



New South Wales

Food Regulation 2001

under the

Food Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Food Act 1989*.

CRAIG KNOWLES, M.P.,

Minister for Health

Explanatory note

The object of this Regulation is to repeal the *Food (General) Regulation 1997* and the *Food (Incorporation of Food Standards Code) Regulation 2000* to remove provisions relating to food premises, vehicles and appliances, food hygiene, packaging and labelling of food and conveyance of food. Those matters will be covered by new provisions of the Food Standards Code adopted in accordance with an agreement between the States and the Commonwealth relating to uniform food laws. This Regulation contains provisions applying that Code to New South Wales with one modification. The modification removes the requirement to notify the Director-General of the Department of Health in relation to fundraising events involving food handling operations.

This Regulation also contains other provisions carried over from the *Food (General) Regulation 1997* relating to analysts and analysis of food samples.

This Regulation is made under the *Food Act 1989*, including sections 32, 38, 39, 42, 81 and 90 (the general regulation-making power).

This Regulation comprises matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth and other States and matters of a machinery nature.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Food Regulation 2001*.

2 Definitions

In this Regulation:

Food Safety Standards means the standards contained in Chapter 3 of the Food Standards Code.

Food Standards Code means the Code published under that name in the Commonwealth of Australia Gazette on 27 August 1987 together with any amendments of the standards in that Code:

- (a) approved by the National Food Standards Council before the commencement of the *Australia New Zealand Food Authority Act 1991* of the Commonwealth and published in the Commonwealth of Australia Gazette as forming part of that Code, or
- (b) made under the *Australia New Zealand Food Authority Act 1991* of the Commonwealth.

the Act means the *Food Act 1989*.

3 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

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Part 2 Incorporation of Food Standards Code

Part 2 Incorporation of Food Standards Code

4 Incorporation of Food Standards Code

- (1) The Food Standards Code, as in force from time to time, is incorporated in this Regulation and applies as a law of New South Wales, subject to the modification set out in subclause (2).
- (2) Standard 3.2.2 of the Food Standards Code is modified by inserting after clause 4 (4) the following subclause:
 - (5) Subclause (1) does not apply to a food business in relation to food handling operations for fundraising events, that is, events:
 - (a) that raise funds solely for community or charitable causes and not for personal financial gain, and
 - (b) at which all the food sold is not potentially hazardous or is to be consumed immediately after thorough cooking.
- (3) The standards set out in the Food Standards Code as adopted by subclause (1) are prescribed for the purposes of the Act.

Part 3 Food Safety Standards

5 Definitions

- (1) Expressions used in this Part have the same meaning as in Standard 3.1.1 of the Food Standards Code.
- (2) A reference in a provision of the Food Safety Standards (as incorporated by clause 4 of this Regulation):
 - (a) to the *appropriate enforcement agency* is to be read as a reference to the *Director-General*, and
 - (b) to *demonstrate* is to be read as a reference to *demonstrate to the satisfaction of the Director-General*.

6 Offence of not complying with Food Safety Standards

- (1) The proprietor of a food business must comply with any requirement imposed on the proprietor of a food business by a provision of the Food Safety Standards (except Subdivision 1 of Division 4 of Standard 3.2.2).

Maximum penalty: 25 penalty units.

- (2) A food handler must comply with any requirement imposed on a food handler by Subdivision 1 of Division 4 of Standard 3.2.2 of the Food Standards Code.

Maximum penalty: 25 penalty units.

Note. Clause 4 (2) of this Regulation modifies the application of Standard 3.2.2 of the Food Standards Code.

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Part 4 Sampling and analysis

Part 4 Sampling and analysis

7 Payment for samples

For the purposes of section 32 of the Act, if the current market value of a sample of food exceeds \$10, the amount payable for the sample concerned is \$10.

8 Fee for analysis

For the purposes of section 38 of the Act, the fee to be prepaid by any person who requires an officer to purchase a sample of food is \$50.

9 Analyst's certificate

- (1) For the purposes of section 39 (4) of the Act, the prescribed form of certificate to be given by an analyst of the result of an analysis of food is the form in Schedule 1.
- (2) For the purposes of section 42 (1) of the Act, the fee for a copy of that certificate is \$20.

10 Qualifications for analysts

- (1) For the purposes of section 81 (1) of the Act, the prescribed qualification for appointment as an analyst to conduct a specific category of analysis is either of the following:
 - (a) a degree or diploma in science, being a degree or diploma:
 - (i) approved by the Director-General for the purposes of this clause, and
 - (ii) the major subject of which (that is, chemistry or microbiology) is relevant to the specific category of analysis concerned,
 - (b) a qualification that the Director-General is satisfied is equivalent to such a degree or diploma.
- (2) Before appointing a person as an analyst for the purposes of the Act, the Director-General may require the person to satisfy the Director-General that the person has:

- (a) at least 2 years' practical experience after graduation, being experience that is relevant to the specific category of analysis that the person is to undertake, and
- (b) access to the use of a suitably equipped laboratory for the performance of that category of analysis.

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Part 5 Miscellaneous

Part 5 Miscellaneous

11 Repeals

The following Regulations are repealed:

Food (General) Regulation 1997

Food (Incorporation of Food Standards Code) Regulation 2000

12 Savings and transitional provisions

Any act, matter or thing that, immediately before the repeal of a Regulation referred to in clause 11 had effect under that Regulation is taken to have effect under this Regulation.

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Form

Schedule 1

Schedule 1 Form

(Clause 9)

Analyst's Certificate

(Food Act 1989, section 39)

I,, an analyst duly appointed under the *Food Act 1989*, certify that the sample has been analysed, that the seal securing the sample was intact (delete if not applicable) and that the result of the analysis is as follows:

(here insert the result of analysis* and any remarks)

Signed on the day of 20

.....
(analyst's signature)

.....
.....
(address)

***Note.** If a method of analysis is prescribed, the analyst is to state that the method has been followed.