



Regulation of retail food businesses

Roles and responsibilities of appointed enforcement agencies

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Overview

National framework

The NSW Food Authority's regulatory functions reflect the food regulation agreement between the Commonwealth and all Australian states and territories, and the treaties between Australia and New Zealand. These collectively commit these parties to a co-operative partly federated bi-national food regulatory system. Each state and territory remain responsible for ensuring compliance with food regulatory requirements.

The agreement commits jurisdictions to implement model food legislation requiring compliance with the Australian New Zealand Food Standards Code (the Code). The Agreement provides for development and variation of standards in the Code through a process administered by Food Standards Australia New Zealand and overseen by the Forum on Food Regulation (Food Ministers' Meeting). The Food Ministers' Meeting includes Ministerial representation from all jurisdictions, each exercising a single vote. NSW Members are the Minister for Agriculture (lead Minister) and Minister for Health (Member).

The NSW Government has implemented the agreement through the *Food Act 2003* and the Food Regulation 2015, which are administered by the Food Authority.

Food Regulation Agreement

Joint Food Standards Treaty between Australia and New Zealand

NSW Food Authority

The NSW Food Authority (Food Authority) is a statutory authority established to provide NSW with an integrated food regulation system. The Food Authority operates within the Department of Primary Industries, responsible to the Minister for Agriculture, and provides a single point of contact on food safety and regulation. The Food Authority's responsibilities extend to all sectors of the food industry, including primary production, manufacturing, transport, and retail food businesses.

Part 9, Food Act 2003

The Food Authority works with key agencies including local councils and NSW Health to ensure effective food safety and food quality management underpins confidence in the state's food industry and reduces the incidence of food poisoning. In addition to food regulation, the Food Authority promotes food safety and works to provide education and resources for consumers empowering them to make more informed and educated food choices.

The retail food sector is an important component of the food industry and a vital business activity, with NSW home to around 57,000 retail food businesses. Retail food businesses include bakeries, grocery stores, bistros, cafes, restaurants, canteens, caterers, clubs, delicatessens, health food shops, retail food outlets, mobile food vendors, temporary food stalls and home food businesses. Effective regulation of this sector is therefore an important part of the food regulation and economic landscape. The Food Authority's regulation of the retail sector is supported by a formal regulatory partnership with local councils, which play a key role in ensuring that the retail sector complies with the Australia New Zealand Food Standards Code.

NSW regulatory framework

The NSW food industry is subject to requirements outlined in the:

- Australia New Zealand Food Standards Code
- *NSW Food Act 2003*
- NSW Food Regulation 2015.

Other laws which relate to food and promotion and packaging are enforced by other agencies including:

- *Competition and Consumer Act 2010* (Commonwealth) - enforced by the Australian Competition and Consumer Commission
- *NSW Fair Trading Act 1987* - enforced by NSW Fair Trading

- weights and measures - enforced by the National Measurement Institute.

Australia New Zealand Food Standards Code

The Australia New Zealand Food Standards Code (the Code) are legislative instruments under the *Legislation Act 2003* (Commonwealth). The Code sets legal requirements for the labelling, composition, safety, handling, and primary production and processing of food in Australia and is applied and enforced in NSW under the *Food Act 2003*.

The Code contains the Food Safety Standards, which place obligations on Australian food businesses to produce food that is safe and suitable to eat. A food business is any business or activity that involves the handling of any type of food for sale, or the sale of food in Australia. The standards, which also contain health and hygiene obligations for food handlers, aim to protect consumers and lower the incidence of foodborne illness.

Chapter 3: Food Safety Standards, Australia New Zealand Food Standards Code

Food Act 2003

The purpose of the *NSW Food Act 2003* (the Act) is to ensure that food for sale is both safe and suitable for human consumption. It prohibits any misleading conduct surrounding food and gives effect to the Code. The Act sets out the role and functions of enforcement agencies, confers powers upon authorised officers, details the role and functions of the Food Regulation Forum, outlines offences relating to food and orders that can be made against a food business, as well as other important requirements. It also lists requirements for food businesses to notify the relevant enforcement agency - mostly councils (retail) or the Food Authority (non-retail).

Section 3, Food Act 2003

Food Regulation 2015

The NSW Food Regulation 2015 (the Regulation) underpins the Food Authority's food regulatory work. Key content of the Regulation includes:

- penalty notice provisions, and the setting of fees and charges
- requirements relating to the licensing, inspection and audit of food businesses
- requirements for food safety supervisor (FSS) qualifications and the manner of approval of registered training organisations to issue FSS certificates
- requirements for the display of nutritional information
- minimum food safety requirements for sectors identified as higher risk, and the implementation of Food Safety Schemes for those sectors.

Enforcement agencies

Appointment of an enforcement agency

To assist in achieving the Food Authority's objectives, the Act:

- allows for the delegation of certain functions, to persons and entities, and provides for the Food Authority to appoint a relevant body to be an enforcement agency for the purposes of the Act

Sections 109E and 111, Food Act 2003

- allows the Food Authority to vary or revoke an appointment, or to impose conditions or limitations on the exercise of functions of an appointed enforcement agency

Sections 111A and 111B, Food Act 2003

- requires an enforcement agency to exercise the functions conferred or imposed on it or delegated to it.

Section 111D, Food Act 2003

Guidelines

The Act provides for the Food Authority to issue guidelines in relation to various matters relevant to appointed enforcement agencies, including:

- the method of appointing a relevant body as an enforcement agency under the Act, including the making of representations to, and processes for consultation by the Food Authority
- the factors to be considered by the Food Authority when determining a relevant body's suitability for appointment
- the nature and extent of functions that may be exercised by appointed enforcement agencies and the associated obligations (that is, conditions and limitations).

Section 111C, Food Act 2003

Guideline for the appointment of enforcement agencies

In addition, the Act provides that the Food Authority may adopt national guidelines relating to the exercise of its functions and may require enforcement agencies to adopt those guidelines in carrying out their functions under the Act.

Section 112, Food Act 2003

Reporting

An appointed enforcement agency is required to report to the Food Authority at prescribed intervals on the exercise of functions under the Act. Reporting requirements are set out in the relevant operating protocol.

In addition, an enforcement agency must forward to the Food Authority details of any proceedings for offences under the Act or the regulations, taken on or behalf of the agency, within 21 days after the proceedings are finally dealt with.

Section 113, Food Act 2003

Operating Protocol – Reporting

Appointment of authorised officers

The Act authorises enforcement agencies to appoint authorised officers for the purposes of the Act, and to issue a certificate of authority (certificate) to an authorised officer. The Act further outlines the prescribed content of the certificate and the circumstances under which the certificate must be produced.

Sections 114 and 115, Food Act 2003

Operating Protocol – Authorised officers

Enforcement agency fees and charges

The Act provides for enforcement agencies to levy fees and charges in relation to its food regulation activities for food businesses that are not required to be licensed under the Act; that is, an annual administration charge, inspection fees and a fee for the issuing of an improvement notice. Fees and charges are to be calculated in accordance with the Regulation.

The Local Government Act 1993 also contains provisions around fees and charges.

Section 66AA, Section 139(1)(b) and Section 139(2B)(d), Food Act 2003

Clauses 11, 14 and 15, Food Regulation 2015

Operating Protocol – Fees and charges

Local Government Act 1993

Public listing of food businesses notifications

Food businesses have an obligation to notify the appropriate enforcement agency prior to commencing food handling operations, providing the information detailed in the Code. Notifications may be made in writing or electronically to the appropriate enforcement agency.

Clause 4, Standard 3.2.2, Australia New Zealand Food Standards Code

Section 100, Food Act 2003

Clause 39(2), Food Regulation 2015

An enforcement agency must maintain and keep up to date a list of notified food businesses and make the list available for public inspection, noting that the *Privacy and Personal Information Protection Act 1998* prevents display of information that identifies a person or allows that person's identity to be ascertained.

Section 101A, Food Act 2003

Consultation mechanism

The Food Regulation Forum

The Act establishes the Food Regulation Forum (Forum) to provide advice and assistance to the Food Authority, with membership outlined in the legislation and members appointed by the lead minister.

The Forum's functions include evaluating and providing advice regarding:

- the sharing of functions under the Act by the Food Authority and other enforcement agencies, including programs of support required by appointed enforcement agencies
- the issuing of guidelines and operating protocols
- the preparation of reports on food regulation in NSW.

The Forum is also informed by the state-wide regulatory liaison group (State Liaison Group) and regional food surveillance network groups (Regional Food Groups).

The outcomes of Forum meetings will be published on the Food Authority website.

Sections 115A and 115B, Food Act 2003

Operating Protocol – Consultation and engagement

The Food Regulation Partnership

The Food Regulation Partnership (the Partnership) is a legislated arrangement that formalises the partnership between the NSW Food Authority and:

- all NSW local councils
- the Secretary of the Department of Climate Change, Energy, the Environment and Water (in respect of Kosciuszko National Park)
- the Lord Howe Island Board (in respect of Lord Howe Island).

The Food Authority shares with these entities the responsibility for ensuring that retail and food service businesses are inspected and comply with food regulatory requirements. These entities undertake routine inspections of retail/food service businesses while the Food Authority provides support and assistance to help improve the consistency of inspections and interpretation of food laws, standardising inspection processes and giving technical advice.

The purpose of the Partnership is to:

- improve food safety coordination between enforcement agencies, particularly through provision of training and increasing uniformity of food inspection processes
- enable quicker response to food emergencies and food recall

- enable all enforcement agencies to recover the costs of food regulation enforcement
- establish the food regulation forum for consultation with enforcement agencies and the retail food sector.

Roles and responsibilities

The Partnership clarifies the responsibilities of enforcement agencies though:

- **Instruments of appointment** - which set out the scope relating to the designated area of operation, the exercise of functions and any limitations or conditions
- **Guidelines relating to the appointment of enforcement agencies** - which detail the processes and considerations for the Food Authority when appointing enforcement agencies
- **Operating protocols for appointed enforcement agencies** – which are the operational procedures for enforcement agencies developed in consultation with the Food Regulation Forum.

To support enforcement agencies in their food regulation role and to promote regulatory consistency, the Food Authority also:

- provides technical advice
- develops standard regulatory tools to assist with inspection, compliance and enforcement
- facilitates authorised officer training and networking through the Food Regulation Forum, the State Liaison Group, Regional Food Groups and Retail and Food Service Information Sessions.

The Food Authority undertakes to meet regularly with enforcement agency representatives to discuss issues of concern.

In addition, the Food Authority reviews enforcement agency reporting (see above) on food regulatory activities. This review includes analysis against indicative measures that assist the Food Authority to identify potential areas of concern. Any such concerns will be discussed with enforcement agencies in accordance with the *Guideline for the appointment of enforcement agencies*.

Related documents

This document should be read in conjunction with the *Guideline for the appointment of enforcement agencies* and the *Operating Protocols for appointed enforcement agencies*. Together, these documents assist enforcement agencies to exercise the functions conferred on or delegated to them through their instruments of appointment. These documents also assist authorised officers to fulfil their role and obligations under the Partnership.

More information

For assistance, support and advice, contact the Food Authority helpline on 1300 552 406.