



New South Wales

# Food Amendment (Food Safety Supervisors) Regulation 2010

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*.

STEVE WHAN, MP  
Minister for Primary Industries

## Explanatory note

The object of this Regulation is to amend the *Food Regulation 2010*:

- (a) to provide for the qualifications required to be held by persons intending to be issued with a food safety supervisor certificate, and
- (b) to enable the Food Authority to issue food safety supervisor certificates, and
- (c) to prescribe fees and charges in relation to the issuing of food safety supervisor certificates, and
- (d) to provide for the giving of approvals by the Food Authority of registered training organisations for the purposes of issuing food safety supervisor certificates, and
- (e) to specify certain conditions to which such approvals are subject, and
- (f) to specify the information to be included in a notice required by section 106E of the *Food Act 2003* relating to the appointment of a food safety supervisor for a food business, and
- (g) to specify certain exemptions from the food safety supervisor provisions of that Act, and
- (h) to define the term “prepackaged” for the purposes of the application of the food safety supervisor requirements of that Act.

This Regulation is made as a consequence of the enactment of the *Food Amendment (Food Safety Supervisors) Act 2009*.

This Regulation is made under the *Food Act 2003*, including sections 106A, 106B, 106E, 106H, 106I, 106J and 139 (the general regulation-making power).

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Clause 1            Food Amendment (Food Safety Supervisors) Regulation 2010

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# **Food Amendment (Food Safety Supervisors) Regulation 2010**

under the

Food Act 2003

### **1 Name of Regulation**

This Regulation is the *Food Amendment (Food Safety Supervisors) Regulation 2010*.

### **2 Commencement**

This Regulation commences on 9 July 2010 and is required to be published on the NSW legislation website.

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## Schedule 1      Amendment of Food Regulation 2010

### [1] Part 2A

Insert after Part 2:

## Part 2A Food safety supervisors

### Division 1      Interpretation

#### 16A Definitions

Terms that are used in this Part and are defined in Division 3 of Part 8 of the Act have the same meanings as they have in that Division.

### Division 2      Food safety supervisor certificates

#### 16B Food Authority may also issue food safety supervisor certificates

The Food Authority may issue a food safety supervisor certificate.

**Note.** Section 106B (3) of the Act provides that a food safety supervisor certificate may be issued by an approved training organisation or another person or body prescribed by the regulations.

#### 16C Qualifications for issue of food safety supervisor certificate

- (1) An approved training organisation may issue a food safety supervisor certificate to a person only if the organisation is satisfied that:
  - (a) the person to whom the certificate is to be issued has attained the required units of competency in accordance with subclause (3), and
  - (b) at least one of the required units of competency was attained from the organisation and was attained when the organisation was an approved training organisation.
- (2) The Food Authority may issue a food safety supervisor certificate to a person only if the Authority is satisfied that:
  - (a) the person to whom the certificate is to be issued has attained the required units of competency in accordance with subclause (3), and

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- (b) the certificate could not be issued by an approved training organisation, for example, because:
  - (i) none of the required units of competency were attained from a person or body that was an approved training organisation when the units were attained, or
  - (ii) the approved training organisation from which the person attained one or more of the required units of competency has ceased to exist or its approval has been suspended or revoked.
- (3) The required units of competency must have been attained:
  - (a) within the period of 5 years immediately preceding the application for the certificate and on or after 1 January 2007, and
  - (b) in a manner that has been determined by the Food Authority and published on its internet website.
- (4) In this clause, *required units of competency* means the particular units of competency that are determined by the Food Authority as being required for the attainment of a certificate referred to in subclause (1) and that are identified on its internet website.
- (5) If the Food Authority changes its determination under this clause as to the required units of competency or the manner in which required units of competency must be attained, the change does not affect required units of competency attained in accordance with a previous determination of the Food Authority that was in force under this clause when the units were attained.

#### **16D Form of food safety supervisor certificate**

A food safety supervisor certificate must be issued in a form approved by the Food Authority and bear an identifying number assigned by the Authority.

#### **16E Charges for issue of food safety supervisor certificates**

- (1) A charge of \$30 is payable to the Food Authority by an approved training organisation for the issue of a food safety supervisor certificate by the organisation.
- (2) The Food Authority or an approved training organisation may impose a fee or charge of not more than \$30 for the issue of a food safety supervisor certificate to a person.

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**Division 3      Approval of registered training organisations  
to issue food safety supervisor certificates****16F      Approval of registered training organisations to issue food safety  
supervisor certificates**

- (1) A registered training organisation (within the meaning of the *Vocational Education and Training Act 2005*) may make an application, in the approved form, to the Food Authority for the approval of the organisation under section 106H of the Act.
- (2) The application is to be accompanied by:
  - (a) such information as the Food Authority requires to determine the application, and
  - (b) an application fee of \$100, and
  - (c) an approval fee of \$1,200.
- (3) The Food Authority may, after considering an application for approval:
  - (a) grant the application, with or without conditions imposed by the Authority, or
  - (b) refuse to grant the application.
- (4) If the Food Authority grants an application for approval, it must issue the applicant with a written approval that sets out the conditions to which the approval is subject.
- (5) If the Food Authority refuses an application for approval, the Food Authority must:
  - (a) give notice of the refusal in writing to the applicant setting out the reasons for the refusal, and
  - (b) refund any approval fee that was submitted with the application.
- (6) This clause applies to an application for renewal of an approval under section 106H in the same way as it applies to an application for an approval. However, no application fee is payable in relation to an application for renewal of an approval.

**16G      Condition of approval**

- (1) In addition to any condition imposed on an approval by the Food Authority, an approval is subject to a condition that the registered training organisation complies with this clause.
- (2) The registered training organisation must ensure that a person does not conduct training on behalf of the organisation for the

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purposes of the issue of a food safety supervisor certificate unless the Food Authority has agreed in writing to the person carrying out such training.

- (3) The registered training organisation must:
- (a) provide the documents and information required by the Food Authority to enable the Authority to determine whether to agree to a person carrying out that training, and
  - (b) obtain the consent of each person who proposes to conduct training on the organisation's behalf to the provision of the information and documents referred to in paragraph (a) to the Food Authority.

### 16H Training qualifications

The Food Authority is not to agree to a person carrying out training on behalf of an approved training organisation for the purposes of the issue of a food safety supervisor certificate unless the Authority is satisfied that:

- (a) the person has had at least 3 years work experience in total as any one or more of the following:
  - (i) a food handler engaged by a retail food business undertaking duties that include the processing of ready-to-eat, potentially hazardous food at the premises of that business,
  - (ii) an authorised officer performing functions under the Act in relation to retail food businesses,
  - (iii) a trainer for a registered training organisation delivering an accredited course (within the meaning of the *Vocational Education and Training Act 2005*) in food safety or a training package (within the meaning of that Act) that includes such a course, or
- (b) arrangements will be in place to provide the person with appropriate assistance to ensure that he or she is able to deliver a training outcome of at least the same standard as would be achieved if the person satisfied the requirements of paragraph (a).

### 16I Duration of approval

- (1) Unless sooner cancelled, an approval remains in force for the period of 12 months from the date on which it was granted but may be renewed in accordance with this Division.
- (2) An approval does not have effect while it is suspended.

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**16J Variation, suspension and cancellation of approvals**

- (1) The Food Authority may:
  - (a) vary a condition imposed by the Authority on an approval or impose a condition on an approval, or
  - (b) suspend or cancel an approval.
- (2) The Food Authority may vary a condition of an approval or impose a condition on an approval, or suspend or cancel an approval only after having given the holder of the approval written notice of its intention to do so setting out its reasons.
- (3) The notice must include a statement that the holder of the approval concerned may make submissions to the Food Authority in relation to the proposed variation, imposition of condition, suspension or cancellation within 14 days after the date of the notice.
- (4) Subclauses (2) and (3) do not apply to the variation of a condition of an approval, or the cancellation of an approval, at the request of the holder of the approval.
- (5) A variation of the conditions of, imposition of conditions on or the suspension or cancellation of an approval:
  - (a) must be by notice in writing, and
  - (b) must be served on the holder of the approval, and
  - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

**Division 4 Notices**

**16K Application of Division**

This Division has no operation until the day on which sections 106E and 106F of the Act commence.

**16L Notice of appointment of food safety supervisor**

The information to be contained in a notice under section 106E of the appointment of a food safety supervisor given by the proprietor of a food business is the following:

- (a) the name of the food business,
- (b) the name of the person who has been appointed as food safety supervisor,
- (c) if the food safety supervisor was appointed under section 106C for premises, the address of the premises,

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- (d) if the food safety supervisor was appointed under section 106D for a mobile catering business, the business address of the proprietor of the business,
- (e) the telephone number and e-mail address (if any) on which the food safety supervisor can be contacted during the food safety supervisor's hours of work for the food business,
- (f) the identifying number of the food safety supervisor certificate,
- (g) the date of issue of the food safety supervisor certificate.

### 16M Exemptions from certain notice requirements

- (1) This clause applies to food businesses for which the relevant enforcement agency is not the Food Authority.
- (2) The proprietor of a food business is exempt from section 106E (2) (a) of the Act (which requires the notice under that section to be given in writing to the relevant enforcement agency) but only if the proprietor has given the notice electronically to the Food Authority in accordance with the instructions for the giving of such notices on the Food Authority's internet website.
- (3) The proprietor of a food business is exempt from section 106F (2) (a) of the Act (which requires the notice under that section to be given in writing to the relevant enforcement agency) but only if the proprietor has given the notice electronically to the Food Authority in accordance with the instructions for the giving of such notices on the Food Authority's internet website.

## Division 5 Miscellaneous

### 16N Definition of "prepackaged food"

For the purposes of Division 3 of Part 8 of the Act, food is *prepackaged* if the food:

- (a) arrives at the premises from which it is sold in a container or wrapper in or by which the food is wholly encased, enclosed, contained or packaged (whether or not the food is also in an outer container or wrapper that encases, encloses, contains or packages multiple units of the food), and
- (b) is not removed from its container or wrapper (other than any such outer container or wrapper) before its sale at those premises.



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**160 Exemptions from Division 3 of Part 8 of the Act**

- (1) The following food businesses are exempt from the operation of Division 3 of Part 8 of the Act:
  - (a) food businesses that are licensed under the Act,
  - (b) coffee vendors if the only processing of potentially hazardous food for sale is the heating of milk.
- (2) The sale of food for the purpose of raising funds solely for community or charitable causes is exempt from the operation of Division 3 of Part 8 of the Act.
- (3) The following premises are exempt from the operation of Division 3 of Part 8 of the Act:
  - (a) a primary or secondary school if the food is sold principally to students and staff at that school,
  - (b) a boarding school if the food is sold principally to students and staff at that school,
  - (c) premises where a children's service (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*) is provided,
  - (d) premises where an out of school hours care service (within the meaning of section 220A of the *Children and Young Persons (Care and Protection) Act 1998*) is provided,
  - (e) correctional centres (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),
  - (f) premises used by a food business where the processing of potentially hazardous food for sale involves one or more of the following activities only:
    - (i) the slicing of fermented meats or smallgoods, or both,
    - (ii) the slicing or portioning of cheese, or both,
    - (iii) the processing of raw seafood,
    - (iv) the slicing or portioning of fruit or vegetable, or both, that is ready-to-eat food,
  - (g) supermarkets if heated food is not sold.