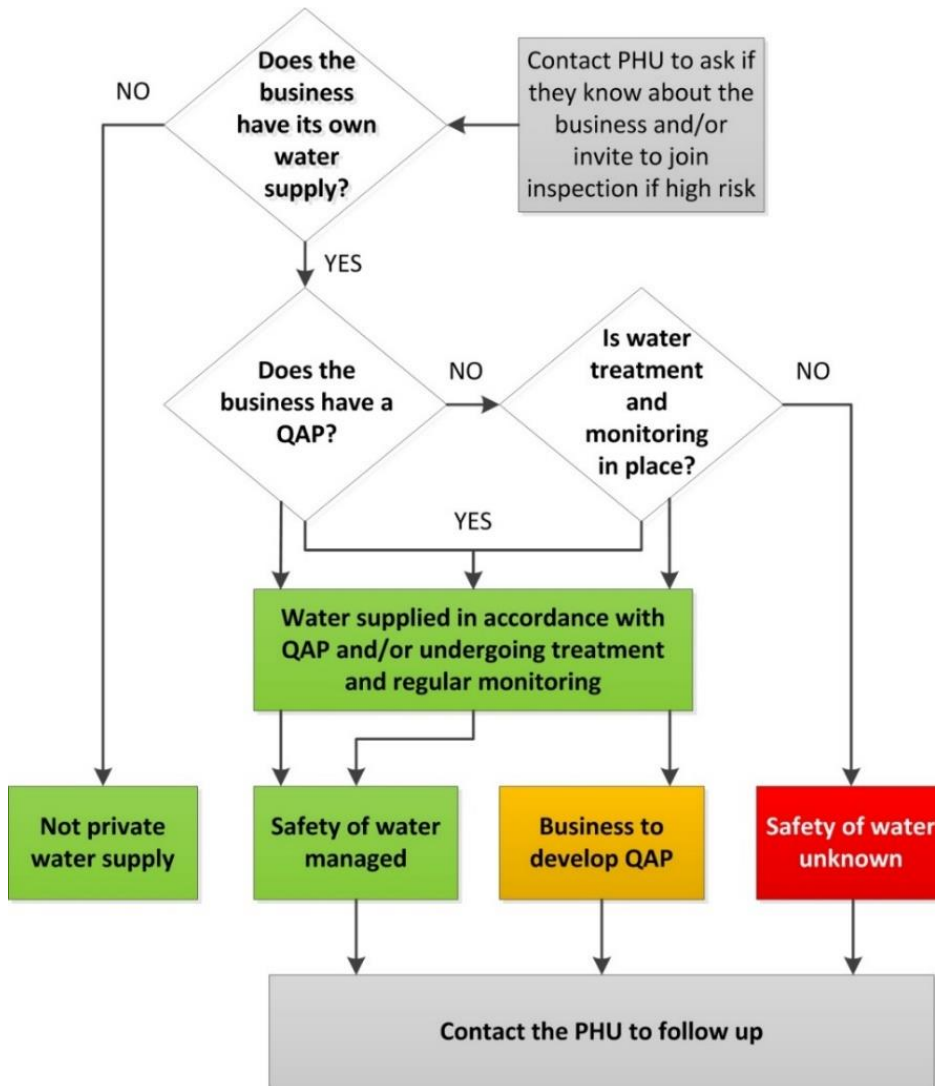
Lack of potable water can cause further issues in the food business. If further breaches are found as a result of non-potable water supply these can be scored separately, e.g. lack of suitable water supply to clean, wash hands or prepare foods.

Authorised officers can use their enforcement powers under the *Food Act 2003* in order to rectify the breach. For example, an improvement notice (section 58 of the *Food Act 2003*) or a prohibition order (section 60 of the *Food Act 2003*) could be issued as appropriate.

See:

- The Australian Drinking Water Guidelines (National Health and Medical Research Council)
- Private Water Supplies (webpage – NSW Health)

Figure 1 Assessment of private water supply



## 8. Enforcement tools

Both statutory (improvement notice, prohibition order, seizure notice, penalty notice, prosecution) and non-statutory (warning letter, re-inspection, verbal warning, advice and training) enforcement tools exist for dealing with non-compliances identified during food premises inspections.

When considering whether enforcement action should be initiated under the Food Act 2003, it is important to select enforcement tools that are proportionate to the risk and nature of the offence.

Enforcement agencies are strongly encouraged to use a consistent approach when determining appropriate enforcement action and to have an escalatory enforcement policy in place. The Food Authority's Compliance Policy and Enforcement Policy is available for reference and outlines the Food Authority's approach in dealing with non-compliance.

See:

- Biosecurity and Food Safety Compliance: Compliance and Enforcement Policy (Department of Primary Industries)

Factors to be considered when determining the appropriate enforcement action include:

- the risk to public health and speed required for resolution of the issue,
- the knowledge of the alleged offender as to the consequences of their actions,
- the degree of care taken by the alleged offender to ensure they did not commit an offence,

- prior history,
- cost/benefit of proceeding,
- the contrition demonstrated by the alleged offender,
- any mitigating or aggravating circumstances,
- public interest, and
- the proportionality of the selected enforcement option.

### 8.1 Suggested compliance strategy

The overall score on the FPAR helps indicate what, if any, follow up action (e.g. enforcement action or re-inspection) should be taken by the authorised officer. The enforcement tool to be used should be based on risk and previous compliance history.

For example, reoccurrence of a previous non-compliance that impacts on food safety should result in an improvement notice issued, and a penalty notice can also be considered. Similarly, the decision to re-inspect a food business will depend on the nature of the issues identified and whether it is warranted to close out any outstanding issues in a set timeframe, or whether these issues are minor in nature and can wait until the next routine inspection.

If greater than 15 points are scored on the FPAR, or if there is a critical issue identified (i.e. any 8 point breach), then follow up action and/or intervention by the officer is warranted and is likely to include the use of statutory enforcement tools.



## FPAR Appendix A – FPAR version 8



## FOOD PREMISES ASSESSMENT REPORT (FPAR V.8 2024)



Trading name		Reference#	
Proprietor/Company		Phone	
Business details		ABN	
		FSS name	
		FSS Cert no.	
Email address:		FSS Expiry date	
Business risk rating: Low / Medium / High		If Standard 3.2.2A applies:	
Inspection frequency: 6 months / 12 months / 18 months / Other:		Cat. 1 business <input type="checkbox"/> Cat. 2 business <input type="checkbox"/>	

Indicate the following: Compliance ☒ Noncompliance ☒ OR Not observed ☒

General requirements			
1	Food business has notified current details. <i>Standard 3.2.2 Clause 4</i>	1	
2	If needed, FSS is appointed and certificate is on the premises. <i>Food Act 2003 s.106C and D</i>	1	
3	Food handlers have skills & knowledge to handle food safely. <i>Standard 3.2.2 Clause 3</i>	1	
3a	Food handlers completed a food safety training course OR can demonstrate skills and knowledge commensurate with their prescribed activities. <i>3.2.2A Clause 10</i>	N/A	
4	No handling or sale of unsafe or unsuitable food eg food that is damaged, deteriorated or perished; no use of cracked or dirty eggs or food past use by date. <i>Food Act 2003 s.16(1)</i>	4	

Food handling controls FSC 3.2.2			
5	Food is protected from the possibility of contamination during: food receipt, storage, preparation, display and transport. <i>Clause 5(1), 6(1), 7(1)(b)(i), (8(1)-(4) and 10(a)</i>	1	
6	Names and addresses are available for manufacturer, supplier or importer of food. <i>Clause 5(2)</i>	1	
7	Potentially hazardous food (PHF) is under temperature control during: food receipt, storage, display and transport; less than 5°C or above 60°C. Frozen food is hard frozen. <i>Clause 5(3), 6(2), 8(5) and 10(b) and (c)</i>	1	
8	Processing of foods: take all practicable measures to process only safe and suitable food; prevent likelihood of contamination; use process step if necessary. <i>Clause 7(1)</i>	4	
9	Cooked PHF is cooled rapidly (2-hr/4-hr rule); items thawed correctly; processed quickly. <i>Clause 7(2) and (3)</i>	4	
10	Reheating of PHF is rapid – oven, stove top or microwave but not bain marie. <i>Clause 7(4)</i>	8	
7-10a	Business can substantiate compliance with requirements listed in FPAR 7-10 through records or demonstration (Category 1 businesses only). <i>3.2.2A Clause 12</i>	N/A	
11	Self-service food is supervised, has separate utensils and sneeze guard. <i>Clause 8(2)</i>	1	
12	Food wraps and containers will not cause contamination. Packaging material is fit for its intended use. <i>Clause 9</i>	1	
13	Food for disposal is identified & separated from normal stock. <i>Clause 11</i>	1	

Health and hygiene FSC 3.2.2			
14	Food handlers wash and dry hands thoroughly using hand wash facilities. <i>Clause 15(4)</i>	4	
15	Food handlers avoid unnecessary contact with ready-to-eat food or food contact surfaces by use of utensils, a gloved hand, food wraps. <i>Clause 15(1)(b) and 18(3)(b)</i>	1	
16	Food handlers do not spit or smoke in food handling areas or eat, sneeze, blow or cough over exposed food or food contact surfaces. <i>Clause 15(1)(e)-(g) and Clause 18(3)(c)</i>	4	
17	Food handlers take all practical measures not to contaminate food/surfaces; have clean clothing, waterproof bandages. <i>Clause 15(1)(a) and (c) and 18(3)(a)</i>	1	
18	Food handlers wash hands when contaminated; before commencing/recommencing work and after: using the toilet, sneezing, smoking, handling raw meat, cleaning. <i>Clause 15(2) and (3)</i>	8	
19	Food handlers do not handle food if ill (vomiting, gastro). <i>Clause 14 and 16</i>	8	
20	Hand washing facilities are easily accessible and used only for washing of hands, arms, and face. <i>Clause 17(1)</i>	1	
21	Hand washing facilities have: warm running water through single spout, single use towels, and soap. <i>Clause 17(1)</i>	4	

Cleaning and sanitising FSC 3.2.2			
22	Premises, fixtures, fittings and equipment is maintained to an appropriate standard of cleanliness. <i>Clause 19</i>	1	
23	Food contact surfaces, eating and drinking utensils is in a clean and sanitary condition, and appropriate sanitising method in use (chemicals or dishwasher). <i>Clause 20</i>	1	
23a	Food business can substantiate compliance with requirements listed in FPAR 23 through records or demonstration (Category 1 businesses only). <i>3.2.2A Clause 12</i>	N/A	

Temperature measuring device / single use items FSC 3.2.2			
24	Accurate temperature measuring device is readily accessible and accurate to +/- 1°C (eg probe thermometer) if handling PHF. <i>Clause 22</i>	1	
25	Single use items are protected from contamination and not reused (drinking straws, disposable utensils). <i>Clause 23</i>	1	

Animal and pests FSC 3.2.2			
26	Animals are not permitted in areas in which food is handled. <i>Clause 24(1)(a)</i>	1	
27	Practical pest exclusion measures are used (screens, seals). <i>Clause 24(1)(b)</i>	1	
28	Practical measures to eradicate and prevent harbourage of pests is used (housekeeping, stock rotation, pest controller). <i>Clause 24(1)(c)</i>	1	
29	No signs of insect infestation or rodent activity in premises (faeces, egg casings, teeth marks). <i>Clause 24(1)</i>	1	

Design and construction FSC 3.2.3			
30	General design and construction of premises is appropriate	1	
31	Supply of potable water is available	1	
32	Effective sewerage and waste water disposal system	1	
33	Adequate storage facilities for garbage and recyclables	1	
34	Premises has sufficient lighting	1	
35	Floors are able to be effectively cleaned, appropriately designed and constructed, and does not permit harbourage for pests	1	
36	Walls and ceilings are sealed & able to be effectively cleaned, appropriately designed and constructed & does not permit harbourage for pests	1	
37	Fixtures, fittings and equipment are able to be effectively cleaned, fit for their intended use, and designed, constructed, located and installed appropriately	1	
38	Sufficient ventilation is provided within the premises	1	
39	Adequate storage facilities (personal items, chemicals, food)	1	

Maintenance FSC 3.2.2 Clause 21			
40	Premises, fixtures, fittings and equipment is in a good state of repair and working order	1	
41	No chipped, broken or cracked eating or drinking utensils	1	

Miscellaneous			
42	Food labelling complies with the Food Standards Code, 1.2	1	
43	For 'Standard Food Outlet', nutrition information is displayed	N/A	
44	Food business is aware of its obligations regarding allergens.	N/A	

Total points (4 or 8 point items may significantly impact food safety and should be addressed as a priority)

★★★★★ (0-3 points) ☐ ★★★★★ (4-8 points) ☐ ★★★ (9-15 points) ☐

No grade (>15 points or any critical 8 point food safety failure) ☐

Scores on Doors certificate issued: Yes ☐ No ☐

Notes

FPAR left: Onsite ☐ Emailed ☐ Posted ☐

Business satisfactory ☐ OR Further action required ☐

Re-inspection ☐ Warning Letter ☐ Improvement Notice ☐ Prohibition Order ☐

Penalty Notice ☐ Other ☐

I have read this report and understand the contents.

Owner/Employee Name: \_\_\_\_\_

Owner/Employee signature: \_\_\_\_\_

NB: Assessment report contains findings from date/time of inspection only.

Officer's Name

Officer's signature

Date/Times

## FPAR Appendix B – FPAR Explanatory notes and definitions

### Food Standards Code Chapter 3, Standards 3.2.2 and 3.2.3

This assessment report is based on guidance in the Safe Food Australia (2016) publication: A Guide to the Food Safety Standards. The Guide should be consulted if assistance with interpretation of the food safety standards is required. The assessment is set up as a checklist. It might not be possible to observe all the areas in a single inspection. Despite the presence of a list each item is a single issue of compliance. The assessment focuses on the foodborne illness risk factors identified by the US Centres for Disease Control. The key targets for inspection are:

- inadequate cooling and cold holding temperatures;
- food prepared ahead of planned service;
- inadequate hot holding temperatures;
- poor personal hygiene and infected food handlers; and
- inadequate reheating and inadequate cleaning of equipment.

### Food handling controls

**Item 5.** Protection from the possibility of contamination includes appropriately covering food so that it is protected from potential contamination sources and includes keeping ready to eat foods separated from raw foods.

**Item 7.** ‘Potentially hazardous food’ is food that has to be kept at certain temperatures to minimise the growth of any pathogenic microorganisms that may be present in the food or to prevent the formation of toxins in the food. Examples of potentially hazardous food include meat, seafood, dairy and foods such as salads and some cut fruits.

**Item 7.** Temperature control means maintaining potentially hazardous food at a temperature of:

- a. 5°C or below, or
- b. 60°C or above, or
- c. another temperature if the food business demonstrates that maintenance of the food at this temperature for the period of time for which it will be maintained, will not adversely affect the microbiological safety of the food.

**Item 9.** A food business must when cooling cooked potentially hazardous food, cool the food:

- a. within two hours – from 60°C to 21°C, and
- b. within a further four hours – from 21°C to 5°C.

**Item 10.** A food business must when reheating previously cooked and cooled potentially hazardous food to hold it hot, use a process that rapidly heats the food to a temperature of 60°C or above, e.g. heating in an oven, microwave or on a stove top.

**Item 11.** A food business must, when displaying unpackaged ready to eat food for self-service:

- a. ensure the display of food is effectively supervised so that any food that is contaminated by a customer or is likely to have been contaminated is removed from display without delay,
- b. provide separate serving utensils for each food or other dispensing methods that minimise the likelihood of the food being contaminated, and
- c. provide protective barriers that minimise the likelihood of contamination by customers.

### Health and hygiene requirements

**Item 14.** Thorough hand washing includes using the designated hand washing facility to wash hands, fingers and wrists using warm water and soap for a recommended 15 seconds, thorough rinsing of hands under warm water and drying thoroughly on single use towel.

**Item 18.** A food handler must wash his or her hands whenever their hands are likely to be a source of contamination of food. This includes:

- before working with ready to eat food,
- after handling raw food,
- immediately after using the toilet,
- before commencing or recommencing handling food,
- immediately after smoking, coughing, sneezing, using a handkerchief or tissue, eating, drinking or using tobacco, and
- after touching his or her hair, scalp or a body opening.

**Item 19.** A food business must ensure the following persons do not engage in the handling of food for the food business where there is a reasonable likelihood of food contamination:

- a. a person known to be suffering from a foodborne disease, or who is a carrier of a foodborne disease, and
- b. person known or reasonably suspected to have a symptom that may indicate he or she is suffering from a foodborne disease.

## Cleaning and sanitising

**Item 22.** Food premises and fixtures, fittings and equipment must be maintained to a standard of cleanliness where there is no accumulation of:

- a. garbage, except in garbage containers,
- b. recycled matter, except in containers,
- c. food waste,
- d. dirt,
- e. grease, or
- f. other visible matter.

**Item 23.** Clean and sanitary condition means a food contact surface or utensil is:

- a. clean, and
- b. has had applied to it heat and/or chemicals or other process so that the number of microorganisms has been reduced to a safe level.

## Design and construction

**Item 30.** General requirements for design and construction of food premises must:

- a. be appropriate for the activities for which the premises are used,
- b. provide adequate space,
- c. permit effective cleaning and, if necessary, sanitising, and
- d. to the extent that is practicable exclude dirt, dust, fumes, smoke, not permit the entry or harbourage of pests.

**Item 31.** Supply of potable water means water that is acceptable for human consumption and available at an adequate volume, pressure and temperature for hand washing, cleaning and food processing requirements.

### Regulation of retail food businesses: Operating protocols for enforcement agencies

**Item 33.** Adequate storage facilities for garbage and recyclable matter means facilities that will contain the volume and types of garbage and recyclable material produced by the food business and not provide a breeding ground for pests and be capable of being easily and effectively cleaned.

**Item 34.** Lighting must be sufficient to enable food handlers to readily see whether areas or equipment are clean, to detect signs of pests and to clearly see food and equipment they are handling.

**Item 38.** Sufficient ventilation (natural or mechanical) must be provided to remove fumes, smoke, steam and vapours from the food premise.

## Appendix 5: Risk-based inspection frequency model

- The table below has been prepared to assist enforcement agencies in the development of a risk-based inspection program.
- The minimum rate of inspection frequency rate is generally applied where there is good compliance history (that is, inspection result and complaint history).
- The maximum frequency is a guide for determining the next scheduled inspection where there is poor or no inspection history. This scheduled inspection will be in addition to any re-inspection undertaken to close out non-conformances.
- In cases of poor performance, enforcement action may be required including additional inspections to check compliance before the next scheduled inspection.

Table 1 Risk-based inspection frequency

Risk rating of food business	Commencing scheduled frequency - every X months New business with no compliance history	Ongoing minimum scheduled frequency - every X months Good compliance record <sup>2</sup>	Ongoing maximum scheduled frequency - every X months Poor compliance record <sup>3</sup>
<b>Low-risk food business</b>	Incident only	N/A	N/A
<b>Medium and high-risk food business that does not require regular inspection</b> (Correctional facilities, armed forces bases, international cruise ships)	Incident only	N/A	N/A
<b>Medium-risk food business</b> Most hospitality-type retail premises that prepare or sell PHF.	12 months	18 months	6 months
<b>High-risk food business</b> <ul style="list-style-type: none"> <li>• large-scale operation</li> <li>• undertakes high risk activities/processes</li> <li>• preparing/serving foods to vulnerable persons.</li> </ul>	6 months	12 months	4 months

<sup>2</sup> For a business where the inspection outcome for the previous 2 inspections was 0-3 points (5 stars).

<sup>3</sup> For a business where the latest inspection outcome has accrued more than 15 points or detected a single 8 point breach (no star), or has attracted enforcement action. Note: this is only a guide.

## Appendix 6: Request form from enforcement agency for approval of sample analysis by the Food Authority's approved laboratory

Request from enforcement agency for approval of sample analysis
Date:
Name of enforcement agency:
Name of enforcement agency contact:
Contact details:
Purpose of testing: <i>(e.g. investigation of complaint, quality issue, survey etc)</i>
Proposed date of sample submission and testing: <i>(include timelines if part of a wider survey)</i>
Sample types:
Tests proposed:
Other supporting information:
For further information, contact the Food Authority's Science and Technical team on 1300 552 406. Please submit your request via email <a href="mailto:food.contact@dpi.nsw.gov.au">food.contact@dpi.nsw.gov.au</a>

## Appendix 7: Consultation and engagement: meeting procedures

### Regional Food Group Operations

#### 1.1 Functions on the Regional Food Groups

The objectives of the RFGs are to:

- ensure that enforcement agencies and the Food Authority are partners in achieving safer food for consumers through smarter use of joint resources.
- establish and facilitate communication and information exchange between enforcement agencies and their authorised officers within a region.
- discuss and resolve food safety issues relevant within the region.
- liaise with other regions and enforcement agencies' authorised officers through the SLG representative.
- facilitate the provision of appropriate training and networking opportunities for authorised officers.

#### 1.2 Membership of the RFGs

Membership to each RFG consists of all authorised officers from all enforcement agencies in that region, and members of the LGU team. The RFGs are regionally based so that all enforcement agencies' authorised officers in that region, including remote and rural councils, can participate. Representation by every enforcement agency within the region at the RFG is strongly encouraged so that currency of food safety issues is maintained.

It is the duty of an enforcement agency to exercise the functions delegated to it under its appointment. One function is to make authorised officers available to regularly participate in networking meetings and undertake professional development. This includes attendance at RFG meetings. The 16 RFGs across NSW are:

Central West	Inner Sydney	North West	South East Region
Far West	Mid North Coast	Northern	South East Sydney
Hunter Region	Murray	Northern Rivers	South West Sydney
Illawarra	Murrumbidgee	Northern Sydney	Western Sydney

#### 1.3 RFG secretariat

A secretariat shall be appointed for each RFG and this appointment is alternated between members on an annual basis or as agreed by the RFG. The appointment of the secretariat shall be confirmed in the RFG minutes. Responsibilities of the secretariat are to:

- coordinate the organisation of their RFG by liaising with the upcoming host council.
- ensure a venue and refreshments (where appropriate) are provided by the host.
- collate RSVPs for each RFG meeting.
- prepare and circulate the minutes of the RFG to members.
- ensure previous minutes are circulated to RFG members within 30 days of the meeting.
- prepare and circulate the RFG agenda to members in advance of meetings.
- advise members to bring the appropriate training materials to the RFG.



- ensure continuity from one meeting to the next
- liaise with chair on the status of previous meeting's action items prior to the meeting.
- maintain and update a contacts list of members for their region at each RFG.
- liaise with the Food Authority's LGU as necessary, including advising the Food Authority at [food.contact@dpi.nsw.au](mailto:food.contact@dpi.nsw.au) of any changes to the SLG rep, observer, RFG secretariat or RFG chairperson.

#### 1.4 RFG chairperson

The RFG meetings are chaired by an appointed chairperson or the host council, as agreed by the RFG. The appointment of a chairperson is alternated between members on an annual basis or as agreed by the RFG and confirmed in the RFG minutes. *NOTE: The SLG rep, secretariat and chairperson can be the same person.*

#### 1.5 RFG host council

Responsibilities of RFG host council are to:

- liaise with the secretariat to ensure the correct information regarding the RFG logistics is communicated to the members in a timely manner in advance of an RFG.
- provide appropriate venue, facilities including audio visuals for the training component, and refreshments (where appropriate)
- chair the RFG in the absence of an appointed chairperson.

#### 1.6 RFG representative and observer to the SLG

Within each RFG one representative and one observer shall be appointed to attend the SLG meetings (known as the SLG rep and SLG observer respectively). Representation to the SLG is alternated between members on an annual basis or as agreed by the RFG. Where there is more than one member seeking to be the SLG representative or observer, a vote should be taken; determination is made based on the majority vote of the group. The appointment of a representative and observer to the SLG shall be confirmed in the RFG minutes.

The duties of the SLG representative are to:

- attend the SLG meetings to:
  - participate in a collaborative spirit of improving food safety outcomes for the citizens of NSW.
  - represent the consensus view of their respective RFG.
  - provide an update on their RFG's food surveillance activities.
  - network with other regional delegates and discuss relevant issues raised at their RFG.
  - participate in various working groups of the SLG as appropriate.
- liaise with the SLG observer to ensure the SLG rep and SLG observer attend the SLG meetings – and if one or both is unable to attend, seek a proxy(s)
- provide a link between the SLG and their RFG by ensuring information is passed along the communication chain - this includes:
  - distribution of SLG minutes to their RFG members
  - report-back of SLG matters to the RFG meeting.
- The duty of the SLG observer is to be the 'back-up' for the SLG representative.



## 1.7 Procedural arrangements of the RFG meetings

### 1.7.1 Frequency of RFG meetings

RFG meetings are held three times per year within each region. Some regions may hold joint meetings on occasions, such as Central West/North West/Far West and Murray/Murrumbidgee, as agreed by the RFGs.

### 1.7.2 Hosting the meeting

The responsibility of hosting the RFG meetings is usually rotated between the various enforcement agencies within that region. The location of the next meeting is decided at the end of the meetings. It is recommended that a host roster be developed for each RFG to ensure each council can host.

### 1.7.3 Agenda

The meeting is comprised of two parts – a professional development session delivered by the LGU officer and a formal meeting. Topics for discussion at the RFG meeting include updates on national and state matters, discussion of regional issues, problem solving and a report from each council in the region. *NOTE: Most issues can be resolved at the RFG level. However, if there is a significant matter that is of state-wide concern and which is supported by the RFG members to warrant escalation to the SLG, then the SLG representative can contact the Manager, LGU proposing that the matter be included on the SLG agenda.*

A draft agenda template for each round of the RFGs is prepared by the LGU and posted on the FRP Portal for use by the secretariat for circulation prior to the meeting. A typical draft agenda template is shown below.

## REGIONAL FOOD SURVEILLANCE GROUP MEETING/TRAINING

## AGENDA

**Date:** \_\_\_\_\_ **Time:** 9:30 am for a 10:00 am start

**Venue:** **Address:** **Parking:**

1. Welcome (Chairperson)
2. Professional Development training session - <<Name of training topic>>
3. Lunch break
4. Apologies
5. Matters arising from previous minutes
6. State Liaison Group meeting update
7. NSW Food Authority update
8. Council activity reports
9. Problem solving
10. General business
11. Update contact list
12. Next meeting (date and venue)

## State Liaison Group Operations

### 2.1 Functions of the State Liaison Group

The objectives of the SLG are to:

- provide opportunity for consultation on key state-wide food safety matters.
- promote consistency in interpreting and enforcing the Act and food regulations through guidelines, training and information.
- enhance the regional food surveillance networks comprising individual enforcement agencies (RFGs) by acting as a key link between them and the Food Authority
- strengthen operational interfaces between enforcement agencies and the Food Authority.

### 2.2 Membership of the SLG

#### 2.2.1 Composition of membership

The SLG consists of one representative and one observer from each of the 16 RFGs (the exception being North West and Far West RFGs which have a combined representative) and the LGU team members. A list of SLG representatives and observers is maintained by the Food Authority.

#### 2.2.2 Role of members

To be effective, SLG reps are to:

- express the issues of their RFG clearly and concisely.
- actively seek solutions that result in the best possible outcomes for the Food Authority, enforcement agencies, food businesses and consumers through consensus-based discussions
- be a conduit to promote consistency in interpreting and enforcing the Act and food regulations within their RFGs.
- network with other RFGs to discuss and assist with common issues.

#### 2.2.3 Chairperson

The chair is the Manager Local Government Unit, NSW Food Authority.

#### 2.2.4 Terms of membership

Representatives and observers are elected for a one-year term (or as agreed by the RFG members) at the RFG meeting and recorded in the RFG minutes. There is opportunity for the observer to take up a term as representative for the following year. Representatives and observers can be re-elected in ensuing years.

#### 2.2.5 Inability to attend a meeting

If a representative is unable to attend a SLG meeting, the observer will step in to represent their RFG and a proxy observer is to be sought from the RFG membership. Similarly, if an observer is unable to attend a SLG meeting, then a proxy observer is to be sought from the RFG membership.

#### 2.2.6 Vacancy

Should a vacancy arise, the relevant RFG secretariat is responsible to arrange a person to fill the vacancy and must inform the SLG chairperson (Manager, LGU) in writing no later than 30 days.

### 2.3 Procedural arrangements of the SLG meetings

#### 2.3.1 Nature and frequency of SLG meetings

- SLG meetings are held three times per year, generally be via videoconferencing.

## Regulation of retail food businesses: Operating protocols for enforcement agencies

- The Food Authority will function as the secretariat, and will determine the time, place (in the case of any face-to-face meetings) and agenda of the meetings.
- The chairperson is to preside at meetings.

### 2.3.2 Notice of meeting

The Food Authority is to circulate a notice of the time, place and agenda of the SLG meeting via email to all representatives and observers at least 14 days before the meeting.

In the case of a special extraordinary meeting, a notice and agenda should be sent at least 7 days before the meeting, if possible.

Representatives may wish to propose items for discussion and these items can be nominated to the chairperson at least 7 days prior to the meeting. The inclusion of agenda items will be subject to the approval of the chairperson. Any proposed agenda item must be accompanied by a concise written explanation of the matter for discussion, confirmation the matter has been discussed at the relevant RFG and, where appropriate, a proposed outcome for the Food Regulation Forum's consideration.

### 2.3.3 Quorum

The quorum for a meeting of the SLG is 15.

### 2.3.4 Agenda

The agenda will take the following format unless otherwise agreed by the chairperson and representatives present at a meeting:

- Chairperson's welcome, introductions and apologies
- Confirmation of minutes from previous meeting
- Action items / Outcomes from previous minutes
- Food Regulation Partnership update
- Topics for discussion
- Topics for information
- Regional Representatives' update
- General Business
- Meeting close

### 2.3.5 Rules of discussion and motions

Conventional rules of debate apply. Meetings will be conducted in an orderly fashion, with good manners and common decency. All debate is to be through the chairperson. The chairperson has the right to request any disruptive member to leave the meeting for a specified period. Repetitive disruption may lead to the person being asked to leave the meeting for the remainder of the day.

Motions may only be put forward by members and must be seconded before the debate may commence. A motion that is not seconded will lapse and will not be subject to any further debate or discussion.

### 2.3.6 Voting

A decision supported by a majority of the votes at a meeting at which a quorum is present, is the decision of the SLG. In the case of equality of votes, the chairperson is entitled to exercise a second or casting vote.

### 2.3.7 Conflicts of interest

Members have expertise and skills in particular areas. Consequently, there may be the potential for conflicts of interest to arise between a members' duties to the SLG, his/her personal interests or the duties or interests of others.

A member has the duty to declare any private interest that may impinge upon a decision. A member must as soon as practicable disclose full and accurate details of the interest or issue to the chairperson.

Members are also required to disclose interests in corporations, partnerships or other organisations that may be relevant to the activities of the SLG. A register of these interests will be maintained by the Food Authority.

The chairperson will decide to how to manage the conflict of interest and reasons for that decision will be recorded. The usual method of managing conflict of interest is for the member to not take part in any discussion of the SLG relating to the interest or issue, and not vote on the matter. This may include a requirement for the member to be absent from the meeting room when any discussion or vote is taking place. This should be recorded in the meeting outcomes.

Other means may be more appropriate to the management of the conflict of interest issue, for example:

- in an extreme case, resignation by the member from the SLG
- divestment of the interest/issue that is creating the conflict, for example the sale of shares.
- severing the connection, for example resignation from a position in another organisation giving rise to the conflict

#### 2.3.8 Out-of-session meeting

Out-of-session meetings may be called by the chairperson to discuss urgent matters. Preferably, matters that can be included in the next meeting agenda should be considered at the next meeting rather than out-of-session. Written submissions on a business item need to be submitted to the chairperson. Out-of-session meetings may be in the form of face-to-face meetings, video or teleconference.

#### 2.3.9 Record of meeting

Draft meeting outcomes from the meeting will be prepared by the Food Authority and sent to members for their review.

Draft outcomes of a meeting are ratified as final outcomes at the next meeting.

#### 2.3.10 Secretarial support for the SLG

The Food Authority will:

- organise meetings.
- coordinate the preparation and circulation of background/options/agenda papers.
- maintain files and records of meetings.
- circulate minutes of the meetings to SLG members
- post SLG minutes on the FRP Portal
- maintain a list of SLG reps, SLG observers, RFG secretariats and RFG chairpersons.

#### 2.3.11 Communication with the Food Regulation Forum

The chairperson will prepare reports and correspondence to the Food Regulation Forum on behalf of the SLG. The reports and correspondence will reflect the SLG views, and any dissenting views will be recorded.

#### 2.3.12 Financial management

Travel and accommodation costs are covered by each members' enforcement agency. The Food Authority will consider requests from regional representatives to cover the cost of attending one SLG meeting in person per year.

## **Managers' Forum (MF) Operations**

### **3.1. Functions of the MF**

The objectives of the MF are to:

- establish engagement on matters of strategic importance to the FRP.
- provide opportunity for consultation with enforcement agency decision makers on key state-wide food safety matters.
- provide opportunity to introduce and discuss food safety strategies, projects and initiatives or raise issues and concerns at a senior level.
- ensure that enforcement agencies and the Food Authority are partners in achieving safer food for consumers through smarter use of joint resources.
- strengthen communication between the Food Authority and enforcement agencies.

### **3.2. Membership of the MF**

#### **3.2.1 Composition of MF**

Invitation to attend the MF is extended to food safety decision makers of all enforcement agencies in NSW – this generally consists of directors, managers or coordinators. Membership also includes the LGU team members.

#### **3.2.2 Chairperson**

The chair is the Manager Local Government Unit, NSW Food Authority.

### **3.3 Procedural arrangements of the MF meetings**

#### **3.3.1 Frequency of MF meetings**

- Meetings are held annually, generally be via videoconferencing.
- The Food Authority will function as the secretariat, and will determine the time, place (in the case of any face-to-face meetings) and agenda of the meetings.
- The chairperson is to preside at meetings.

#### **3.3.2 Notice of meeting**

The Food Authority is to circulate a notice of the time, place and agenda of the MF meeting via email to Managers of all enforcement agencies at least 14 days before the meeting. In the case of a special extraordinary meeting, a notice and agenda should be sent at least seven (7) days before the meeting, if possible.

Should any member wish to propose items for discussion, these items can be nominated to the chairperson at least seven (7) days before the meeting. The inclusion of agenda items will be subject to the approval of the chairperson. Any proposed agenda item must be accompanied by a concise written explanation of the matter for discussion, and where appropriate, a proposed outcome for the Food Regulation Forum's consideration.

#### **3.3.3 Quorum**

The quorum for a meeting of the MF is 15.

#### **3.3.4 Agenda**

The agenda will take the following format unless otherwise agreed by the chairperson and members present at a meeting:

- Chairperson's welcome, introductions and apologies
- Confirmation of minutes from previous meeting

- Action items / Outcomes from previous minutes
- Food Regulation Partnership update
- Topics for discussion
- Topics for information
- General Business
- Meeting close

### 3.3.5 Rules of discussion and motions

Conventional rules of debate apply. Meetings will be conducted in an orderly fashion, with good manners and common decency. All debate is to be through the chairperson. The chairperson has the right to request any disruptive member to leave the meeting for a specified period. Repetitive disruption may lead to the person being asked to leave the meeting for the remainder of the day.

Motions may only be put forward by members and must be seconded before the debate may commence. A motion that is not seconded will lapse and will not be subject to any further debate or discussion.

### 3.3.6 Voting

A decision supported by a majority of the votes at a meeting at which a quorum is present, is the decision of the MF. In the case of equality of votes, the chairperson is entitled to exercise a second or casting vote.

### 3.3.7 Conflicts of interest

Members have expertise and skills in particular areas. Consequently, there may be the potential for conflicts of interest to arise between a members' duties to the MF, their personal interests or the duties or interests of others.

A member has the duty to declare any private interest that may impinge upon a decision. A member must as soon as practicable disclose full and accurate details of the interest or issue to the chairperson.

Members are also required to disclose interests in corporations, partnerships or other organisations that may be relevant to the activities of the MF. A register of these interests will be maintained by the Food Authority.

The chairperson will decide how to manage the conflict of interest and reasons for that decision will be recorded. The usual method of managing conflict of interest is for the member to not take part in any discussion relating to the interest or issue, and not vote on the matter. This may include a requirement for the member to be absent from the meeting room when any discussion or vote is taking place. This should be recorded in the meeting outcomes.

Other means may be more appropriate to the management of conflict of interest issues, for example:

- in an extreme case, resignation by the member from the MF
- divestment of the interest/issue that is creating the conflict, for example the sale of shares.
- severing the connection, for example resignation from a position in another organisation giving rise to the conflict

### 3.3.8 Out-of-session meeting

Out-of-session meetings may be called by the chairperson to discuss urgent matters. Preferably, matters that can be included in the next meeting agenda should be considered at the next meeting rather than out-of-session. Written submissions on a business item need to be submitted to the chairperson. Out-of-session meetings may be in the form of face-to-face meetings, video or teleconference.

### 3.3.9 Record of meeting

## **Regulation of retail food businesses: Operating protocols for enforcement agencies**

Draft meeting outcomes will be prepared by the Food Authority and sent to members for review. Draft outcomes are ratified as final outcomes at the next meeting.

### **3.3.10 Secretarial support for the SLG**

The Food Authority will:

- organise meetings, including the preparation and circulation of any background/options/agenda papers.
- maintain files and records of meetings.
- circulate minutes of the meetings to MF members and post on the FRP Portal

### **3.3.11 Communication with the Food Regulation Forum**

The chairperson will prepare reports and correspondence to the Food Regulation Forum on behalf of the MF. The reports and correspondence will reflect the MF views, and any dissenting views will be recorded.

### **3.3.12 Financial management**

Travel and accommodation costs (if required) are covered by each members' enforcement agency.