

How to apply to change a register

Explanatory guidelines for *Register of prosecutions* or *Register of penalty notices*

March 2024

Background

This guide explains how to apply for a change to be made to information published in the [Register of prosecutions](#) or the [Register of penalty notices](#). Applications can be made under section 133F of the *NSW Food Act 2003* (the Act).

About the Food Authority

The NSW Food Authority (Food Authority) is the government organisation responsible for ensuring NSW food is safe and correctly labelled. It works with industry, consumers, and other government organisations to minimise food poisoning by regulating and providing information about the safe production, storage, transport, promotion and preparation of food.

NSW Food Act 2003

The Food Authority administers the *NSW Food Act 2003*. The objects of the Act set out in section 3 include to:

- a. ensure food for sale is both safe and suitable for human consumption
- b. prevent misleading conduct in connection with the sale of food
- c. provide for the application of the Food Standards Code in NSW.

Enforcement of the Act is essential for the effective management of food safety risks and the prevention of misleading conduct in connection with the sale of food. Accordingly, the Food Authority is committed to ensuring there is a high level of compliance with the Act and regulations.

The Food Authority's [Compliance and enforcement policy](#) (PDF, 672KB) details how the Food Authority facilitates the regulatory goals of the Act in a manner that is:

- authorised by law
- procedurally fair
- consistent
- proportionate
- accountable
- transparent.

Registers of alleged breaches

The Food Authority began web publication of its successful prosecutions under the Act on 1 July 2007. In addition, qualifying prosecutions by councils were also published.

Following amendments to the Act in 2008, the Food Authority started publishing details of penalty notices.

The Act creates 2 registers or lists to contain these details:

- the Register of offences for successful prosecutions
- the Register of penalty notices.

Among other things, the Act sets out what may be published, the period of publication and various processes to be followed relating to the registers.

Why are details of penalty notices and prosecutions published?

Consistent with the Food Authority's Compliance and enforcement policy, authorised officers of the Food Authority and local councils may serve a penalty notice or commence a prosecution on a person if the officer believes the person has committed an offence(s) under the Act or the regulations.

The Act permits the Food Authority to publish particular details on its website about any penalty notice issued if the alleged offence relates to the handling or sale of food. The Food Authority may also publish certain details about a person convicted of an offence if it relates to the handling or sale of food.

The lists give consumers more information to make decisions about where they eat or buy food.

For further information on the Food Authority's policies and procedures for publication see: [Publication Criteria for Penalty Notices \(PDF, 259KB\)](#)

What details can the Food Authority publish?

Register of prosecutions

Under section 133 of the Act, the Food Authority may keep a register of information on its website (and any other approved means) about offences under the Act or the regulations relating to the handling or sale of food (the Register of prosecutions). The register may contain any of the following information in relation to a person who has been convicted by a court of an offence under the Act or the regulations relating to the handling or sale of food, or whose employee or agent has been convicted of such an offence:

- a. the name of the person
- b. the name and address of the place of business at which the offence was committed, including the local government area in which it is located
- c. the name and address of the usual place of business of the person
- d. the trade name under which the person trades
- e. if the person is a company, the name of the chief executive officer and any director of the company
- f. a description of the nature and circumstances of the offence, the decision of the court, the penalty imposed and any forfeiture incurred
- g. the enforcement agency or other body under the direction of which, or on behalf of whom, the relevant prosecution was conducted
- h. such other information of a general nature in relation to matters connected with food safety or other interests of consumers as the Food Authority thinks necessary.

Register of penalty notices

The Act allows the Food Authority to keep a register of information on its website (and any other approved means) about penalty notices issued for alleged offences under the Act or the regulations relating to the handling or sale of food. The Register of penalty notices may contain any of the following:

- a. the name of any person served with a penalty notice for an alleged offence under the Act or the regulations relating to the handling or sale of food
- b. the name and address of the place of business at which the offence is alleged to have been committed, including the local government area in which it is located
- c. the name and address of the usual place of business of the person
- d. the trade name under which the person trades

- e. if the person is a company, the name of the chief executive officer and any director of the company
 - f. a description of the nature and circumstances of the alleged offence, including the short title of the offence
 - g. the date, time and place of the alleged offence
 - h. the penalty notice infringement number
 - i. the amount payable under the penalty notice
 - j. the date the penalty notice was served
 - k. the enforcement agency or other body under the direction of which, or on behalf of whom, the penalty notice was served
 - l. the status of the penalty notice (that is, particulars of whether the penalty notice has been fully or partly paid, whether a penalty notice enforcement order under Part 3 of the *NSW Fines Act 1996* has been issued in respect of the penalty notice or whether the penalty notice is unresolved)
 - m. such other information of a general nature in relation to matters connected with food safety or other interests of consumers in food as the Food Authority thinks necessary.
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When must the Food Authority change the information?

The Food Authority must change the information in the registers on its website in the following circumstances:

1. It must correct any error in the information as soon as practicable after it becomes aware of the error.
2. It must remove information about a conviction for an offence from the Register of offences as soon as practicable after it has become aware that:
 - a. the conviction has been quashed or annulled,
 - b. an appeal has been made against the conviction¹, or
 - c. a period of two (2) years has elapsed since the end of the period during which an appeal could have been made against the conviction, or if an appeal was made against the conviction, the date on which a final order was made affirming the conviction.
3. It must remove information about a penalty notice from the Register of penalty notices as soon as practicable after it has become aware that:
 - a. the penalty notice was not properly served,
 - b. the person on whom the notice was served has elected to have the matter dealt with by a court,
 - c. a decision has been made by the body, by or on behalf of whom the penalty notice was issued, not to enforce the penalty notice,
 - d. a penalty reminder notice or penalty notice enforcement order in respect of the penalty notice has been withdrawn under the *Fines Act 1996* (unless the enforcement action authorised by the enforcement order is authorised by another penalty notice enforcement order),
 - e. a penalty notice enforcement order in respect of the penalty notice has been annulled under the *NSW Fines Act 1996* and the matter has been referred to a court, or
 - f. a period of twelve (12) months has elapsed since the date on which the Food Authority was first authorised to publish information about the penalty notice on the register.

¹ The Food Authority may restore information to the Register of prosecutions, which was removed because an appeal had been made against the conviction, if the Authority is satisfied that the appeal was unsuccessful.

When can the Food Authority change the information?

The Food Authority can, but is not required to, change the information in the registers on its website in the following circumstances:

1. It may correct an omission from information in a register.
 2. It may remove information about a conviction for an offence from the Register of prosecutions if it is appropriate in the circumstances.
 3. It may remove information about a penalty notice from the Register of penalty notices if it is satisfied it is appropriate in the circumstances.
 4. It may add information to a register for the purpose of indicating that a business named in a register has been sold or otherwise disposed of after the date on which the offence is committed or a penalty notice served.
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When will the Food Authority generally not change, add or remove information?

Where the Food Authority is authorised, but not required, to make a change to the information in the registers on its website, having regard to the scope and purpose of the Act, it will generally **not** be appropriate to make a change in the following circumstances:

1. You have since rectified the issue that led to the offence or alleged offence.
2. The publication of the details of the offence or alleged offence have adversely impacted upon your reputation.
3. The publication has caused you financial hardship or other adverse impacts.
4. You were experiencing financial hardship at the time of the offence or alleged offence.
5. You were not aware the details of the penalty notice or prosecution would be published on the website at the time of the offence or alleged offence, payment of the fine or entering of a plea in court.
6. You or the food handler has not received a penalty notice before and is seeking leniency for good character.

However, the Food Authority will consider the circumstances of each case on its own merits.

How do I request a change?

The Food Authority is authorised or required to change the information in the registers on its own volition or following an application under section 133F of the Act.

To make an application to the Food Authority to change information in the registers you must:

1. Determine if you are an 'interested person' and so entitled to apply to the Food Authority for a change to a register. To be an 'interested person', you must:
 - a. be the person to whom the information on the register relates, or
 - b. be the employer or principal of the person to whom the information on the register relates, that is, the information relates to your employee or agent, or
 - c. own or have an interest in the business or company to which the information on the register relates.
2. Complete the [online application form](#) to change the register under section 133F of the *NSW Food Act 2003*.

3. Refer to [Appendix A](#) in this guide when completing the application.
 4. Attach all supporting documentation as outlined in [Appendix A](#) (it may not be possible for the Food Authority to grant your application without the supporting documentation).
 5. Pay the prescribed fee (\$55), which may be waived under the circumstances as outlined below.
 6. Submit the completed application form to the Food Authority.
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Application fees

The prescribed fee of \$55 must be paid for the application to be submitted. If the Food Authority decides that in your particular circumstances fee waiving is appropriate, it will be refunded.

The prescribed fee of \$55 may also be reduced (via partial refund) if the Food Authority deems it appropriate in the circumstances. A written request for consideration of a fee reduction is to accompany the application form with supporting documentary evidence.

Fee waiving

The prescribed fee will be waived and refunded when the Food Authority is required to change the information published. As a guide, this will be when you demonstrate with supporting evidence either:

1. The Food Authority has made an error in the publication of the information.
2. The information published does not meet the criteria under the [Publication Criteria for Penalty Notices](#) (PDF, 79MB).
3. The conviction has been quashed, annulled or an appeal has been filed.
4. The permitted publication time has transpired and the Food Authority had not removed it immediately.

The \$55 fee will generally not be waived in circumstances when the Food Authority is authorised to add, change or remove information contained on the registers. Please refer to [Appendix A](#) of this guide for examples of scenarios appropriate in the circumstances to change the information.

What will the Food Authority do with the application?

Once an application under section 133F of the *NSW Food Act 2003* for change to the register is received, the Food Authority will firstly consider whether it is required or authorised under the Act to change the information in the relevant register. If it is authorised, but not required, to change the information, it will consider whether the change is appropriate in the circumstances.

Outcome and appeals

The Food Authority will advise you in writing of the outcome of your application.

If you disagree with the Food Authority's decision not to make a correction or addition to information, or not to remove any information, in accordance with your request, you may apply to the [NSW Civil and Administrative Tribunal](#) for a review of the decision.

An application for review must be made within 28 days after the day on which you receive notice of the Food Authority's decision. For further information, tribunal forms and fees:

- Visit ncat.nsw.gov.au
- Phone 1300 006 228.

Complaints about food

Complaints or information about breaches of the Act can be lodged with the Food Authority helpline:

- Online food complaints form at foodauthority.nsw.gov.au/help/complaints-about-food
- Email food.contact@dpi.nsw.gov.au
- Phone 1300 552 406 (Australia-wide).

The helpline can provide general information on the Food Authority, and advice on who to contact for specific issues.

The Food Authority cannot give legal advice but may be able to offer you practical information.

Appendix A

The following tables outline:

- the circumstances in which the Food Authority may be required or authorised to make a change to the information published on the website
- suggested information and supporting documentation to submit with the application.

There may be other circumstances not listed where it is appropriate for the Food Authority to make a change to the information published on the website.

Register of prosecutions

Requests to change published information

| Circumstance | Information needed to support request |
|--|--|
| There is an error in the information published on the register. | Details of your claim including supporting documentary evidence confirming the error. |
| There is an omission in the information published on the register. | Details of your claim including supporting documentary evidence confirming the omission. |

Requests to remove published details

| Circumstance | Information needed to support request |
|---|---|
| An appeal has been made against the conviction. | Details of your claim including supporting documentary evidence confirming the lodgement of the appeal within the relevant appeal period. |
| A period of 2 years has elapsed since the date on which the Food Authority was first authorised to publish information about the particular conviction on the register. | Details of your claim including supporting documentary evidence confirming the date marking the end of the relevant appeal period. |
| The conviction has been quashed or annulled. | Details of your claim including supporting documentary evidence of the final order quashing or annulling conviction. |
| The offences do not relate to the 'sale or handling of food'. | Details of your claim including reference to the definition of 'sale and handling of food' in Appendix B . |
| The person who committed the offence and named on the register is now deceased. | Proof of death, which may include: <ul style="list-style-type: none"> • original or copy of death certificate issued by the Principal Registrar of Births, Deaths and Marriages • original or copy of Certificate of Death issued by a medical practitioner • original or copy of any document issued by a legal practitioner, police officer or Coroner which refers to the death |

| Circumstance | Information needed to support request |
|--------------|---|
| | <ul style="list-style-type: none"> any other documentary evidence that is sufficient proof of death. |

Requests for removal or addition of information²

| Circumstance | Information needed to support request |
|--|--|
| <p>The business named on the register has been sold or otherwise disposed of since the date of the offence</p> | <ul style="list-style-type: none"> Verification of the changes to the Notification and Food Safety Information System (NAFSIS), A signed statutory declaration by the new owner outlining details of their purchase and stating whether or not they are related to, or share any business interests with, the person named in the register, and Evidence of the transfer or sale of the food business. <p>The Food Authority will generally remove an entry where it is satisfied that the business has been sold after the offence listed in the register was committed and there is no relationship between the person named in the register and the new owner.</p> <p>The Food Authority will generally add a note to the register that 'The food business has been sold or otherwise disposed of' where it is not satisfied that there is no relationship between the person named in the register and the new owner.</p> |

² Section 133E of the *NSW Food Act 2003* permits the Food Authority to add information to a register for the purpose of indicating that a business named in the register has been sold or otherwise disposed of after the date on which an offence is committed, or a penalty notice served, in relation to an offence committed or alleged to have been committed in the conduct of the business. A business will have been 'disposed of' if there has been a change of ownership of the business through a gift, transfer by the operation of will, or transfer pursuant to mortgage or security arrangements.

Register of penalty notices

Requests to change published information

| Circumstance | Information needed to support request |
|---|--|
| There is an error in the information published on the register. | Details of your claim including supporting documentary evidence confirming the error. |
| There is an omission in the information published on the register. | Details of your claim including supporting documentary evidence confirming the omission. |
| You are the owner/occupier of the place of food business but did not commit the offence as described. | Details of your claim including supporting documentary evidence. |

Requests to remove published details

| Circumstance | Information needed to support request |
|---|---|
| The penalty notice has not been paid and an enforcement order has not been issued. | Details of your claim including supporting documentary evidence. |
| The penalty notice was not properly served. | Details of your claim including supporting documentary evidence. |
| The person on whom the notice was served has elected to have the matter dealt with by a court. | Details of your claim including supporting documentary evidence. |
| The offences do not relate to the 'sale or handling of food'. | Details of your claim including reference to the definition of 'sale and handling of food' in Appendix B . |
| A period of 12 months has elapsed since the date on which the Food Authority was first authorised to publish information about the particular penalty notice on the register. | Details of your claim including supporting documentary evidence. |
| You were not the proprietor of the food business who committed the offence and believe another food business or person has used your particulars. | <ul style="list-style-type: none"> • Details of your claim including supporting documentary evidence that you or an employee or agent were not subject to an inspection to which the offence relates and did not receive a penalty notice. • If overseas, proof of absence overseas – copy of passport showing entry and exit dates. • Copy of photo identification. |
| You sold or transferred the food business ownership prior to the date of the offence. | Evidence of the transfer or sale of the food business is to be produced with the statutory declaration. |
| Food business was not under effective control because of natural emergency conditions such as flood or electrical storm. | Details of your claim and this will be checked against the information recorded by the issuing officer at the time of issue. |

| Circumstance | Information needed to support request |
|--|--|
| The offence occurred because there was a medical emergency | Details of the medical emergency on letterhead from a medical authority. |
| The person who committed the offence and named on the register is now deceased. | Proof of death which may include: <ul style="list-style-type: none"> original or copy of death certificate issued by the Principal Registrar of Births, Deaths and Marriages original or copy of Certificate of Death issued by a medical practitioner original or copy of any document issued by a legal practitioner, police officer or Coroner which refers to the death any other documentary evidence that is sufficient proof of death. |
| Issuing the penalty notice contravened the Food Authority's policy for enforcement of the <i>NSW Food Act 2003</i> . | Evidence that shows a contravention of Food Authority's policy. (Compliance and enforcement policy is available at foodauthority.nsw.gov.au/sites/default/files/2022-03/BFS-Compliance-and-Enforcement-Policy-v2.0.pdf (PDF, 671 KB) or phone 1300 552 406). |
| The Food Authority applied the decision matrix incorrectly when determining whether to publish the penalty notice. | Evidence that would change either the assessed risk profile of the business or severity of the alleged breach and result in a determination to not publish the penalty notice. The decision matrix and summaries of breach severity and risk profile are at foodauthority.nsw.gov.au/sites/default/files/Documents/corporate/publication_criteria_penalty_notices.pdf (PDF, 259 KB) or phone 1300 552 406). |

Requests for removal or addition of information³

| Circumstance | Information needed to support request |
|--|--|
| The business named on the register has been sold or otherwise disposed of since the date of the offence. | <ul style="list-style-type: none"> Verification of the changes to the Notification and Food Safety Information System (NAFSIS) A signed statutory declaration by the new owner outlining details of their purchase and stating whether or not they are related to, or share any business interests with, the person named in the register, and |

³ Section 133E of the *NSW Food Act 2003* permits the Authority to add information to a register for the purpose of indicating that a business named in the register has been sold or otherwise disposed of after the date on which an offence is committed, or a penalty notice served, in relation to an offence committed or alleged to have been committed in the conduct of the business. A business will have been 'disposed of' if there has been a change of ownership of the business through a gift, transfer by the operation of will, or transfer pursuant to mortgage or security arrangements.

| Circumstance | Information needed to support request |
|--------------|--|
| | <ul style="list-style-type: none"><li data-bbox="821 241 1471 309">• Evidence of the transfer or sale of the food business. <p data-bbox="821 324 1471 526">The Food Authority will generally remove an entry where it is satisfied that the business has been sold after the offence listed in the register was committed and there is no relationship between the person named in the register and the new owner.</p> <p data-bbox="821 542 1471 712">The Food Authority will generally add a note to the register that 'The food business has been sold or otherwise disposed of' where it is not satisfied that there is no relationship between the person named in the register and the new owner.</p> |

Appendix B

Definition of 'handling or sale of food'

Section 4 of the Act defines 'handling of food' and 'sell' as follows:

handling of food includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.

sell includes:

- a. the trade name under which the person trades,
- b. barter, offer or attempt to sell,
- c. receive for sale,
- d. have in possession for sale,
- e. display for sale,
- f. cause or permit to be sold or offered for sale,
- g. send, forward or deliver for sale,
- h. dispose of by any method for valuable consideration,
- i. dispose of to an agent for sale on consignment,
- j. provide under a contract of service,
- k. supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work,
- l. dispose of by way of raffle, lottery or other game of chance,
- m. offer as a prize or reward,
- n. give away for the purpose of advertisement or in furtherance of trade or business,
- o. supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment,
- p. supply food (whether or not for consideration) in the course of providing services to patients in public hospitals or inmates in correctional centres, or
- q. sell for the purpose of resale.

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