

# Food Amendment (Food Safety Supervisors) Act 2009 No 85

[2009-85]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### 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 Amendment (Food Safety Supervisors) Act 2009 No 85



New South Wales

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# Food Amendment (Food Safety Supervisors) Act 2009 No 85



New South Wales

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

## 1 Name of Act

This Act is the *Food Amendment (Food Safety Supervisors) Act 2009*.

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of *Food Act 2003* No 43

### [1] Part 8 Regulation of food businesses

Insert before section 100:

Division 1 **Notification of conduct of food businesses**

### [2] Section 106 List of food businesses to be maintained

Renumber the section as section 101A and move it after section 101.

### [3] Part 8, Division 2, heading

Insert before section 102:

Division 2 **Food safety schemes**

### [4] Part 8, Division 3

Insert at the end of Part 8:

## **Division 3 Requirements relating to food safety supervisors**

### **106 Definitions**

In this Division:

**approved training organisation** means a registered training organisation approved under section 106H.

**food safety supervisor**—see section 106B.

**food safety supervisor certificate**—see section 106B (3).

**food to which this Division applies**—see section 106A.

**mobile catering business** means a food business that provides food catering services involving:

- (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
- (b) the processing of the food, whether or not at the location to which it is transported,

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.

**potentially hazardous food** means food that is required to be kept at more than or less than a particular temperature to minimise the growth of any pathogenic micro-organisms that may be present in the food or to prevent the formation of toxins in the food.

**process**, 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.

**ready-to-eat food** 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.

**relevant enforcement agency**, 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.

**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.

## **106A Application of Division to certain food**

This Division applies to food that:

- (a) is ready-to eat food, and
- (b) is potentially hazardous food, and

(c) is not packaged in a way that is prescribed by the regulations as prepackaged.

### **106B Food safety supervisors**

- (1) For the purposes of this Act, a food safety supervisor for premises is a person who:
  - (a) holds a food safety supervisor certificate that has been issued within the immediately preceding period of 5 years, and
  - (b) does not hold the position of food safety supervisor for any other premises or for a mobile catering business, and
  - (c) has the authority to supervise other persons handling food at, or from, the premises and to ensure that the handling is done safely.
- (2) For the purposes of this Act, a food safety supervisor for a mobile catering business is a person who:
  - (a) holds a food safety supervisor certificate that has been issued within the immediately preceding period of 5 years, and
  - (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
  - (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.
- (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.
- (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.
- (5) Without limiting subsection (4), any such regulation may provide for the Food Authority to determine those qualifications or any aspect of those qualifications.
- (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.
- (7) Nothing in this Division prevents:

- (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
- (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
- (c) more than one person holding the position of food safety supervisor in respect of particular premises or a mobile catering business.

### **106C Appointment of food safety supervisor for premises**

- (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.
- (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.
- (3) It is a defence to a prosecution for an offence against subsection (2) if the proprietor of the food business concerned establishes that:
  - (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
  - (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).
- (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.

### **106D Appointment of food safety supervisor for mobile catering business**

- (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.
- (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.

- (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:
- (a) a person had been appointed as food safety supervisor for the business but had ceased to be appointed as food safety supervisor, and
  - (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 applies was processed in the course of the business on not more than 30 days (whether or not consecutive).

Maximum penalty: 50 penalty units in the case of an individual and 100 penalty units in the case of a corporation.

#### **106E Notice of appointment of food safety supervisor**

- (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.

Maximum penalty: 25 penalty units in the case of an individual and 50 penalty units in the case of a corporation.

- (2) The notice must:
- (a) be given in writing to the relevant enforcement agency, and
  - (b) be given within 7 days after the appointment of the food safety supervisor concerned, and
  - (c) contain the information prescribed by the regulations.
- (3) Subsection (1) does not apply to the appointment of a food safety supervisor for:
- (a) temporary premises, or
  - (b) premises that are a vehicle from which food to which this Division applies is sold by retail at more than one location.

#### **106F Notice of change of details of food safety supervisor**

- (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.

Maximum penalty: 25 penalty units in the case of an individual and 50 penalty units in the case of a corporation.

- (2) The notice must:
  - (a) be given in writing to the relevant enforcement agency, and
  - (b) be given within 7 days after the proprietor of the food business concerned becomes aware of the change in the information provided.
- (3) Subsection (1) does not apply to the appointment of a food safety supervisor for:
  - (a) temporary premises, or
  - (b) premises that are a vehicle from which food to which this Division applies is sold by retail at more than one location.

### **106G Inspection of food safety supervisor certificates**

- (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.
- (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.

Maximum penalty: 25 penalty units in the case of an individual and 50 penalty units in the case of a corporation.

### **106H Approval of registered training organisations to issue food safety supervisor certificates**

- (1) The Food Authority may approve a registered training organisation (within the meaning of the *Vocational Education and Training Act 2005*) for the purposes of issuing food safety supervisor certificates.
- (2) Regulations may be made for or with respect to approvals granted under this section.
- (3) Without limiting subsection (2), the regulations may make provision for or with respect to the following:
  - (a) applications for approvals,
  - (b) the granting of approvals,



- (c) conditions of approvals,
  - (d) duration of approvals,
  - (e) suspension and revocation of approvals.
- (4) The Food Authority is to prepare and maintain a list of approved training organisations.
- (5) The list is to be made publicly available and is to be revised at least annually.

#### **106I Fees and charges payable under Division**

- (1) The regulations may make provision for or with respect to the following:
- (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,
  - (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.
- (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.

#### **106J Exemptions from operation of Division**

- (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.
- (2) Any such exemption has no effect during any period in which a condition to which it is subject is not complied with.

#### **[5] Section 113A Publication of information relating to enforcement agencies**

Omit section 113A (1). Insert instead:

- (1) The Food Authority is to keep a record of the following:
- (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,

(b) relevant enforcement agencies for the purposes of Division 3 of Part 8.

**[6] Section 133F Applications for changes to register**

Omit section 133F (4). Insert instead:

(4) The Food Authority may reduce the fee or remit or waive payment of the whole or any part of the fee.

**[7] Section 137**

Insert after section 136A:

**137 Service of documents**

(1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:

(a) in the case of a natural person:

(i) delivering it to the person personally, or

(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

(iii) sending it by facsimile transmission to the facsimile number of the person, or

(b) in the case of a body corporate:

(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

(ii) sending it by facsimile transmission to the facsimile number of the body corporate.

(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.

**[8] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Food Amendment (Food Safety Supervisors) Act 2009*

**[9] Schedule 2, Part 6**

Insert after Part 5:

**Part 6 Provisions consequent on enactment of [Food Amendment \(Food Safety Supervisors\) Act 2009](#)**

**23 Application of new offences relating to food safety supervisors**

- (1) This clause applies to provisions of Division 3 of Part 8 as inserted by the [Food Amendment \(Food Safety Supervisors\) Act 2009](#).
- (2) In this clause, the **prescribed day**, in relation to a provision of Division 3 of Part 8, means the day occurring 12 months after the commencement of the provision.
- (3) A person does not commit an offence against a provision of Division 3 of Part 8 until on or after the prescribed day.
- (4) Section 106C applies only to the processing and sale by retail of food occurring on or after the prescribed day.
- (5) Section 106D applies only to the processing of food occurring on or after the prescribed day.
- (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.