



New South Wales

# Food Amendment Regulation 2008

under the

Food Act 2003

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Food Act 2003*.

IAN MACDONALD, M.L.C.,  
Minister for Primary Industries

## Explanatory note

The object of this Regulation is to amend the *Food Regulation 2004* as follows:

- (a) to provide for a fee for improvement notices in respect of food businesses and a fee for the inspection of non-licensed food businesses,
- (b) to provide for an annual administration charge to be imposed on non-licensed food businesses,
- (c) to update the fee for the inspection of licensed food businesses in accordance with increases in the Consumer Price Index,
- (d) to make other minor and miscellaneous changes.

This Regulation is made under the *Food Act 2003*, including sections 66AA, 120 and 139 (the general regulation-making power).

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Clause 1            Food Amendment Regulation 2008

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## **Food Amendment Regulation 2008**

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Food Act 2003

### **1 Name of Regulation**

This Regulation is the *Food Amendment Regulation 2008*.

### **2 Commencement**

This Regulation commences on 1 March 2008.

### **3 Amendment of Food Regulation 2004**

The *Food Regulation 2004* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

**[1] Clause 20 Charges for inspections and audits**

Omit "\$140" and "\$35" from clause 20 (1).

Insert instead "\$143.08" and "\$35.77" respectively.

**[2] Clause 38 Requirements of Export Control Orders to apply**

Omit "Schedules 2 and 3 of the *Export Control (Dairy, Eggs and Fish) Orders 2005*" from clause 38 (1).

Insert instead "Schedules 3 and 4 to the *Export Control (Milk and Milk Products) Orders 2005*".

**[3] Clause 38 (3)**

Omit the subclause. Insert instead:

(3) In this clause:

*Export Control (Milk and Milk Products) Orders 2005* means the *Export Control (Milk and Milk Products) Orders 2005* made under regulation 3 of the *Export Control (Orders) Regulations 1982* of the Commonwealth.

**[4] Clause 170 Enforcement agencies**

Omit clause 170 (1). Insert instead:

(1) For the purposes of the definition of *enforcement agency* in section 4 (1) of the Act, the Lord Howe Island Board constituted by the *Lord Howe Island Act 1953*, but only in respect of Lord Howe Island, is prescribed.

**[5] Clauses 173A, 173B and 173C**

Insert after clause 173:

**173A Improvement notice fee**

For the purposes of section 66AA (1) of the Act, the prescribed fee is \$330.

**173B Charges for inspections of non-licensed food business**

(1) The charge payable for the carrying out by a relevant enforcement agency of any inspection of a food business under section 37 of the Act (other than an inspection in relation to a licence or application for a licence) is \$143.08 per hour with a

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minimum charge of half an hour (excluding time spent in travelling) plus \$35.77 for travelling expenses.

- (2) The relevant enforcement agency may increase the amounts referred to in subclause (1) annually in accordance with the annual percentage increase (if any) in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.
- (3) The charges payable under this clause are payable to the relevant enforcement agency that carried out the inspection under this clause.
- (4) The relevant enforcement agency may reduce or waive payment of a charge in a particular case or class of cases.
- (5) In this clause, **relevant enforcement agency** means any of the following:
  - (a) the Food Authority,
  - (b) in respect of the Kosciuszko National Park, the Director-General of the Department of Environment and Climate Change,
  - (c) in respect of Lord Howe Island, the Lord Howe Island Board constituted by the *Lord Howe Island Act 1953*,
  - (d) a local council, but only in respect of an area that is not within a local government area.

#### **173C Annual administration charge**

- (1) An enforcement agency may impose an administration charge for a 12 month period on a person who carries on a food business that is not required to be licensed under the Act.
- (2) The charge is to be calculated in relation to each of the premises of the food business by reference to the number of full-time equivalent food handlers working at the premises indicated in Column 1 of the Table to this clause, as at the date the charge is imposed.
- (3) The amount of the charge must not exceed the maximum charge indicated in Column 2 of the Table to this clause.
- (4) A charge may only be imposed by an enforcement agency on a food business under this clause if the enforcement agency intends to carry out at least one inspection of the premises of the food business during the 12 month period to which the charge relates.

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- (5) The enforcement agency is to issue each person who is liable to pay a charge under this clause with a notice in writing that specifies the following:
- (a) the amount of the charge,
  - (b) the period for which the charge relates,
  - (c) the period within which the charge must be paid.
- (6) The person liable to pay a charge under this clause must pay the charge within the period specified in the notice.
- (7) If the enforcement agency does not carry out at least one inspection of the premises of the food business during the 12 month period to which the charge relates, the enforcement agency must refund the charge paid (if any) by the person who carries on the food business.
- (8) Any charge paid under this clause in respect of a food business that, after the charge has been paid and before the expiration of the period to which the charge relates, becomes licensed under the Act, is to be refunded as an amount proportionate to the remainder of the period to which the charge relates.
- (9) The enforcement agency may, on the application of the person liable to pay a charge under this clause, extend the time for payment of the charge or reduce or waive payment of the charge.
- (10) This clause does not apply to a food business that operates for the sole purpose of raising funds for a community or charitable cause.
- (11) In this clause, *food handler* means a person who directly engages in the handling of food for a food business.

**Table**

<b>Number of full-time equivalent food handlers working at premises</b>	<b>Maximum charge per premises</b>
Up to and including 5	\$250
More than 5 but not more than 50	\$500
More than 50	\$2,000

**[6] Schedule 1 Penalty notices**

Insert in appropriate order in Part 1 of the Schedule:

Section 66AA (3)	\$330	\$660
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BY AUTHORITY