



New South Wales

Food Amendment (Food Authority Maximum Amount and Application Fee) Regulation 2009

under the

Food Act 2003

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

IAN MACDONALD, MLC
Minister for Primary Industries

Explanatory note

The Food Authority may institute proceedings in respect of offences under the *Food Act 2003* and the *Food Regulation 2004*. Any fines or penalties imposed as a result of such proceedings are paid into the Food Authority Fund. At the end of the financial year the Food Authority must pay into the Consolidated Fund all money in excess of the **maximum amount**. Section 117D of the *Food Act 2003* provides that the maximum amount for a financial year is \$250,000 or such other amount specified in or calculated in a manner prescribed by the regulations. Currently, the regulations do not prescribe an amount or manner of calculating such an amount.

The Food Authority may keep a register of offences under Part 10A of the *Food Act 2003*. An interested person may apply to the Food Authority for changes to the register of offences and section 133F (3) (b) of the *Food Act 2003* provides that such an application must be accompanied by the fee prescribed by the regulations. Currently, the regulations do not prescribe a fee payable for such applications.

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

- (a) to prescribe a formula to calculate the maximum amount that the Food Authority can retain in the Food Authority Fund at the end of the financial year, and
- (b) to prescribe a fee of \$55 for applications for changes to the register.

This Regulation is made under the *Food Act 2003*, including sections 117D, 133F and 139 (the general regulation-making power).

2009 No 271

Clause 1

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1 Name of Regulation

This Regulation is the *Food Amendment (Food Authority Maximum Amount and Application Fee) Regulation 2009*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Food Regulation 2004

Clauses 183A and 183B

Insert after clause 183:

183A Payment of penalties and fines into Food Authority Fund— determination of the maximum amount

- (1) For the purposes of the definition of *maximum amount* in section 117D (3) of the Act, the maximum amount for a financial year is to be calculated in accordance with the following formula:

$$MA = \$250,000 + F$$

where:

MA is the maximum amount for a financial year.

F is 50% of all fines and monetary penalties paid to the Food Authority in that financial year in proceedings instituted by the Food Authority in respect of offences under the Act or this Regulation.

- (2) In this clause:
- proceedings instituted by the Food Authority* means any proceedings instituted:
- (a) by the Food Authority, or
 - (b) under the direction of the Food Authority, or
 - (c) on behalf of the Food Authority, or
 - (d) for the benefit of the Food Authority,
- but does not include the issuing of a penalty notice under the Act.
- fine* does not include any costs (including expenses or disbursements) payable by a person under an order made by a court in proceedings for an offence under the Act or this Regulation.

183B Fee for application for change to register

For the purposes of section 133F (3) (b) of the Act, the prescribed fee to accompany an application for a change to the register kept under Part 10A of the Act is \$55.