

Food Instrument of Delegation 2020

under the

Food Act 2003

I, ELIZABETH ANN SZABO, Chief Executive Officer of the Food Authority, in pursuance of section 109E of the *Food Act 2003*, make the following Instrument of Delegation.

Dated this 20th day of April 2020.

ELIZABETH ANN SZABO
Chief Executive Officer of the NSW Food Authority

Explanatory note

This Instrument is made under section 109E of the *Food Act 2003*. The object of this Instrument is to delegate functions conferred or imposed on the Food Authority by or under the *Food Act 2003*.

Food Instrument of Delegation 2020

Made under the *Food Act 2003*

1 Name

This Instrument is the *Food Instrument of Delegation 2020*.

2 Commencement

This Instrument commences on the day on which it is signed.

3 Interpretation

(1) In this Instrument:

Authority means the Food Authority.

Director means a person employed by the Department within Senior Executive Band 1 to the extent that the duties and responsibilities of the position to which they are assigned enable the Food Authority to exercise its functions, and any person assigned to, acting in, or performing the functions of that position.

function includes a power, authority or duty, and *exercise* a function includes perform a duty.

Holder of the office of General Manager of a Local Council means the person appointed as general manager of a council of a local government area under the *Local Government Act 1993*

Manager means a person employed by the Department who reports directly to a Director or the Director, Food Safety and Chief Executive Officer Food Authority

role includes office.

role title includes title of an office.

Senior Executive Band 1 means Band 1 under the *Government Sector Employment (Senior Executive Bands) Determination 2014* or in any equivalent band in a determination made by the Minister administering the *Government Sector Employment Act 2013* under section 35 of that Act.

the Act means the *Food Act 2003*.

the Code means the Food Standards Code.

the Department means Regional NSW.

the Regulation means the Food Regulation 2015.

(2) Unless otherwise defined in this Instrument, words and expressions that are defined in the Act or Regulation have the same meaning in this Instrument.

Note: *enforcement agency, Food Authority* are defined in the Act

(3) Unless otherwise specified, references to a role or role title in this Instrument are references to a role or role title within the Department to the extent that the duties and responsibility of the position to which they are assigned enable the Food Authority to exercise its functions.

(4) The summary of a function delegated in Column 2 of Schedules 2, 3 and 4 is only for general explanation and does not limit the delegation of functions under the sections and clauses identified in Column 1 of Schedules 2, 3 and 4.

4 Delegation of functions

- (1) All of the functions conferred or imposed on the Food Authority under the Act, except those listed in section 109E(2), are delegated to the person assigned to the role having the title Director, Food Safety and Chief Executive Officer Food Authority.
- (2) The person assigned to the role having the title Director, Food Safety and Chief Executive Officer Food Authority includes any person who is for the time being acting in that role or performing the duties and responsibilities of that role.
- (3) Delegate categories are defined in Schedule 1.
- (4) The functions conferred or imposed on the Food Authority under the Act or Regulation in Column 1 of Schedules 2, 3 and 4 are delegated to the person in the delegate category specified in Column 3 of those Schedules.
- (5) Any limitation on a delegation is specified in Column 2 of Schedules 2, 3 and 4.

5 Revocation

Pursuant to section 109E of the Act, the Food Instrument of Delegation 2019 published in the NSW Government Gazette No. 13 of 15 February 2019 at pages 309 to 321 is revoked, as is any instrument of delegation revived as a result of this revocation.

Schedule 1 – Delegate categories

Column 1		Column 2
Delegate category		Level
Category A	Director	
Category B	Manager	
Category C	The holder of the office of General Manager of a Local Council	

Schedule 2 – the Act

Column 1 Part and Section of the Act	Column 2 Summary of functions delegated and limitations (if any)	Column 3 Delegate category
Part 4, Inspection and seizure powers		
47	Return of seized item if Authority becomes satisfied that there has been no contravention of the Act or Regulations	A B
48	Direct the destruction, sale or disposal of seized item	A B
49	Sign certificate stating amount of costs and the manner in which they were incurred.	A B
50	Return seized item after forfeiture to Crown if Authority becomes satisfied that there has been no contravention of the Act or Regulations	A B
51	Make determination to pay compensation and pay compensation in relation to seized item(s)	A
Part 5, Improvement Notices and Prohibition Orders for premises or equipment		
60(1)	Serve prohibition order on the proprietor of a food business.	A B
60(4)	Give certificate of clearance	A B
66	Make and send determination as to the payment of compensation and pay compensation in relation to prohibition orders	A
66AA(2)	Extend time for payment and waive payment of improvement notice fee	A
Part 6, Taking and analysis of samples		
75	Approval of Laboratories	A B
78	Variation of conditions or suspension or cancellation of approval of laboratory	A B
81	Approval of persons to carry out analyses	A B
84	Variation of conditions or suspension or cancellation of approval of analyst	A B
86	Prepare and maintain a list of approved analysts	A B
Part 7, Auditing		
87	Approval of food safety auditors	A B

Column 1 Part and Section of the Act	Column 2 Summary of functions delegated and limitations (if any)	Column 3 Delegate category
87A	Beef labelling auditors	A B
90	Variation of conditions or suspension or cancellation of approval of auditor	A B
93	Priority classification system and frequency of auditing,	A B
97	Certificates of authority of food safety auditors	A B
98	Prepare and maintain a list of food safety auditors	A B
Part 8, Regulation of Food businesses		
101A	List of food businesses to be maintained	A B
105(1)	Industry consultation for food safety schemes	A B
106B	Making a determination as to the qualifications in relation to food safety supervisors	B
106H	Approval of registered training organisations to issue food safety supervisor certificates	A B
Part 9, Administration		
109B	Use of consultants and contractors Limitation: This delegation is subject to the same limits, in terms of amount concerned, as apply under general financial delegations.	A
111C	Guidelines relating to the appointment of enforcement agencies	A
112	Adoption of national guidelines and require other enforcement agencies and authorised officers to adopt those guidelines	A
113	Prepare protocols for reporting by enforcement agencies (other than the Food Authority)	A B
113A	Publication of information relating to enforcement agencies	A B
114	Appointment of authorised officers	A B
115	Certificates of Authority	A B
Part 10, Disclosure of information about offences and alleged offences		

Column 1 Part and Section of the Act	Column 2 Summary of functions delegated and limitations (if any)	Column 3 Delegate category
133	Register of Offences	A B
133A	Register of information about penalty notices	A B
133B	Publication of information on registers	A B
133C	Correction of register	A B
133D	Removal of information from register	A B
133E	Addition of information to register	A B
133F	Applications for changes to register of offences	A
Part 11, Miscellaneous		
136A	Providing information to another enforcement agency and relevant authority	A B

SCHEDULE 3 – the Regulation

Column 1 Part and Clause of the Regulation	Column 2 Summary of functions delegated and limitations (if any)	Column 3 Delegate category
Part 3, Fees and Charges		
14	Increase, reduce or waive charges for inspections of non-licenced food businesses	A
15	Annual administration charge	A
Part 4, Food Safety Supervisors		
19	Issue of a food safety supervisor certificate	B
20(3)	Determination of required units of competency	B
21	Form of food safety supervisor certificate	B
22	Charges for issue of food safety supervisor certificates	B
23	Approval of registered training organisations to issue food safety supervisor certificates	B
24	Condition of approval	B
25	Training qualifications	B
27	Variation, suspension and cancellation of approvals	B
Part 7, Food Safety Schemes – General provisions		
42	Application for licence	A
43	Issue of licences	A B
46	Variation of terms and conditions of licence	A B
47	Suspension or cancellation of licence	A B
49	Renewal of licence	A B
50	Calculation, notification, approval to pay by instalments, waiver and reduction of licence fees and levies	A
51	Inspection of vehicles	A B
52	Issue of vehicle labels	A B
Part 7, Inspections and Audits		

Column 1 Part and Clause of the Regulation	Column 2 Summary of functions delegated and limitations (if any)	Column 3 Delegate category
55	Inspections and audits of food businesses	A B
56	Approval for a food business to retain food safety auditor	A B
57	Increase, reduce or waive charges for inspections and audits	A
Part 8, Dairy Food Safety Scheme		
70	Give notice of frequency of analysis and standards to be met for analysis	A B
74	Establishment of Dairy Industry Consultative Committee	A B
75	Increase licence fees in respect of dairy businesses	A
Part 9, Meat Food Safety Scheme		
100	Identification systems for lamb and hogget meat	A B
108	Application and issue of brands for meat	A B
110	Issue new brands for lost or stolen brand and replacement brand for damaged brand for meat	A B
111	Authorise manufacture or possession of similar brands to prescribed brands for meat	A B
112	Authorised use of brands similar to prescribed brands	A B
113	Appointment of meat safety inspectors for abattoirs and game meat primary processing plants	A B
115	Revocation of approval of appointment of meat safety inspector	A B
116	Give notice of frequency of analysis and standards to be met for analysis	A B
118	Establishment of Meat Industry Consultative Council	A B
119	Increases to licence fees in respect of meat businesses	A
Part 10, Plant Products Food Safety Scheme		

Column 1 Part and Clause of the Regulation	Column 2 Summary of functions delegated and limitations (if any)	Column 3 Delegate category
123	Declarations that the plant products food safety scheme does not apply to certain plant products businesses and revocations of such declarations	A B
125	Give notice of frequency of analysis and standards to be met for analysis	A B
127	Industry consultation	A B
128	Increases to licence fees in respect of plant products businesses	A
Part 11, Seafood Safety Scheme		
139	Give notice of frequency of analysis and standards to be met for analysis	A B
140	Exempt analysis in a particular case or class of cases	A B
144	Establishment of NSW Shellfish Program	A B
145	Establishment of NSW Shellfish Committee	A B
147	Appointment of local shellfish committees	A B
148	Giving directions to local shellfish committees	A B
150	Funding of Committees	A B
151	Increases to the annual general licence fees for seafood businesses	A
152	Determination of licence fees for shellfish harvesting, cultivating of shellfish, cultivating of spat or operation of duration plant	A
156	Calculation of annual local shellfish program levy	A
157	Establishment of NSW Seafood Industry Forum	A B
Part 12, Vulnerable Persons Food Safety Scheme		
161	Give notice of frequency of analysis and standards to be met for analysis	A B
163	Establishment of NSW Vulnerable Persons Food Safety Scheme Consultative Committee	A B

Column 1 Part and Clause of the Regulation	Column 2 Summary of functions delegated and limitations (if any)	Column 3 Delegate category
164	Increases to license fees for licences in respect of vulnerable persons food businesses	A
Part 13, Egg Food Safety Scheme		
176	Approve the sale of eggs which were obtained from a bird administered with a veterinary product	A B
177	Method of pasteurisation of egg product	A
178	Method of pasteurisation of blended egg product mixture	A
179	Give notice of frequency of analysis and standards to be met for analysis	A B
182	Establishment of NSW Egg Industry Consultative Committee	A B
183	Increases to license fees in respect of egg businesses	A
Schedule 4 Standards for animal food processing plants		
Cl 6 of Schedule 4	Approval of amenities for use during processing	A B
Schedule 5 Prescribed brands for abattoir meat		
Cls 2, 6 and 9 of Schedule 5	Approve the dimensions of the brand	A
Schedule 6 Prescribed brands for game meat		
Clause 2 of Schedule 6	Approve of the units of measurement in relation to the brand	A
Schedule 7 Provisions relating to members and procedure of local shellfish committees		
Cl 3 of Schedule 7	Appointment of deputy of a member	B

Schedule 4 – the Code

Column 1 Part and Section of the Act	Column 2 Summary of functions delegated	Column 3 Delegate category
The Code		
The entire Code	All powers or functions of a relevant authority or the appropriate enforcement agency in the Code	A B
The entire Code	Assess any application to demonstrate that a requirement in the Code can be met by an alternative method	A
Chapters 3.2.2 and 3.2.3 of the Code	All powers or functions of a relevant authority or the appropriate enforcement agency in the Code	C

Note: Clause 38 of the *Food Regulation 2015* provides that a reference in the Code to relevant authority or appropriate enforcement agency are to be read as a reference to the Food Authority. It also provides that a reference to “demonstrate” is to be read to demonstrate to the satisfaction of the Food Authority.