

# Food Production (Seafood Safety Scheme) Regulation 2001

[2001-969]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Note**

The *Food Production (Seafood Safety Scheme) Regulation 2001* made under the *Food Production (Safety) Act 1998* is on and from 5.4.2004 taken to be a regulation made under the *Food Act 2003 No 43*. See clause 15 of Schedule 2 to the *Food Act 2003*.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the *Interpretation Act 1987*.

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# Food Production (Seafood Safety Scheme) Regulation 2001



New South Wales

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# Food Production (Seafood Safety Scheme) Regulation 2001



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Food Production (Seafood Safety Scheme) Regulation 2001*.

### 2 Commencement

This Regulation commences on 14 December 2001.

### 3 Seafood Food Safety Scheme

The provisions of this Regulation are prescribed as a food safety scheme for the purposes of section 19 of the Act.

### 4 Interpretation

(1) In this Regulation:

**annual local shellfish program levy** means the levy payable under Division 3 of Part 8.

**class A permit** means a class A aquaculture permit under the *Fisheries Management Act 1994*.

**Code of Practice for Oyster Depuration in NSW** means the document of that title published by Safe Food as in force at 30 November 2001.

**estuarine waters** means waters located within the estuary of a New South Wales river.

**food safety program** for a seafood business means a food safety program certified by the Food Authority under Part 4 for the seafood business.

**licence** means a licence in force under this Regulation.

**local committee** means a local shellfish committee appointed under clause 28.

**local program** means a local shellfish program prepared under clause 25.

**NSW Shellfish Committee** means the New South Wales Shellfish Committee appointed under clause 26.

**Operations Manual for NSW Shellfish Program** means the document of that title published by Safe Food, as in force at 31 December 2001.

**Program** means the New South Wales Shellfish Program established under clause 25.

**Program Manager** means the person appointed by the Food Authority to be Program Manager of the Program.

**seafood**—see clause 5A.

**seafood business**—see clause 6.

**shellfish** means estuarine or oceanic bivalve molluscs.

**the Act** means the [Food Act 2003](#).

**transshipment** means the process of transferring live shellfish between harvest areas.

- (2) For the purposes of Part 8, a reference to a year is a reference to the financial year of the Food Authority.

**Note—**

The financial year of the Food Authority is the period from 1 July in any year to 30 June in the following year, inclusive.

- (3) The notes in the text of this Regulation do not form part of this Regulation.

## **5 Certain vessels excluded from Regulation**

This Regulation does not apply to a vessel that is used in the handling of seafood intended for sale if the vessel is used for one or more of the following purposes only:

- (a) the cultivation and handling of live estuarine bivalve molluscs,
- (b) setting and retrieving fishing gear,
- (c) towing.

### **5A Meaning of “seafood”**

- (1) In this Regulation, **seafood** means any of the following intended for human consumption:
- (a) marine, estuarine or freshwater fish or other aquatic animal life,
  - (b) any aquatic organisms,

(c) any product of, or anything containing a product of, fish, animal life or aquatic organisms referred to in paragraphs (a) and (b).

(2) However, seafood does not include the following:

(a) crocodile,

(b) aquatic plant life,

(c) any product of, or anything containing a product of, crocodile or aquatic plant life that does not also contain any other thing referred to in subclause (1) (a)–(c).

## **6 Meaning of “seafood business”**

(1) In this Regulation, **seafood business** means a business involving the handling of seafood, including (but not limited to) the carrying on of any of the following activities:

(a) the culture, harvesting and collecting of shellfish and gastropods,

(b) the depuration of shellfish,

(c) aquaculture,

(d) the processing of seafood, including (but not limited to) skinning, gill and gutting, filleting, shucking, cooking, smoking, preserving and canning,

(e) the packaging of seafood,

(f) the storage of seafood,

(g) the transportation of seafood,

(h) the wholesaling of seafood.

(2) For the purposes of this Regulation, a **seafood business**:

(a) does not include the act of taking or catching marine fin fish, crustacea or cephalopod but includes any handling of such seafood immediately after it is taken or caught, whether the handling occurs on board a vessel or otherwise, and

(b) does not include the retail sale of seafood.

## **Part 2 Handling of seafood**

### **7 Seafood business to be licensed to carry out activities**

A person must not carry on a seafood business unless the person holds a licence for the seafood business.

## **8 Temperature at which certain seafood to be kept**

A person must not store or transport seafood at a temperature:

- (a) subject to paragraph (c), that contravenes the requirements of Standard 3.2.2 of the *Food Standards Code*, or
- (b) (Repealed)
- (c) if a requirement relating to the storage or transportation of a particular type of shellfish is specified in the *Operations Manual of the NSW Shellfish Program*, that contravenes that requirement.

## **Part 3 Licensing of seafood businesses**

### **9 Application for licence**

- (1) A person may apply to the Food Authority for a licence to carry on a seafood business.
- (2) An application for a licence must:
  - (a) be made in a form approved by the Food Authority, and
  - (b) be accompanied by an application fee of \$50, and
  - (c) comply with any other requirements of this Regulation relating to applications for licences, and
  - (d) be accompanied by such information as the Food Authority requires to determine the application.
- (3) The Food Authority may require further information to be provided by the applicant if the Food Authority considers that the information is necessary to determine the application.

### **10 Issue of licences**

- (1) The Food Authority may, after considering an application for a licence:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (2) Without limiting the grounds on which the Food Authority may refuse a licence, the Food Authority must not grant a licence unless satisfied that:
  - (a) the applicant for the licence has prepared a proposed food safety program for the seafood business concerned that complies with clause 18, and
  - (b) the applicant has any necessary authorisation under the *Fisheries Management*



*Act 1994* to carry on the activities to which the application relates.

**Note—**

Schedule 5 to this Regulation contains provisions relating to seafood businesses in existence at the commencement of this Regulation.

- (3) If the Food Authority grants an application for a licence, it must issue the licence to the applicant in a form that sets out the following:
- (a) the activities authorised by the licence,
  - (b) the premises or vehicles on or in which such activities may be conducted,
  - (c) the conditions to which the licence is subject.

**Note—**

The Act defines “vehicle” as any means of transport, whether self-propelled or not, and whether used on land or sea or in the air.

- (4) If the Food Authority refuses an application for a licence, it must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

## **11 Duration of licences**

A licence has effect until it is surrendered or cancelled, except during any period of suspension.

## **12 Additional conditions of licence**

In addition to any conditions of a licence imposed by the Food Authority under clause 10, the following are conditions of a licence:

- (a) that the holder of the licence ensure that the provisions of the Act and this Regulation are complied with in relation to the carrying on of any activity authorised by the licence and any premises or vehicle to which the licence relates,
- (b) that the holder of the licence ensure that the requirements specified in Schedule 1 in relation to a particular activity authorised by the licence are complied with in respect of the carrying on of the activity and the premises or vehicles used in the carrying on of the activity.

## **13 Variation of terms and conditions of licence**

- (1) The Food Authority may vary any term of a licence or any condition imposed by the Food Authority on a licence.
- (2) The Food Authority may vary a term or condition of a licence only after having given the licensee written notice of its intention to vary the term or condition setting out its reasons.

- (3) The notice must include a statement that the holder of the licence concerned may make submissions to the Food Authority in relation to the proposed variation within 14 days after the date of the notice.
- (4) Subclauses (2) and (3) do not apply to the variation of a term or condition of a licence at the request of the licensee.
- (5) A variation of a term or condition of a licence:
  - (a) must be made by notice in writing, and
  - (b) must be served on the licensee, and
  - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.
- (6) The Food Authority may charge the holder of a licence who applies for a variation of the terms or conditions of the licence:
  - (a) an application fee of not more than \$50, and
  - (b) if the Food Authority considers that any inspection or audit is required to enable it to determine the application properly, a charge for the inspection or audit in accordance with clause 24.
- (7) If the Food Authority varies a term or condition of a licence, it is to issue the holder of the licence with a replacement licence that takes account of the variation.

**Note—**

A licensee will need to apply to the Food Authority for a variation under this clause of a term or condition of the licence if, for example, the licensee proposes to change the activities authorised by the licence or the premises or vehicles on or in which such activities are conducted.

#### **14 Suspension or cancellation of licence**

- (1) The Food Authority may suspend or cancel a licence:
  - (a) if the Food Authority is satisfied that the suspension or cancellation is necessary to avert a potential threat to food safety, or
  - (b) if the Food Authority is satisfied that there has been a contravention of any provision of the Act or this Regulation, or the *Food Act 1989* or the regulations under that Act, in relation to the carrying on of the seafood business authorised by the licence, or
  - (c) if the Food Authority is satisfied that a condition to which the licence is subject has been contravened, or
  - (d) if the Food Authority is of the opinion that the food safety program for the seafood

business is inadequate or is not being properly implemented, or

- (e) if any amount due to the Food Authority under the Act by the licensee is unpaid, or
  - (f) if the Food Authority is of the opinion that the holder of the licence, or a person involved in the carrying on of the seafood business authorised by the licence, does not have the necessary capacity, experience or qualifications to ensure the safety of food for human consumption, or
  - (g) if any relevant authorisation under the *Fisheries Management Act 1994* has been suspended or cancelled, or
  - (h) at the request of the holder of the licence.
- (2) The Food Authority may suspend or cancel a licence only after having given the holder of the licence written notice of its intention to suspend or cancel the licence setting out its reasons.
- (3) The notice must include a statement that the holder of the licence concerned may make submissions to the Food Authority in relation to the proposed suspension or cancellation within 14 days after the date of the notice.
- (4) Subclauses (2) and (3) do not apply to the suspension or cancellation of a licence at the request of the licensee.
- (5) The suspension or cancellation of a licence:
- (a) must be made by notice in writing, and
  - (b) must be served on the licensee, and
  - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.
- (6) If a licence authorises the carrying on of more than one activity, the Food Authority may suspend the licence to the extent to which it authorises a particular activity or activities to be carried on.
- (7) If a licence authorises the carrying on of an activity at 2 or more premises or in or on 2 or more vehicles, the Food Authority may suspend the licence to the extent to which it authorises activities to be carried on at particular premises or in or on a particular vehicle.

## **15 Licence not transferable**

A licence is not transferable.

## **16 Display of licence**

- (1) The holder of a licence must ensure that a copy of the licence is displayed on every premises to which the licence relates.

Maximum penalty: 25 penalty units.

- (2) The holder of a licence must ensure that a copy of the licence is carried on every vehicle to which the licence relates.

Maximum penalty: 25 penalty units.

## **17 Appeals**

A person may apply to the Administrative Decisions Tribunal for a review of the following decisions:

- (a) a decision to refuse to issue a licence to the person,
- (b) a decision to issue a licence to the person subject to conditions imposed by the Food Authority,
- (c) a decision to vary the conditions of the person's licence or to impose a condition on the person's licence,
- (d) a decision to suspend or cancel the person's licence,
- (e) a decision as to the assessment of the applicable licence fee for a licence held by the person,
- (f) a decision as to the applicable levy to be paid by the person under this Regulation.

## **Part 4 Food safety program**

### **18 Content of food safety program**

A food safety program must:

- (a) comply with:
  - (i) the principles and guidelines set out in the document entitled *Hazard Analysis Critical Control Point (HACCP) System and Guidelines For Its Application* published by the Codex Alimentarius Commission, or
  - (ii) Standard 3.2.1 of the *Food Standards Code*, and
- (b) meet any other requirements notified in writing by the Food Authority to the applicant for a licence or the holder of the licence for the seafood business concerned.

## **19 Certification of food safety program**

- (1) The Food Authority must certify a food safety program for a seafood business to which a licence relates if the Food Authority is satisfied that the food safety program complies with clause 18.
- (2) For the purposes of determining whether a proposed food safety program for a seafood business should be certified, the Food Authority may arrange for an authorised officer to conduct an audit of the food safety program.

## **Part 5 Sampling and analyses**

### **20 Seafood businesses to undertake analyses of seafood**

- (1) The holder of a licence must, at the holder's own expense, ensure that samples of seafood handled in the course of the seafood business authorised by the licence are analysed:
  - (a) except as provided by paragraph (b):
    - (i) in the case of shellfish—in accordance with the requirements of the *Operations Manual for the New South Wales Shellfish Program*, or
    - (ii) in the case of any other seafood or of any materials used in the handling of any seafood—in accordance with the requirements of the Food Standards Code, or
  - (b) in accordance with the terms of a notice served on the holder of the licence under subclause (2).

Maximum penalty: 25 penalty units.

- (2) The Food Authority may, by notice in writing given to the holder of a licence, specify the frequency at which analyses are to be carried out for the purposes of this clause and the manner in which they are to be carried out.

### **21 Reports of analyses**

- (1) The holder of a licence must ensure that every analysis carried out for the purposes of clause 20 is carried out in a laboratory approved by the National Association of Testing Authorities, or by the Food Authority, for the particular type of analysis to be undertaken.

Maximum penalty: 25 penalty units.

- (2) The person in charge of a laboratory in which an analysis for the purposes of clause 20 is carried out must submit a written report to the Food Authority on the results of the analysis within 24 hours after the analysis is completed, unless the analysis is the subject of an exemption under subclause (3).

Maximum penalty: 25 penalty units.

- (3) The Food Authority may exempt analyses carried out for the purposes of clause 20 from the operation of subclause (2) in a particular case or class of cases.
- (4) An exemption must be in writing and notified to each laboratory that is affected or, in a case where the exemption affects or may affect a number of laboratories, may instead be published in the Gazette.
- (5) The holder of a licence must, in accordance with subclause (6), notify the Food Authority of the details of any analysis carried out by or on behalf of the licensee for the purposes of clause 20 if the results of the analysis indicate that the seafood analysed contained a substance at a level in excess of that allowed by the *Food Standards Code*.

Maximum penalty: 25 penalty units.

- (6) A notification under subclause (5) must:
  - (a) be made orally as soon as possible after the holder becomes aware of the results of the analysis, and
  - (b) be made in writing within 7 days after the holder becomes aware of the results of the analysis.
- (7) A person is not excused from a requirement to notify the Food Authority under subclause (5) on the ground that the information provided in the notification might incriminate the person or make the person liable to a penalty.
- (8) However, any information furnished in such a notification is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against subclause (5).

## **22 Charges for analyses**

- (1) The charge payable for the carrying out by the Food Authority of any analysis for the purposes of the Act or this Regulation is the amount of reasonable costs incurred by the Food Authority in carrying out the analysis or having the analysis carried out on its behalf.
- (2) The charges payable under this clause are payable to the Food Authority.
- (3) The Food Authority may reduce or waive payment of a charge in a particular case or class of cases.

## **Part 6 Inspections and audits**

### **23 Inspections and audits in relation to seafood businesses**

- (1) The Food Authority may arrange for an authorised officer to carry out any or all of the following types of inspection or audit before or after granting a licence in respect of a seafood business:
  - (a) an inspection of the premises and equipment involved in the seafood business, and the activities carried on in the course of the seafood business,
  - (b) an audit of the food safety program, or proposed food safety program, for the seafood business.
- (2) This clause is not intended to limit any powers of an authorised officer to carry out an inspection under Part 4 or 5 of the Act.

### **24 Charges for inspections and audits**

- (1) The charge payable for the carrying out by the Food Authority of:
  - (a) any inspection for the purposes of the Act in relation to a licence or application for a licence, or
  - (b) any audit of any food safety program or proposed food safety program required by this Regulation,is \$140 per hour with a minimum charge of half an hour (excluding time spent in travelling) plus \$35 for travelling expenses.
- (1A) The Food Authority 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.
- (2) The charges payable under this clause are payable to the Food Authority.
- (3) The Food Authority may reduce or waive payment of a charge in a particular case or class of cases.

## **Part 7 New South Wales Shellfish Program**

### **25 Establishment of New South Wales Shellfish Program**

- (1) The Food Authority is required:
  - (a) to establish, manage and operate a program to be called the New South Wales Shellfish Program, and
  - (b) to ensure that the Program is maintained and applied to the harvest, collection, depuration, transshipment, labelling, identification and tracking of shellfish.

- (2) The objective of the Program is to ensure that shellfish harvested or collected in New South Wales for sale for human consumption meet food safety requirements by:
  - (a) assessing harvest areas to determine appropriate risk-based classifications and required food safety controls, and
  - (b) establishing criteria for the harvest, collection and depuration of shellfish, and
  - (c) ensuring that those criteria are satisfied in the harvest, collection and depuration of shellfish, and
  - (d) monitoring and assessing the effectiveness of those criteria.
- (3) The operational parameters of the Program are to be contained in a document to be called the *Operations Manual for the NSW Shellfish Program*, that includes the following:
  - (a) minimum requirements for management plans for each area where shellfish are harvested or collected,
  - (b) standards that are to apply to shellfish and harvest areas,
  - (c) requirements relating to the depuration of shellfish,
  - (d) requirements relating to the transshipment of shellfish,
  - (e) requirements relating to the labelling and identification of transhipped and harvested shellfish,
  - (f) requirements relating to the keeping of records of shellfish that have been transhipped, harvested, depurated or packaged for human consumption,
  - (g) provisions for the collection of data for the purposes of the Program,
  - (h) other methods or operational parameters of a food safety nature to be applied to the harvest or collection of shellfish.
- (4) The *Operations Manual for the NSW Shellfish Program* may be reviewed from time to time by the Food Authority and the NSW Shellfish Committee.
- (5) For each area in which shellfish is harvested or collected, the Food Authority is to prepare a local shellfish program that complies with the objectives and operational parameters set out in the *Operations Manual for the NSW Shellfish Program*.

## **26 Appointment of New South Wales Shellfish Committee**

- (1) The Food Authority is required to appoint a committee to be called the New South Wales Shellfish Committee.
- (2) The NSW Shellfish Committee is to have 8 members of whom:



- (a) 4 are to be persons who are holders of a licence that authorises the harvesting of farmed shellfish, and
  - (b) 1 is to be a person who is the holder of a licence that authorises the collection of wild shellfish from near-shore oceanic areas, and
  - (c) 1 is to be a person who is the holder of a licence that authorises the collection of wild shellfish from estuarine areas, and
  - (d) 1 is to be the Director-General of the Food Authority, or a nominee of the Director-General who is a member of staff of the Food Authority, and
  - (e) 1 is to be the Program Manager.
- (3) The members of the NSW Shellfish Committee referred to in subclause (2) (a), (b) and (c) are to be appointed by the Food Authority for a period, not exceeding 3 years, specified in their instruments of appointment and are to be selected by a panel established by the Food Authority comprising:
- (a) the Director-General of the Food Authority, and
  - (b) an independent person appointed by the Food Authority, and
  - (c) 1 industry representative who is a member of, and nominated by, the Oyster Farmers Association of NSW Pty Ltd, and
  - (d) 1 industry representative who is a member of, and nominated by the NSW Farmers Association Oyster Growers Committee.
- (4) The panel is to apply the following selection criteria in determining the persons who are to be members of the NSW Shellfish Committee, but may have regard to other relevant matters:
- (a) possession of a licence to harvest, collect or deplete shellfish,
  - (b) commercial reliance on harvesting, collection or depuration of shellfish,
  - (c) demonstration of experience at a local committee level in the Program conducted under this Regulation or the New South Wales Shellfish Quality Assurance Program conducted under the *Fisheries Management Act 1994*,
  - (d) demonstration of previous compliance with those Programs.
- (5) The NSW Shellfish Committee is to elect one of its members as chairperson of the Committee.

## **27 Responsibilities of New South Wales Shellfish Committee**

The NSW Shellfish Committee is responsible for the following:

- (a) advising the Minister and the Food Authority on matters relating to the operation and administration of the Program, including its operation at a local level, and
- (b) communicating with and assisting local committees and industry members on matters relating to the Program, and
- (c) providing, where appropriate, representatives to other committees dealing with shellfish food safety issues, and
- (d) assisting the Program Manager in the preparation of an annual report on the operation and finances of the Program.

## **28 Appointment of local shellfish committees**

- (1) The Food Authority is required to appoint a local shellfish committee for each area or group of areas of estuarine waters to which the Program relates.
- (2) A local committee is to comprise such number of members as the Food Authority considers appropriate.
- (3) The Food Authority is to arrange for the election of members of a local committee by such persons as the Food Authority is satisfied are holders of licences that authorise the harvesting or collection of shellfish, or the operation of a depuration plant, in the proposed area of operations of the committee.
- (4) A person is eligible to be elected to a local committee if the Food Authority is satisfied that the person:
  - (a) is the holder of a licence that authorises the harvesting or collection of shellfish in the proposed area of operations of the committee, and
  - (b) has previously complied with the Program conducted under this Regulation or the New South Wales Shellfish Quality Assurance Program conducted under the [Fisheries Management Act 1994](#).

## **29 Responsibilities of local shellfish committees**

- (1) A local committee is responsible for the following:
  - (a) administering, under the direction of the Program Manager, the local program for the area for which the committee is appointed,
  - (b) communicating and consulting with the NSW Shellfish Committee, the Program Manager and persons who harvest farmed shellfish or collect wild shellfish in the area,
  - (c) determining annually, in consultation with persons required to comply with the local program, the total projected administration and operational costs of the local program (including the cost of maintaining the local committee),

- (d) advising the Food Authority before 1 August in each year of the costs referred to in paragraph (c),
- (e) preparing and submitting to the Food Authority, before 1 August in each year, a report on the local committee's operations, including the level of participation in the local program, an account of the finances of the committee and any other matter that the NSW Shellfish Committee notifies as being required for inclusion in the report.

- (2) A local committee is to nominate one or more of its members to assist in the day to day operation of the local program under the general direction of the Program Manager.

### **30 Provisions relating to members and procedure of committees**

Schedule 2 applies to the NSW Shellfish Committee and to each local committee.

### **31 Funding of committees**

- (1) The Food Authority may arrange for the funding of the NSW Shellfish Committee from licence fees and levies payable under Division 2 of Part 8.
- (2) The Food Authority may arrange for the funding of each local committee from money levied under Division 3 of Part 8.
- (3) Each committee funded by the Food Authority is to keep accounts of:
  - (a) all amounts paid to the committee by the Food Authority for the purposes of enabling the committee to exercise its functions, and
  - (b) all amounts expended by the committee.
- (4) A local committee is to establish and maintain at an authorised deposit-taking institution located in New South Wales a trust account for the operation of the relevant local program into which all amounts referred to in subclause (3) (a) are to be paid.
- (5) The Food Authority may require a committee funded by the Food Authority under this Regulation to produce its accounts for inspection at any reasonable time.

## **Part 8 Licence fees and levies**

### **Division 1 Annual general licence fees**

#### **32 (Repealed)**

#### **33 Payment of annual general licence fee**

- (1) The holder of a licence who carries on one or more of the activities specified in Column 1 of Schedule 3 is to pay a licence fee each year to the Food Authority

calculated in accordance with this clause.

- (1A) The licence fee payable under this clause is in addition to any other licence fee or levy payable by the holder under this Part.
- (2) If a category specified in Column 2 of the Table in Schedule 3 applies to a seafood business (that is, because the business carries on the activity specified in Column 1 of that Table in respect of that category and employs the number of persons, if any, indicated in Column 3 of that Table in respect of that category), the amount specified in Column 4 of that Table in respect of that category is payable by the holder of the licence for the seafood business.
- (3) If more than one category specified in Column 2 of the Table in Schedule 3 applies to a seafood business, the amount of the licence fee payable by the holder of the licence is the total of each amount payable by the holder under subclause (2) in respect of each of those categories.
- (4) A reference in subclause (2) to an employee of a seafood business is a reference to an employee of the business involved in the handling of seafood.
- (5) The Food Authority may increase the amount of any licence fee payable under this clause 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.
- (6) (Repealed)

## **Division 2 Licence fees and levies for State shellfish program**

### **34 Payment of shellfish licence fees**

- (1) The holder of a licence that authorises the harvesting of shellfish or the operation of a depuration plant is to pay a licence fee each year to the Food Authority.
- (2) The amount of the licence fee is the fee determined by the Food Authority or the fee calculated on the basis determined by the Food Authority.
- (3) The Food Authority may determine a fee, or a basis for calculating a fee, for the purposes of subclause (2) that:
  - (a) applies generally or is limited in its application by reference to specified exceptions or factors, or
  - (b) applies differently according to different factors of a specified kind.
- (4) The licence fee payable under this clause is in addition to any other licence fee or levy payable by the holder under this Part.

### **35 Shellfish area service levy**

- (1) The holder of a licence is to pay a levy each year to the Food Authority if the holder:
  - (a) is also the holder of a class A aquaculture permit issued under Part 6 of the *Fisheries Management Act 1994* that authorises the carrying on of any activity authorised by the licence, and
  - (b) is the lessee under an aquaculture lease granted under Part 6 of that Act.
- (2) The amount of the levy payable under this clause by the holder of a licence is to be calculated by multiplying the number of hectares (including any part of a hectare) of the area of the aquaculture lease granted to the holder by \$9.
- (3) The levy payable under this clause is in addition to any other licence fee or levy payable by the holder under this Part.

### **35A Purposes for which licence fee or levy to be applied**

A licence fee or levy payable under this Division is to be applied only for the following purposes:

- (a) meeting the costs incurred in maintaining the NSW Shellfish Committee,
- (b) meeting the costs incurred by that Committee in carrying out its responsibilities,
- (c) contributing to the operating costs of the Program.

## **Division 3 Local shellfish program levy**

### **36 Payment of annual local shellfish program levy**

- (1) An annual local shellfish program levy is payable to the Food Authority, in addition to any other levy payable under this Part, by the holder of a licence that authorises any of the following activities if there is a local committee appointed for the area in which the activity is carried on:
  - (a) the harvesting or collection of shellfish,
  - (b) the operation of a depuration plant.
- (2) The levy is to be applied only for the following purposes:
  - (a) meeting the costs incurred in maintaining the local committees,
  - (b) meeting the costs incurred by those committees in carrying out their responsibilities.
- (3)-(8) (Repealed)

### **37 Calculation of annual local shellfish program levy**

- (1) The annual local shellfish program levy payable by the holder of a licence is to be calculated in accordance with this clause.
- (2) The Food Authority is to determine the levy payable under this clause in relation to the holder of a licence who harvests or collects shellfish, or operates a depuration plant, in an area for which a local committee is appointed by dividing the total projected administration and operational costs submitted to the Food Authority under clause 29 (1) (c) for the year concerned by the number of such licence holders.
- (3) If the holder of a licence harvests or collects shellfish, or operates a depuration plant, in more than one area for which a local committee is appointed, the holder is liable to pay a levy under this Division for each of those areas.
- (4) Despite any other provision of this Division, the levy payable by the holder of a licence in respect of an area for which a local committee is appointed is to be reduced by half if:
  - (a) the only activity carried on in that area under the licence is:
    - (i) the operation of a depuration plant, or
    - (ii) the harvesting of shellfish that are required to be on-grown in another area before being sold for human consumption, and
  - (b) the holder harvests or collects shellfish, or operates a depuration plant, in at least one other such area and has paid an unreduced amount of levy required under this Division in relation to at least one other such area.
- (5) If a licence is granted after the commencement of a year for which the annual local shellfish program levy is payable, the Food Authority may reduce the levy payable by the holder of the licence for that year by a proportionate amount.

## **Division 4 Procedures for payment of licence fees and levies**

### **37A Payment of licence fees and levies**

- (1) The Food Authority is to issue to each holder of a licence who is liable to pay a licence fee or levy under this Part a notice in writing:
  - (a) specifying the amount of the licence fee or levy and the period (being not less than 30 days after the issue of the notice) within which the licence fee or levy must be paid, and
  - (b) specifying (where relevant) the method of calculating the amount of the licence fee or levy to be paid by that holder.
- (2) The holder of a licence is to pay the licence fee or levy to the Food Authority within

the period specified in the notice for its payment unless the holder has approval from the Food Authority under this clause to pay the licence fee or levy by instalments.

- (3) The holder of a licence may, before the expiration of the period referred to in subclause (1) (a), apply to the Food Authority for approval to pay the licence fee or levy for a particular year by instalments.
- (4) An approval under this clause must be notified in writing to the holder of the licence concerned and must specify the amount of each instalment and the date by which each instalment must be paid.
- (5) The holder of a licence who has been given approval by the Food Authority to pay the licence fee or levy by instalments must pay each instalment in accordance with the terms of the approval.
- (6) If there is a failure by the holder of a licence who has approval to pay the licence fee or levy by instalments to pay the amount of an instalment by the date required in the approval, the total unpaid balance of the licence fee or levy may be treated by the Food Authority as an overdue amount even if payment by instalments has commenced.
- (7) The Food Authority may reduce or waive payment of a licence fee or levy in a particular case or class of cases.
- (8) Without limiting subclause (7), if a licence is granted after the commencement of a year for which a licence fee or levy is payable, the Food Authority may reduce the licence fee or levy payable by the holder of the licence for that year by a proportionate amount.

## **Part 9 Industry consultation**

### **38 New South Wales Seafood Industry Conference**

- (1) The Food Authority is to establish a body to be known as the New South Wales Seafood Industry Conference for the purposes of the consultation referred to in section 105 of the Act in relation to this Regulation (except Part 7 and Divisions 2 and 3 of Part 8).
- (2) The New South Wales Seafood Industry Conference is to be comprised principally of persons nominated by the seafood industry, and endorsed by the Food Authority, to represent the major sectors of the industry.
- (3) The Industry Conference may also comprise such officers of the Food Authority and the Department of Health, and representatives of other bodies or industry organisations, as the Food Authority allows.
- (4) The Industry Conference may establish subcommittees to assist it in the exercise of

its functions.

- (5) The Food Authority is to appoint a Chairperson and Secretary of the Industry Conference.
- (6) The procedure for the calling and holding of meetings of the Industry Conference is to be as determined by the Food Authority in consultation with the seafood industry.

### **39 Industry consultation on shellfish**

The NSW Shellfish Committee is established as the consultative body for the purposes of the consultation referred to in section 105 of the Act in respect of Part 7 and Divisions 2 and 3 of Part 8 of this Regulation.

**Note—**

The New South Wales Shellfish Committee has other functions under Part 7.

## **Part 10 Miscellaneous**

### **40 Offences**

- (1) A breach of a provision of this Regulation does not constitute an offence against this Regulation unless a penalty is provided in the provision.
- (2) Subclause (1) does not affect the operation of section 104 of the Act in relation to the provisions of this Regulation.

**Note—**

Section 104 of the Act makes it an offence (among other things):

- (a) for a person to handle food in a manner that contravenes a provision of a food safety scheme, and
- (b) for a person who carries on a food business or activity for which a licence is required by the regulations to carry on that food business or activity without such a licence, and
- (c) for the holder of a licence granted under the regulations to contravene or fail to comply with a condition of a licence.

### **41 Penalty notices**

- (1) For the purposes of section 120 of the Act:
  - (a) each offence arising under a provision specified in Column 1 of the Table in Schedule 4 is prescribed as a penalty notice offence, and
  - (b) the prescribed penalty for such an offence is the amount specified in relation to the offence in Column 2 of that Table.
- (2)–(6) (Repealed)



## 42 Savings and transitional provisions

Schedule 5 has effect.

## Schedule 1 Additional requirements relating to licences

(Clause 12)

Activity	General operating conditions	Premises conditions	Vehicle conditions
Processing of seafood	Complies with Standard 3.2.2 of <i>Food Standards Code</i>	Complies with Standard 3.2.3 of <i>Food Standards Code</i>	Complies with Standard 3.2.3 of <i>Food Standards Code</i>
Storage of seafood	Complies with Standard 3.2.2 of <i>Food Standards Code</i>	Complies with Standard 3.2.3 of <i>Food Standards Code</i>	Complies with Standard 3.2.3 of <i>Food Standards Code</i>
Transportation of seafood	Complies with Standard 3.2.2 of <i>Food Standards Code</i>		Complies with Standard 3.2.3 of <i>Food Standards Code</i>
Wholesaling of seafood	Complies with Standard 3.2.2 of <i>Food Standards Code</i>	Complies with Standard 3.2.3 of <i>Food Standards Code</i>	
Harvesting or collecting of bivalve molluscs	Complies with <i>Operation Manual for NSW Shellfish Program</i>		
Depuration of bivalve molluscs	Complies with <i>Operation Manual for NSW Shellfish Program</i> Complies with Code of Practice for Oyster Depuration in NSW	Complies with <i>Operation Manual for NSW Shellfish Program</i> Complies with Code of Practice for Oyster Depuration in NSW	

## Schedule 2 Provisions relating to members and procedure of committees

(Clause 30)

### 1 Definitions

In this Schedule:

**committee** means:

- (a) the NSW Shellfish Committee, or
- (b) a local committee.

**member** means a member of a committee.

## **2 Deputy members**

- (1) The Food Authority may, from time to time, appoint a person to be the deputy of a member, and may at any time revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be the member.
- (3) A person while acting in the place of a member is entitled to be paid such allowances as the Food Authority may from time to time determine in respect of the person.

## **3 Terms of office of member**

Subject to this Schedule, a member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **4 Allowances for member**

A member is entitled to be paid such allowances as the Food Authority from time to time determines in respect of the member.

## **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Food Authority, or
  - (d) is removed from office by the Food Authority under subclause (2), or
  - (e) is absent from 3 consecutive meetings of the committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the committee for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Food Authority may remove from office all or any of the members of a committee.

## **6 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to this Regulation, required to be appointed to fill the vacancy.

## **7 Disclosure of pecuniary interests**

(1) A member of a committee:

- (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the committee, and
- (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.

(2) A disclosure by a member of a committee at a meeting of the committee that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

(3) Particulars of any disclosure made under this clause must be recorded by the members of the committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members of the committee.

(4) After a member of the committee has disclosed the nature of an interest in any matter, the member must not, unless the Food Authority or the other members of the committee otherwise determine:

- (a) be present during any deliberation of the committee with respect to the matter, or

(b) take part in any decision of the committee with respect to the matter.

(5) For the purposes of the making of a determination by the members of the committee under subclause (4), a member of the committee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the other members of the committee for the purpose of making the determination, or

(b) take part in the making by the other members of the committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the committee.

(7) A member is taken not to have an interest in a matter for the purposes of this clause merely because the member is the holder of an aquaculture permit or aquaculture lease under the *Fisheries Management Act 1994* or is the holder of a licence.

## 8 General procedure for calling and holding meetings of a committee

The procedure for the calling and holding of meetings of a committee is, subject to any direction by the Food Authority, to be determined by the committee.

## 9 Quorum

The quorum for a meeting of a committee is a majority of its members for the time being.

## 10 Presiding member and voting rights

(1) The chairperson of a committee or, in the absence of the chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the committee.

(2) The person presiding at a meeting of a committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## 11 Voting

A decision supported by a majority of the votes cast at a meeting of a committee at which a quorum is present is the decision of the committee.

## Schedule 3 Annual general licence fees

(Clause 33)

Column 1	Column 2	Column 3	Column 4
Activity of seafood business	Category	Number of employees	Amount payable (\$)

Fishers with or without a vessel who do any of the following activities:			
(a) capture or collect any wild seafood,	1		310
(b) store, gill, gut or cook only wild seafood that they have captured or collected themselves.			
	2	1 to 10	250
Finfish or crustacea aquaculture.	3	11 to 50	500
	4	More than 50	2,000
Transportation of seafood by vehicle on land (except by fishers referred to in Category 1 if transporting their own catch of wild seafood to a store or processor).	3		160 per vehicle
Businesses that process seafood (including freezing, thawing and preparing sushi) or store seafood (other than as referred to in Category 1) or that do both.	5	1 to 10	250
	6	11 to 50	500
	7	More than 50	2,000

## Schedule 4 Penalty notices

(Clause 41)

### Table

#### Column 1

#### Provision

Clause 16 (1) of this Regulation	2
Clause 16 (2) of this Regulation	2
Clause 20 (1) of this Regulation	5
Clause 21 (1) of this Regulation	5
Clause 21 (2) of this Regulation	5
Clause 21 (5) of this Regulation	5
Clause 2 (2) of Schedule 5 to this Regulation	5

#### Column 2

#### Penalty units

2
2
5
5
5
5
5

## Schedule 5 Savings and transitional provisions

(Clause 42)

### 1 Licensing of existing seafood businesses

If a person who is carrying on a seafood business at the commencement of this Regulation applies for a licence before 1 March 2002, the person is taken to be licensed to carry on that seafood business until the Food Authority determines the application.

### 2 Development of food safety programs for existing seafood businesses

- (1) Despite clause 10 (2) (a), the Food Authority may grant a licence to an applicant who is carrying on a seafood business at the commencement of this Regulation even though the applicant has not prepared a proposed food safety program.
- (2) A person who is carrying on a seafood business at the commencement of this Regulation and who continues to carry on the seafood business after that commencement must submit to the Food Authority a proposed food safety program for the seafood business, that complies with clause 18, within the period specified below in relation to the particular type of seafood business or within such further period as is notified in writing to the person by the Food Authority:
  - (a) in relation to a seafood business that involves aquaculture of shellfish, collection of shellfish, processing of oysters or processing of smoked seafood—6 months after that commencement,
  - (b) in relation to a seafood business that involves the handling of seafood immediately after it is taken or caught, seafood processing or seafood manufacturing, being an activity not referred to in paragraph (a)—12 months after that commencement,
  - (c) in relation to a seafood business that does not involve an activity referred to in paragraph (a) or (b)—18 months after that commencement.

Maximum penalty: 25 penalty units.

- (3) If a seafood business involves more than one of the activities specified in subclause (2) (a)–(c), the period within which a food safety program for the seafood business is to be prepared for the purposes of that subclause is the shortest period specified in relation to any of those activities.

### 3 New South Wales Shellfish Committee

- (1) This clause has effect despite anything to the contrary in clause 26.
- (2) On the commencement of this Regulation, the New South Wales Shellfish Committee is to comprise the following persons as members:

- (a) such of the persons who were members of the New South Wales Shellfish Quality Assurance Committee appointed under the *Fisheries Management (Aquaculture) Regulation 1995* immediately before that commencement and are eligible to be appointed under that clause as members of the New South Wales Shellfish Committee,
  - (b) such other persons as the Food Authority determines in accordance with that clause.
- (3) The term of office of a person who is a member of the New South Wales Shellfish Committee referred to in subclause (2) (a) expires on the date on which the person's term of office as a member of the New South Wales Shellfish Quality Assurance Committee would have expired if that Committee had not been dissolved. However, the person is eligible (if otherwise qualified) for re-appointment.
- (4) The requirements of clause 26 (4) (c) and (d) do not apply to the members of the New South Wales Shellfish Committee appointed under clause 26 (2) (b) and (c) to serve the first term of office after the commencement of this Regulation.
- (5) The Food Authority is to apply any contributions paid to it under clause 64 (2) of the *Fisheries Management (Aquaculture) Amendment (Transitional) Regulation 2001* in the manner provided by clause 34 (2) of this Regulation.

#### 4 Local shellfish committees

- (1) This clause has effect despite anything to the contrary in clause 28.
- (2) On the commencement of this Regulation, there is taken to be appointed by the Food Authority for the purposes of clause 28, a local shellfish committee for each area or group of areas of estuarine waters for which a local shellfish quality assurance committee (**the corresponding committee**) existed under the *Fisheries Management (Aquaculture) Regulation 1995* immediately before that commencement.
- (3) A local shellfish committee referred to in subclause (2) is to comprise the following persons as members:
- (a) such of the persons who were members of the corresponding committee immediately before the commencement of this Regulation as are eligible in accordance with this Regulation to be members of the local shellfish committee, and
  - (b) such other persons as the Food Authority appoints in accordance with clause 28 to be members of the committee.
- (4) The term of office as a member of a person referred to in subclause (3) (a) expires on the date that the person's term of office as a member of the corresponding committee would have expired if the corresponding committee had not been dissolved. However,

the person is eligible (if otherwise qualified) for re-appointment.

- (5) The requirements of clause 28 (4) (b) do not apply in relation to the first election after the commencement of this Regulation of a member of a local shellfish committee who is the holder of a licence that authorises the collection of wild shellfish.
- (6) The Food Authority is to pay any funds received by it that were held by a local shellfish quality assurance committee dissolved by clause 64 of the *Fisheries Management (Aquaculture) Regulation 1995* to the local shellfish committee for which that local shellfish quality assurance committee is the corresponding committee.

## **5 Levies**

- (1) Despite any other provision of this Regulation, the first levy imposed by the Food Authority under Division 1 of Part 8 after the commencement of this Regulation is to be for the period commencing on that commencement and ending on 30 June 2002.
- (2) The first levy imposed by the Food Authority under Division 2 of Part 8 after the commencement of this Regulation is to be for the period commencing on 1 January 2002 and ending on 30 June 2002.

## **6 Industry consultation**

The New South Wales Seafood Industry Conference and NSW Shellfish Committee as in existence at the commencement of the *Food Amendment Regulation 2004* are taken to have been established under Part 9 as amended by that Regulation.

## **7 Licence fees and levies for 2003 to 2004**

- (1) The amendments made to clauses 32 and 33 by the *Food Amendment (Food Safety Schemes) Regulation 2004* apply only in respect of the year commencing on 1 July 2004 and each subsequent year. Accordingly, this Regulation, as in force immediately before the commencement of that Regulation, applies to and in respect of a levy imposed under clause 32 in respect of a year commencing before 1 July 2004.
- (2) In relation to the year commencing on 1 July 2003, the Food Authority is taken to have determined an amount of \$750 as the licence fee for the purposes of clause 34 (2).