



New South Wales

Food Amendment (Food Safety Supervisors) Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Food Act 2003* (*the Principal Act*):

- (a) to require the proprietors of certain food businesses to appoint food safety supervisors who hold certain qualifications and have the authority to supervise food handling, and
- (b) to require that those appointments be notified to relevant enforcement agencies, and
- (c) to allow the Food Authority to approve registered training organisations to issue food safety supervisor certificates to persons who have the prescribed qualifications, and
- (d) to make other amendments to facilitate the administration of the Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Food Act 2003 No 43

Amendments relating to food safety supervisors

Schedule 1 [4] inserts proposed Division 3 into Part 8 of the Principal Act which contains the following provisions relating to food safety supervisors:

Proposed section 106 contains definitions of terms used in the proposed Division. In particular, *relevant enforcement agency* for a food business means the enforcement agency specified on the Food Authority's website as the relevant enforcement agency for food businesses of the same class. Enforcement agencies under the Principal Act are the Food Authority, local councils and certain other bodies that are appointed under the Act as enforcement agencies and bodies prescribed by the regulations (currently, the Lord Howe Island Board). *Temporary premises* means premises comprising a tent or stall or the like from which food is sold by retail on an occasional basis only, such as for a fete, fair, market or other event.

Proposed section 106A provides that the proposed Division applies to ready-to-eat food that is potentially hazardous but does not apply to certain prepackaged food.

Proposed section 106B sets out the criteria for appointing a person as a food safety supervisor for premises or for a mobile catering business. The person must hold a food safety supervisor certificate and have the authority to supervise the relevant food handling activities and ensure that the handling is done safely. In the case of a food safety supervisor for premises, the person must not hold the position of food safety supervisor for any other premises. In the case of a food safety supervisor for a mobile catering business, the person must not hold the position of food safety supervisor for any other business. A food safety supervisor certificate is a certificate issued in accordance with the regulations by a registered training organisation approved under proposed section 106H or by another person or body prescribed by the regulations.

Proposed section 106C requires the proprietor of a food business to ensure that, before food to which the proposed Division applies is processed and sold by retail at premises in the course of carrying on the business, at least one food safety supervisor is appointed for the premises. The proposed section also requires the proprietor to ensure that at least one person continues to be appointed as food safety supervisor for the premises at all times at which food to which the proposed Division applies is processed and sold from the premises in the course of carrying on the business. A defence is provided in cases where a food safety supervisor ceases to be appointed for the premises and the relevant food handling activities are not carried out on the premises on more than 30 days after that occurs.

Proposed section 106D requires the proprietor of a mobile catering business to ensure that, before food to which the proposed Division applies is processed in the course of carrying on the business at least one food safety supervisor is appointed for the business. The proposed section also requires the proprietor to ensure that at least one food safety supervisor continues to be appointed for the business at all times that food to which the proposed Division applies is processed in the course of carrying on

the business. A defence is provided in cases where a food safety supervisor ceases to be appointed for the business and the relevant food handling activities are not carried out on more than 30 days after that occurs.

Proposed section 106E requires the proprietor of a food business to give notice to the relevant enforcement agency of the appointment of a food safety supervisor. The requirement does not apply to the appointment of a food safety supervisor for temporary premises or for premises that are a vehicle or vessel from which food is sold at more than one location.

Proposed section 106F requires the proprietor of a food business to give notice to the relevant enforcement agency of a change in the particulars provided in relation to a food safety supervisor. The requirement does not apply to a food safety supervisor for temporary premises or for premises that are a vehicle or vessel from which food is sold at more than one location.

Proposed section 106G requires the proprietor of a food business for which a food safety supervisor is required to be appointed to keep a copy of the relevant food safety supervisor certificate and produce it for inspection on the request of an authorised officer of an enforcement agency.

Proposed section 106H enables the Food Authority to approve registered training organisations (within the meaning of the *Vocational Education and Training Act 2005*) to issue food safety supervisor certificates. Regulations may be made in relation to approvals.

Proposed section 106I enables regulations to be made in respect of certain fees and charges under the proposed Division and provides that no fee or charge is payable in relation to the giving of notice under proposed section 106E or 106F.

Proposed section 106J enables the regulations to provide for exemptions from all or any of the provisions of the proposed Division.

Schedule 1 [5] amends section 113A of the Principal Act to require the Food Authority to keep records of relevant enforcement agencies for the purposes of proposed Division 3 of Part 8.

Schedule 1 [9] amends Schedule 2 to the Principal Act to provide for specific savings and transitional provisions relating to the operation of proposed Division 3 of Part 8 and, in particular, to provide 12 month lead-in times for the new offences under the proposed Division.

Schedule 1 [1]–[3] make consequential amendments.

Other amendments

Schedule 1 [6] amends section 133F of the Principal Act to give the Food Authority the power to remit the whole or part of any fee accompanying an application to correct or add to particulars on, or remove particulars from, the register of offences.

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Explanatory note

Schedule 1 [7] inserts proposed section 137 into the Principal Act to provide for the way in which documents may be served under that Act.

Schedule 1 [8] amends Schedule 2 to the Principal Act to enable the regulations to prescribe savings and transitional provisions as a consequence of the enactment of the proposed Act.

First print



New South Wales

Food Amendment (Food Safety Supervisors) Bill 2009

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New South Wales

Food Amendment (Food Safety Supervisors) Bill 2009

No. , 2009

A Bill for

An Act to amend the *Food Act 2003* with respect to food safety supervisors; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Food Amendment (Food Safety Supervisors) Act 2009</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Food Act 2003 No 43	1
[1]	Part 8 Regulation of food businesses	2
	Insert before section 100:	3
	Division 1 Notification of conduct of food businesses	4
[2]	Section 106 List of food businesses to be maintained	5
	Renumber the section as section 101A and move it after section 101.	6
[3]	Part 8, Division 2, heading	7
	Insert before section 102:	8
	Division 2 Food safety schemes	9
[4]	Part 8, Division 3	10
	Insert at the end of Part 8:	11
	Division 3 Requirements relating to food safety supervisors	12
		13
106	Definitions	14
	In this Division:	15
	<i>approved training organisation</i> means a registered training organisation approved under section 106H.	16
		17
	<i>food safety supervisor</i> —see section 106B.	18
	<i>food safety supervisor certificate</i> —see section 106B (3).	19
	<i>food to which this Division applies</i> —see section 106A.	20
	<i>mobile catering business</i> means a food business that provides food catering services involving:	21
		22
	(a) the transporting of food to which this Division applies to the location at which it is to be served, whether or not it is to be served by the food business, and	23
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	(b) the processing of the food, whether or not at the location to which it is transported,	26
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	but does not include a food business commonly known as a takeaway food business or home delivery food business or that sells the food from temporary premises.	28
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	<i>potentially hazardous food</i> means food that is required to be kept at more than or less than a particular temperature to minimise the	31
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growth of any pathogenic micro-organisms that may be present in the food or to prevent the formation of toxins in the food.	1 2
<i>process</i> , in relation to food, means to do anything to the food in order to prepare it for sale, including (but not limited to) chopping, cooking, drying, fermenting, heating, pasteurising, thawing or washing.	3 4 5 6
<i>ready-to-eat food</i> means food that is in a state in which it is ordinarily consumed, but does not include nuts in the shell or raw fruit or vegetables that are intended to be hulled, peeled or washed by the consumer.	7 8 9 10
<i>relevant enforcement agency</i> , in relation to a food business, is the enforcement agency specified on the Food Authority's internet website as the relevant enforcement agency for food businesses of the same class.	11 12 13 14
<i>temporary premises</i> means premises comprising a tent or stall or the like from which food is sold by retail on an occasional basis only, such as for a fete, fair, market or other event.	15 16 17
106A Application of Division to certain food	18
This Division applies to food that:	19
(a) is ready-to eat food, and	20
(b) is potentially hazardous food, and	21
(c) is not packaged in a way that is prescribed by the regulations as prepackaged.	22 23
106B Food safety supervisors	24
(1) For the purposes of this Act, a food safety supervisor for premises is a person who:	25 26
(a) holds a food safety supervisor certificate that has been issued within the immediately preceding period of 5 years, and	27 28 29
(b) does not hold the position of food safety supervisor for any other premises or for a mobile catering business, and	30 31
(c) has the authority to supervise other persons handling food at, or from, the premises and to ensure that the handling is done safely.	32 33 34
(2) For the purposes of this Act, a food safety supervisor for a mobile catering business is a person who:	35 36
(a) holds a food safety supervisor certificate that has been issued within the immediately preceding period of 5 years, and	37 38 39

(b)	does not hold the position of food safety supervisor for any other such business or for the premises of any other food business, and	1 2 3
(c)	has the authority to supervise other persons handling food in the course of the carrying on of the business and to ensure that the handling is done safely.	4 5 6
(3)	A food safety supervisor certificate is a certificate stating that the person to whom it is issued is qualified to hold the position of a food safety supervisor for the purposes of this Act and that has been issued in accordance with the regulations by an approved training organisation or by another person or body prescribed by the regulations.	7 8 9 10 11 12
(4)	The regulations may make provision for or with respect to the issuing of food safety supervisor certificates, including the qualifications that a person must have to be issued with a food safety supervisor certificate.	13 14 15 16
(5)	Without limiting subsection (4), any such regulation may provide for the Food Authority to determine those qualifications or any aspect of those qualifications.	17 18 19
(6)	In making a determination in relation to qualifications, the Food Authority is to be satisfied that a person holding those qualifications will know how to recognise, prevent and alleviate the hazards associated with the handling of food.	20 21 22 23
(7)	Nothing in this Division prevents:	24
(a)	the proprietor of a food business from holding the position of food safety supervisor for premises so long as the proprietor complies with the requirements of subsection (1), or	25 26 27 28
(b)	the proprietor of a mobile catering business from holding the position of food safety supervisor for the business so long as the proprietor complies with the requirements of subsection (2), or	29 30 31 32
(c)	more than one person holding the position of food safety supervisor in respect of particular premises or a mobile catering business.	33 34 35
106C	Appointment of food safety supervisor for premises	36
(1)	The proprietor of a food business must ensure that before any food to which this Division applies is processed and sold by retail on premises in the course of carrying on the business at least one food safety supervisor has been appointed for the premises.	37 38 39 40

(2)	The proprietor of a food business must ensure that at all times at which food to which this Division applies is processed and sold by retail on premises in the course of carrying on the food business there continues to be at least one person appointed as food safety supervisor for the premises.	1 2 3 4 5
(3)	It is a defence to a prosecution for an offence against subsection (2) if the proprietor of the food business concerned establishes that:	6 7 8
(a)	a person had been appointed as food safety supervisor for the relevant premises but had ceased to be appointed as food safety supervisor, and	9 10 11
(b)	after that person had ceased to be so appointed and before the appointment (if any) of another person as food safety supervisor for the premises, food to which this Division applies was processed and sold by retail on the premises on not more than 30 days (whether or not consecutive).	12 13 14 15 16
(4)	This section does not apply to a food business that is a mobile catering business. Maximum penalty: 50 penalty units in the case of an individual and 100 penalty units in the case of a corporation.	17 18 19 20
106D	Appointment of food safety supervisor for mobile catering business	21 22
(1)	The proprietor of a mobile catering business must ensure that before food to which this Division applies is processed in the course of the business at least one food safety supervisor has been appointed for the business.	23 24 25 26
(2)	The proprietor of a mobile catering business must ensure that at all times at which food to which this Division applies is processed in the course of carrying on the business there continues to be at least one person appointed as food safety supervisor for the business.	27 28 29 30 31
(3)	It is a defence to a prosecution for an offence against subsection (2) if the proprietor of the mobile catering business concerned establishes that:	32 33 34
(a)	a person had been appointed as food safety supervisor for the business but had ceased to be appointed as food safety supervisor, and	35 36 37
(b)	after that person had ceased to be so appointed and before the appointment (if any) of another person as food safety supervisor for the business, food to which this Division	38 39 40

	applies was processed in the course of the business on not more than 30 days (whether or not consecutive).	1
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	Maximum penalty: 50 penalty units in the case of an individual and 100 penalty units in the case of a corporation.	3
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106E	Notice of appointment of food safety supervisor	5
(1)	The proprietor of a food business must, in accordance with this section, give notice of the appointment of a food safety supervisor required by section 106C or 106D to be made in relation to the food business.	6
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	Maximum penalty: 25 penalty units in the case of an individual and 50 penalty units in the case of a corporation.	10
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(2)	The notice must:	12
	(a) be given in writing to the relevant enforcement agency, and	13
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	(b) be given within 7 days after the appointment of the food safety supervisor concerned, and	15
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	(c) contain the information prescribed by the regulations.	17
(3)	Subsection (1) does not apply to the appointment of a food safety supervisor for:	18
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	(a) temporary premises, or	20
	(b) premises that are a vehicle from which food to which this Division applies is sold by retail at more than one location.	21
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106F	Notice of change of details of food safety supervisor	23
(1)	The proprietor of a food business must, in accordance with this section, give notice of any change in the information provided by the proprietor under section 106E in relation to a food safety supervisor.	24
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	Maximum penalty: 25 penalty units in the case of an individual and 50 penalty units in the case of a corporation.	28
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(2)	The notice must:	30
	(a) be given in writing to the relevant enforcement agency, and	31
		32
	(b) be given within 7 days after the proprietor of the food business concerned becomes aware of the change in the information provided.	33
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(3)	Subsection (1) does not apply to the appointment of a food safety supervisor for:	1
(a)	temporary premises, or	2
(b)	premises that are a vehicle from which food to which this Division applies is sold by retail at more than one location.	3
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106G	Inspection of food safety supervisor certificates	6
(1)	If a person is appointed for the purposes of this Division as food safety supervisor for premises on which food to which this Division applies is processed and sold by retail in the course of carrying on a food business, the proprietor of the food business must ensure that a copy of the person's food safety supervisor certificate is kept on the premises and is produced for inspection on request by an authorised officer.	7
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(2)	If a person is appointed for the purposes of this Division as food safety supervisor for a mobile catering business, the proprietor of the business must ensure that a copy of the person's food safety supervisor certificate is kept at the proprietor's business address and is produced for inspection on request by an authorised officer.	14
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	Maximum penalty: 25 penalty units in the case of an individual and 50 penalty units in the case of a corporation.	20
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106H	Approval of registered training organisations to issue food safety supervisor certificates	22
		23
(1)	The Food Authority may approve a registered training organisation (within the meaning of the <i>Vocational Education and Training Act 2005</i>) for the purposes of issuing food safety supervisor certificates.	24
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(2)	Regulations may be made for or with respect to approvals granted under this section.	28
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(3)	Without limiting subsection (2), the regulations may make provision for or with respect to the following:	30
(a)	applications for approvals,	31
(b)	the granting of approvals,	32
(c)	conditions of approvals,	33
(d)	duration of approvals,	34
(e)	suspension and revocation of approvals.	35
(4)	The Food Authority is to prepare and maintain a list of approved training organisations.	36
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(5)	The list is to be made publicly available and is to be revised at least annually.	1 2
106I	Fees and charges payable under Division	3
(1)	The regulations may make provision for or with respect to the following:	4 5
(a)	fees and charges payable to the Food Authority under this Division, including charges payable to the Food Authority by an approved training organisation or other person or body in relation to the issue by the organisation, person or body of food safety supervisor certificates,	6 7 8 9 10
(b)	the imposition of fees and charges by an approved training organisation or other person or body for the issuing of food safety supervisor certificates (but not fees and charges relating to training provided by any such organisation, person or body), including limiting the imposition of any such fee or charge.	11 12 13 14 15 16
(2)	Despite any other provision of this or any other Act, no fee or charge is payable in relation to the giving of any notice under section 106E or 106F.	17 18 19
106J	Exemptions from operation of Division	20
(1)	The regulations may exempt, with or without conditions, any class of persons, food businesses, premises, food or activities from the operation of all or any of the provisions of this Division.	21 22 23
(2)	Any such exemption has no effect during any period in which a condition to which it is subject is not complied with.	24 25
[5]	Section 113A Publication of information relating to enforcement agencies	26 27
	Omit section 113A (1). Insert instead:	28
(1)	The Food Authority is to keep a record of the following:	29
(a)	each appointment of an enforcement agency under this Division, including any limitations and conditions in relation to the appointment and any variation or revocation of an appointment,	30 31 32 33
(b)	relevant enforcement agencies for the purposes of Division 3 of Part 8.	34 35

[6] Section 133F Applications for changes to register	1
Omit section 133F (4). Insert instead:	2
(4) The Food Authority may reduce the fee or remit or waive payment of the whole or any part of the fee.	3 4
[7] Section 137	5
Insert after section 136A:	6
137 Service of documents	7
(1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:	8 9
(a) in the case of a natural person:	10
(i) delivering it to the person personally, or	11
(ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or	12 13 14 15 16
(iii) sending it by facsimile transmission to the facsimile number of the person, or	17 18
(b) in the case of a body corporate:	19
(i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or	20 21 22 23 24 25
(ii) sending it by facsimile transmission to the facsimile number of the body corporate.	26 27
(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	28 29 30
[8] Schedule 2 Savings, transitional and other provisions	31
Insert at the end of clause 1 (1):	32
<i>Food Amendment (Food Safety Supervisors) Act 2009</i>	33

[9] Schedule 2, Part 6	1
Insert after Part 5:	2
Part 6 Provisions consequent on enactment of Food Amendment (Food Safety Supervisors) Act 2009	3 4 5
23 Application of new offences relating to food safety supervisors	6
(1) This clause applies to provisions of Division 3 of Part 8 as inserted by the <i>Food Amendment (Food Safety Supervisors) Act 2009</i> .	7 8 9
(2) In this clause, the <i>prescribed day</i> , in relation to a provision of Division 3 of Part 8, means the day occurring 12 months after the commencement of the provision.	10 11 12
(3) A person does not commit an offence against a provision of Division 3 of Part 8 until on or after the prescribed day.	13 14
(4) Section 106C applies only to the processing and sale by retail of food occurring on or after the prescribed day.	15 16
(5) Section 106D applies only to the processing of food occurring on or after the prescribed day.	17 18
(6) Despite section 106E (2) (b), the notice of the appointment of a food safety supervisor required to be given under that section may be given within 7 days after the prescribed day if the appointment occurred before the prescribed day.	19 20 21 22