



# Food Regulation 2004

under the

Food Act 2003

Her Excellency the Governor, with the advice of the Executive Council, and with the approval of the Premier and certification of the Minister for Health under section 141 of the *Food Act 2003*, has made the following Regulation under that Act.

MORRIS IEMMA, M.P.,

Minister for Health

## Explanatory note

The object of this Regulation is to prescribe a new Regulation for the purposes of the *Food Act 2003* that deals with the following matters:

- (a) the way in which certain references are to be read in the *Australia New Zealand Food Standards Code* of the Commonwealth (with which compliance is required by certain provisions of that Act),
- (b) an exemption to the notification provisions of that Act in relation to fundraising events for charities,
- (c) fees in relation to notifications and inspection of the list of food businesses under that Act,
- (d) specifying enforcement agencies for the purposes of that Act,
- (e) enabling the Director-General of the Department of Health to delegate functions under that Act to the Chief Executive Officer of Safe Food Production NSW,
- (f) enabling certain confidential information obtained under that Act to be disclosed to a person administering the *Food Production (Safety) Act 1998*,
- (g) savings and transitional provisions.

This Regulation is made under the *Food Act 2003*, including sections 4, 68, 109, 136, 139 (the general regulation-making power) and 141 and clause 1 of Schedule 2.

## **2004 No 59**

Food Regulation 2004

Explanatory note

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

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## **2004 No 59**

Clause 1            Food Regulation 2004

Part 1             Preliminary

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## **Food Regulation 2004**

under the

Food Act 2003

### **Part 1        Preliminary**

#### **1    Name of Regulation**

This Regulation is the *Food Regulation 2004*.

#### **2    Commencement**

This Regulation commences on 23 February 2004.

#### **3    Definitions**

In this Regulation:

***Director-General*** means the Director-General of the Department of Health.

***the Act*** means the *Food Act 2003*.

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## Part 2 Provisions relating to Food Standards Code

### 4 Modification of Food Standards Code

- (1) A reference in the Food Standards Code:
  - (a) to the relevant authority is to be read as a reference to the Director-General, and
  - (b) to the Act is to be read as a reference to the *Food Act 2003*, and
  - (c) to the appropriate enforcement agency is to be read as a reference to the Director-General, and
  - (d) to demonstrate is to be read as a reference to demonstrate to the satisfaction of the Director-General.
- (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.

### 5 Notifications of food handling operations

- (1) Expressions used in this clause have the same meaning as in Standard 3.1.1 of the Food Standards Code.
- (2) The Director-General may make an arrangement with a local council for the council to accept notifications under clause 4 of Standard 3.2.2 of the Food Standards Code on behalf of the Director-General and forward those notifications to the Director-General.
- (3) A local council that performs the service of accepting and forwarding a notification under subclause (2) may charge a fee for that service not exceeding the following:
  - (a) if the notification relates to 5 food premises or less—\$50,
  - (b) if the notification relates to more than 5 food premises—\$10 per premises.

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Clause 5 Food Regulation 2004

Part 2 Provisions relating to Food Standards Code

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- (4) A notification under clause 4 of Standard 3.2.2 of the Food Standards Code may be made:
  - (a) in a written form—directly to the Director-General or to the Director-General through a local council (under an arrangement made in accordance with subclause (2)), or
  - (b) in an electronic form by way of the Internet—directly to the Director-General.
- (5) A notification that is made in a written form directly to the Director-General must be accompanied by a processing fee of:
  - (a) if the notification relates to 5 food premises or less—\$50, and
  - (b) if the notification relates to more than 5 food premises—\$10 per premises.
- (6) A notification under clause 4 of Standard 3.2.2 of the Food Standards Code is not duly made unless it is accompanied by any fee that is required under this clause.

## Part 3 Administration

### 6 Enforcement agencies

- (1) For the purposes of the definition of *enforcement agency* in section 4 (1) of the Act, the following are prescribed:
  - (a) Safe Food Production NSW constituted by the *Food Production (Safety) Act 1998*,
  - (b) each local council,
  - (c) in respect of the Kosciuszko National Park, the Director-General of the Department of Environment and Conservation,
  - (d) in respect of Lord Howe Island, the Lord Howe Island Board constituted by the *Lord Howe Island Act 1953*.
- (2) The Director-General is prescribed as the appropriate enforcement agency for the purposes of sections 93, 95 and 100 of the Act.

### 7 Delegations

For the purposes of section 109 (1) (c) of the Act, the following offices are prescribed:

- (a) the Chief Executive Officer of Safe Food Production NSW constituted by the *Food Production (Safety) Act 1998*,
- (b) the general manager of a local council.

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Clause 8            Food Regulation 2004

Part 4             Miscellaneous

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### Part 4            Miscellaneous

#### 8    Payment for samples

For the purposes of section 68 of the Act, if the current market value of a sample of food exceeds \$10, the amount payable for the sample concerned is \$10.

#### 9    Disclosure of certain confidential information

For the purposes of section 136 (1) (e) of the Act, the *Food Production (Safety) Act 1998* is prescribed.

#### 10   Savings and transitional provisions

- (1) A notification relating to a food business that was duly made for the purposes of Standard 3.2.2 of the Food Standards Code before the commencement of section 100 of the Act is taken to be a written notice in the approved form for the purposes of that section.
- (2) Until 12 months after the commencement of this Regulation, section 100 of the Act does not apply to the proprietor of a food business that is the subject of a licence under the *Food Production (Safety) Act 1998*.

BY AUTHORITY