



Food
Regulation
Partnership™

Together towards safer food

pathway to partnership

a guide to food regulation in NSW

Part One

January 2008



NSW Food Authority

safer food, clearer choices

8 January 2008

Pathway to partnership – A guide to food regulation in NSW

Dear colleagues

Welcome to pathway to partnership – A guide to food regulation in NSW.

Following the recent passage of legislation which amended the NSW Food Act 2003, and after extensive consultation with councils, the Food Regulation Partnership (FRP) is being formally established. Together, local councils supported by the NSW Food Authority (the Authority) are beginning a new era in food regulation.

This information package was developed to inform councils of the key changes to food regulation in NSW and the role and requirements of councils going forward.

The package is delivered in two parts:

Part One – highlights information about the new legislation, councils' responsibilities, the administrative framework, fees and charges and support, assistance and training provided by the Authority.

Part Two – draft protocols and guidelines – contains the supplementary material to assist EHOs in fulfilling their role and obligations under the Food Regulation Partnership. These documents have been developed in consultation with councils.

It is anticipated that more detailed information about the appointment process will be available early next year.

The support by many councils for the new legislation is most encouraging and is evidence that the new era in local food regulation is becoming a reality for councils in NSW.

In view of the intended 1 July 2008 formal commencement date, councils are encouraged to transition towards that date by joining the Category B pilot.

Please do not hesitate to contact myself or another member of the Authority's Local Government Unit, on 1300 552 406 if you would like more information or to discuss any other matter.

We look forward to continuing to work with you all next year.

Best regards

A handwritten signature in blue ink that reads "Phillip Bird". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

Phillip Bird

Manager – Local Government Unit

contents

Councils' role in food regulation

Background	3
Next steps	3
What are the changes?	4

New legislation

Commencement	6
Key changes	6
Exchanging information	7

Responsibilities

Categories	9
The retail and food service sector	10

Administrative framework

Appointing enforcement agencies	12
Enforcement agency options	13
Category A considerations	14

Indicative fees and charges

Introduction of fees and charges	17
----------------------------------	----

Support and assistance

Perceived conflicts of interest	20
Resource assistance in unforeseen circumstances	20
Technical advice	20
Effective communication	20
New website	20
Ongoing training and networking	21
Enforcement support	21
Special projects grants program	21
EHO career promotion	21

Abbreviations, explanatory notes and glossary

Abbreviations	23
Explanatory notes	23
Glossary	23

councils' role in food regulation

What is the Food Regulation Partnership (FRP) about?

Background

Extensive consultation with stakeholders resulted in overwhelming support for a food regulation partnership between the NSW Food Authority (the Authority) and local councils.

The partnership's objectives are:

- safer food for consumers – reduce the impact of foodborne illness caused by the retail food sector
- strengthen the food safety response capacity of NSW State and local government agencies
- better use of local and State government resources, including avoiding duplication of food regulation services

Essential to a successful partnership are:

- a mandated role for councils clearly stating their responsibilities in the retail and food service sector, commensurate with their resources and capacity
- full cost recovery options
- comprehensive support, assistance and training for councils
- consistency among jurisdictions
- evidence that the objectives are realised

The *Food Amendment Act 2007*, received assent on 1 November 2007 and was proclaimed on 1 January 2008. The *NSW Food Act 2003*, has now been amended. It can be viewed on the NSW Parliament's website (browse A-Z or in the Government Gazette 185, 21 December 2007, page 9809).

Further details will be provided in an amendment to the *Food Regulation 2004*, expected to be gazetted early in 2008, and in 'Draft protocols and guidelines'. Refer to Part Two of this information package.

Next steps

Councils should consider:

- their food regulation role at the Category A, B or C level by studying this information package
- the matters to be taken into account when the Authority appoints an enforcement agency

The Authority determines the conditions of council's appointment as an enforcement agency.

The aim is for councils to formally commence their new food regulation role on 1 July 2008.

Council's functions and powers under the amended *NSW Food Act 2003*, will expire and their new functions under the amended *NSW Food Act 2003*, will come into force on the same day, providing food regulation continuity.

Pathway to being an enforcement agency

What are the changes?

Food regulation role

- Council formally undertakes its food regulation role as an enforcement agency under the *NSW Food Act 2003*, as amended. Protocols and guidelines should ensure there is a clear understanding of council's role. In most cases it is expected there will be no change to council's current activities. Councils and the Authority will be using the special FRP logo and branding to promote their partnership.

Cost recovery capability

- Councils will have the power to recover the costs of providing their food regulation function.
- The current inspection fees raised under the *Local Government Act 1993*, will continue.
- A new Annual Administration Charge under the *NSW Food Act 2003*, as amended, is intended for enforcement agencies to recover the indirect costs associated with their function.
- A new fee under the *NSW Food Act 2003*, as amended, for issuing an Improvement Notice and one reinspection will be available.
- Details of the new fee and charge will be gazetted by way of amendment to the *Food Regulation 2004*. The Authority will review its own fees and charges annually and post them on the FRP website when it is launched – planned in early 2008.

Support and assistance by the Authority

- Support, assistance and training for councils will be provided by the Authority. This will include:
 - assistance with high level enforcement
 - assistance with resource support in unforeseen circumstances
 - development of operational guidelines in consultation with council networks
 - assistance with perceived conflicts of interest
 - environmental health officer career promotion
 - special projects grants program
 - facilitation of networks, eg the existing regional food groups and state liaison group
 - providing technical and paralegal advice
 - facilitating a special website for enforcement agencies
 - maintaining 'real-time' communication with emails and newsletters

Reporting requirements

- Each six months, councils will be required to submit a report to the Authority on their resources and activities for the period. The Authority will publish on the FRP website when it is launched – planned in early 2008, summary information of these reports.

Have any questions?

If you have any questions contact the Authority's Local Government Unit on 1300 552 406.

new legislation

The *NSW Food Act 2003* has been amended

Amendments to the *Food Regulation 2004* in relation to fees and charges

Commencement date

Changes resulting from the *Food Amendment Act 2007*

The amended *NSW Food Act 2003* can be viewed on the NSW Parliament's website.

This section explains the key provisions of the amended *NSW Food Act 2003*.

Commencement

The *Food Amendment Act 2007*, received assent on 1 November 2007. On 1 January 2008, it amended the *NSW Food Act 2003*.

Some provisions in the amendments, mainly relating to fees and charges, require the making of regulations before they can properly take effect.

The Authority has requested that a regulation be drafted as soon as possible. The regulation will amend the *Food Regulation 2004*, and will contain the following matters:

- a fee that may be charged to a person who is given an Improvement Notice
- an Annual Administration Charge that may be charged on an unlicensed food business that is subject to routine inspection
- an inspection fee that may be charged by:
 - a. the Food Authority
 - b. enforcement agencies other than local councils
 - c. local councils inspecting in areas that are not within any local government areas

Local councils inspecting in areas that are within local government areas will charge an inspection fee under the *Local Government Act 1993*.

The regulation will require approval by the Governor, on the advice of the Executive Council, before it can be made. Refer to 'Indicative fees and charges'.

It is planned that councils will begin their new enforcement agency role on 1 July 2008.

Key changes

- The Authority can appoint a relevant body as an enforcement agency after consultation and consideration of council's resources and skills (s.111). Councils and the Director-General of the Department of Environment and Climate Change, in respect of the Kosciuszko National Park, are considered to be a relevant body (s.110). It also enables the Authority to vary or revoke the appointments, and to impose conditions or limitations (s.111A).

It will be the duty of an enforcement agency to carry out its functions

Fees and charges

Food Regulation Forum

Other key changes

Ensuring food regulation continuity

Certain information may be provided to and by the Authority

When can an enforcement agency provide information?

What about the privacy impact?

- It is the duty of the enforcement agency to undertake the functions conferred or imposed on it, or delegated to it (s.111D).
- A secure funding base for carrying out enforcement agency functions by enabling:
 - a fee for the issuing of an Improvement Notice to a food business, and making it an offence not to pay the fee required (s.66AA)
 - an Annual Administration Charge on food businesses that are not required to be licensed by the Authority (s.139(2B)(d))

Refer to 'Indicative fees and charges'.

The Authority will publish recommended maximum fees and charges to be imposed by local councils on food businesses.

- The amended *Food Regulation 2004*, will give power to the Authority to charge fees for non-licensed food businesses (s.139(1)(b)).
- The establishment of a Food Regulation Forum to consist of representatives from State, Local government and the environmental health profession, to provide advice and assistance to the Authority. Refer to the Food Regulation Forum membership and its functions (s.115A and 115B).
- Various other amendments including:
 - enabling the Authority to issue guidelines in relation to various matters relevant to enforcement agencies, including the different categories of function and the making of representations to the Authority (s.111C)
 - clarifying 'the holder of an office' (s.109E), and the relationship between councils and its general manager

In order for enforcement agencies to be appointed under the amended *NSW Food Act 2003*, they will first be de-prescribed and then appointed. This action will take effect on the same date ensuring food regulation continuity.

Exchanging information

Enforcement agencies, eg councils and the Authority are empowered to provide information to each other and NSW Health services under certain conditions (s.136A).

An enforcement agency is authorised to provide information to:

- a relevant authority if the enforcement agency considers the provision of the information is necessary to enable the relevant authority to exercise its functions under the *Public Health Act 1991* (s.136A(1)). A 'relevant authority' for the purpose of this section is defined as the Director-General of Health and a public health organisation within the meaning of the *Health Services Act 1997* (s.136A(4)). The reverse is also authorised (s.136A(2))
- another enforcement agency if the enforcement agency providing the information considers the provision of the information is necessary to enable the other enforcement agency to exercise its functions under the *NSW Food Act 2003* (s.136A(1)(b)). Note that the Authority is also an enforcement agency (s.4 *NSW Food Act 2003*, and Schedule 2, Pt 4 of the Savings, transitional and other provisions)

Information may be provided, in accordance with the above requirements, despite any prohibition in, or the need to comply with any requirement of, any Act or law (in particular, the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*) (s.136A(3)).

responsibilities

What are the responsibilities relating to Categories A, B and C?

Who carries out the Category B function if a council does not?

What if councils wish to deliver value-added services?

This section provides information about the type of enforcement agency functions and responsibilities.

Categories

Note: The legislation does not mention 'categories'. At this stage the definitions for each category are indicative only. The Authority is considering the appropriate mechanism to provide more rigour around defining each category. Consistent with earlier council consultations, categories will be used by the Authority when appointing enforcement agencies.

Category A – this is intended to be the minimum food regulation responsibility level for an enforcement agency. It only covers responding to urgent food safety matters, urgent food recall investigations and six-monthly reporting on food regulation activities (s.113). Mandatory protocols providing detail around these responsibilities have been drafted. Refer to Part Two of this information package.

Category B – this is the intended standard food regulation responsibility level for an enforcement agency. It includes Category A responsibilities, and the following:

- a. food recall investigations
- b. routine inspection and enforcement of the retail and food service sector
- c. medium and low risk food complaint investigations
- d. collaboration on single-case foodborne illness investigations

Mandatory protocols providing detail around these responsibilities have also been drafted. Refer to Part Two of this information package.

Note: Councils will only be appointed to Category A responsibilities where they have exhausted other options, such as forming alliances with other councils or engaging contractors/consultants. Refer to 'Enforcement agency options' for details.

The Authority will be responsible for carrying out the responsibilities for the Category B role (minus the Category A responsibilities), in situations where a council carries out Category A responsibilities only.

Category C – this is the higher food regulation responsibility for an enforcement agency. It includes responsibilities for Categories A and B and any other responsibility determined in consultation with the Authority, eg inspection of non-licensed manufacturers and wholesalers.

Other responsibilities, eg providing information and training for food handlers, are worthwhile food regulation activities that are encouraged but they will not be compulsory.

The retail and food service sector

Councils' scope in food regulation

Councils' primary responsibility is for the retail and food service sector. However, for efficient State wide food safety response capacity, council officers are still authorised (within their powers under the *NSW Food Act 2003*), for all types of food businesses, including manufacturers and those licensed by the Authority.

What are retail and food service businesses?

Retail and food service businesses include:

- a food business which performs as its principal food-related activity, the production of food for direct sale to the consumer
- the sale or service of food directly to the consumer

It does not include:

- primary production
- businesses licensed by the Authority – including retail meat premises
- manufacturers
- wholesalers
- food transport vehicles

To assist in identifying retail and food service businesses, a generic list appears in Part Two – 'Draft advisory guidelines'.

What food businesses are the Authority primarily responsible for?

The Authority is primarily responsible for:

- very high risk food businesses eg dairy factories, meat processors and seafood processors – which it licenses
- non-licensed manufacturers eg bakeries
- wholesalers – including food transport vehicles

A list of food businesses licensed or routinely inspected by the Authority is available from the Authority.

If there is still doubt, contact the Authority and arrange a discussion.

How often will businesses be required to be inspected?

Inspection frequencies are outlined in Part Two – 'Draft advisory guidelines'. They are not defined under legislation.

administrative framework

Council considers its options

Council considers its resources and skills

The Authority determines the appointment based on council's resources and skills, and in consultation with council

Varying appointment conditions

The Authority publishes appointments

Formal commencement date 1 July 2008

This section provides information about the administrative framework.

Appointing enforcement agencies

- 1.** Council considers its preference for the level of food regulation responsibility ie Category level A, B or C.
- 2.** Council determines the resources and skills required to carry out the food regulation responsibilities, including:
 - food business profile, eg number and type of food businesses that need inspection
 - resources, eg staff engaged in food regulation and their skills, experience and training
 - management, eg management plan, budget, policies and delegations
 - services, eg inspection plans and equipment
- 3.** The Authority determines the enforcement agency's conditions of appointment in consultation with council (s.111(3)(b)).

In particular, consideration is given to council's resources and skills.

The Authority will consider additional criteria regarding Category A. Refer to 'Category A considerations'.
- 4.** Appointments remain until varied or revoked by the Authority and take effect from the date specified in the appointment instrument (s.111(3)(c)). There is provision for an appointed enforcement agency to vary the conditions by consultation with the Authority.
- 5.** The Authority will maintain and publish on the FRP website when it is launched – planned in early 2008, a list of appointed enforcement agencies and their respective food regulation responsibilities, ie Category level A, B or C, along with any conditions or limitations on those appointments, and any variation or revocations of appointment. The Authority will update the list regularly and indicate when it was last updated (s.113A).
- 6.** Council should plan to formally commence undertaking their responsibilities for the particular Category level from 1 July 2008.

What are the options for enforcement agencies?

Enforcement agency options

The Authority may appoint a local council as an enforcement agency in respect of:

- its own local government area (LGA) or part LGA
- another LGA or part LGA (but only after consultation with the local council of that other LGA)
- an area not within a LGA (s.111(4))

The Authority may appoint more than one enforcement agency to work in the same LGA, provided their functions and food regulatory activities are different (s.111(5)).

The following enforcement options are possible:

1. a council (council 1) is an enforcement agency for its own area (Category A only)
2. a council (council 2) is an enforcement agency for its own area (Category B)
3. a council is an enforcement agency for its own area (Category C)
4. a council is an enforcement agency for its own area (Category B) AND an enforcement agency (Category A role) in council area 1 or for as many other council areas as agreed
5. a council is an enforcement agency for its own area (Category B) AND an enforcement agency (Category B, no A role) in council area 1 or for as many other council areas as agreed
6. a council is an enforcement agency for its own area (Category B or C) AND an enforcement agency (Category C) in council area 1 or 2 or for as many other council areas as agreed
7. councils can operate at Category A, B or C by sharing resources. Each council still retains responsibility – and enforcement powers – for its own category
8. a council or a group of councils can provide services to any other council, not just those close to it geographically
9. services can also be provided on a business case basis, however it must be clear, which council is the enforcement agency under the *NSW Food Act 2003*, for its own food businesses
10. the Authority can use its own staff, the use of contractors or another council, to perform the responsibilities of Category B or C in a council area operating only at the Category A level

Note: A council in Category B **must** perform Category A responsibilities in its own area.

Councils should also note the following:

- the powers of an enforcement agency cannot be delegated by a council to another council, an individual or contractor
- councils can 'engage' contractors to undertake inspections if they are authorised under the *NSW Food Act 2003*. Legal advice should be obtained as to the mechanism by which contractors are engaged, used, employed and authorised by council, particularly concerning the use of enforcement powers for seizures, issuing Improvement Notices, issuing Penalty Notices and serving Prohibition Orders. Liability protection for councils should also be considered
- enforcement agencies can only be appointed by the Authority
- when sharing resources or agreeing to being serviced by another council, consideration should be given to the chain of enforcement activities, funding and collection of fees and charges. A formal agreement may be considered

- the powers of an authorised officer under the *NSW Food Act 2003* are not limited to the geographic area of the council which appointed the officer. However, there are advantages in specifically authorising officers for a particular council area
- the Authority will consider applications by a council that has the resources and skills and is willing to take on the food regulation role as an enforcement agency:
 - a. in another local government area operating at the Category A level
 - b. under contract to the Authority in another local government area operating at the Category A level
 - c. in the unincorporated area

Category A considerations

Background

The consultation process revealed that greater numbers and higher densities of food businesses in urban areas make providing food regulatory services more viable than in rural areas. Difficulties in attracting qualified staff to the country are another challenge faced by rural councils.

There may be a case for different base/minimum roles for urban and rural local councils. An alternative view is that resource sharing between neighbouring councils and the use of consultants could substantially address the difficulties faced by rural councils.

Ideally all local councils would fulfill whatever base/minimum role is finally determined. To achieve this, in practice, special consideration and support may need to be provided by the Authority to councils in very remote areas.

A fundamental principle of the food regulation partnership is that councils would operate at a level commensurate with their resources, expertise, capacity and for most, a continuation of their existing functions. It would be consistent with councils' roles in other states and territories.

Basic principle

Councils should only be appointed as an enforcement agency with responsibilities for Category A where they demonstrate exceptional circumstances.

Appointments

Appointment as an enforcement agency at the Category A level are at the discretion of the Director-General of the NSW Food Authority.

They may be based on:

- the merit of a written application made by council addressing the 'matters to be considered', mentioned below
- on the advice of the NSW Food Regulation Forum

Councils subsequently appointed as an enforcement agency with responsibilities under Category A must re-apply within one (1) year of an ordinary election of councillors.

A need for Category A

Fundamental principle of the FRP

How will councils be appointed?

What will be considered?

Matters to be considered

The Director-General of the NSW Food Authority may take into account the following matters.

- Council's geographic location
- Council's previous activities:
 - a. council's previous food regulation services in its area including complaint investigations, providing advice, conducting inspections and food handler training
 - b. council's participation in the regional food group network
- The size of the retail food business sector:
 - a. number of food businesses
 - b. type of food businesses – high, medium and low risk
 - c. geographic distribution of food businesses
- Capacity of council's resources and skills:
 - a. council's overall budget and resources
 - b. number of full-time equivalent (FTE) officers currently authorised under the *NSW Food Act 2003*
 - c. number of FTE officers capable of being authorised under the *NSW Food Act 2003*
 - d. number of FTE officers currently engaged in any type of food regulation activity
 - e. officers' skills and experience
- Evidence of attempts at forming a partnership or engaging contractors
 - a. forming food regulation partnerships with adjoining, regional or other councils
 - b. engaging contractors or consultants

indicative fees and charges

This section provides information about fees and charges.

Introduction of fees and charges

When will information relating to the fees and charges be available?

A fees and charges structure is being established to support full cost recovery for appointed enforcement agencies. The detail pertaining to fees and charges will be described in the amendments to the *Food Regulation 2004*. Once this regulation is gazetted and approved, it will be available for council use.

How were the fees and charges determined?

The fees are based on cost-recovery determined by the Authority's own budget, operating on a commercial basis.

Fees are indicative

The fees and charges are indicative only. Consultation with councils in 2004-2005 indicated no adverse reaction to the proposals.

The new Annual Administration Charge

The Annual Administration Charge is raised under the *NSW Food Act 2003*, as amended (s.139B(2B)(d)).

The amended *Food Regulation 2004*, will address the amount of the charge, which food businesses it applies to and how it will be determined. There will be some limitations, probably around maximum charges and exempting charities and food businesses not inspected annually. The indicative Annual Administration Charge is as follows:

Annual Administration Charge – indicative only	
No. of full-time equivalent food handlers at premises	Maximum Annual Administration Charge per premises
5 or less	\$250
6-50	\$500
51 or more	\$2,000

Inspection fees

Councils already have the power to charge fees in relation to inspections of retail and food service sector businesses, under the *Local Government Act 1993*.

The Authority will recommend the maximum fee that can be charged by councils for this activity (s.108(2)(f)). Currently it is \$143.08 per hour with a minimum charge of half an hour (excluding time spent in travelling).

Higher inspection fees can only be charged if council can justify them.

New Improvement
Notice fee

A person, who is given an Improvement Notice by an authorised officer or an enforcement agency, must pay the fee prescribed within 28 days if the notice contains a requirement to do so. Failure to do so is an offence and incurs a further penalty. The fee is raised under the *NSW Food Act 2003* (s.66AA). It is proposed at \$330 and is designed to cover the cost of preparing and serving the Improvement Notice on the proprietor of the food business and the cost of one re-inspection.

Council already has the power to waive or reduce inspection fees under the *Local Government Act 1993*. Council will have the power to increase the recommended maximum inspection fee where it can be justified.

Waiving fees and
charges

Council will have the power to waive or reduce the Annual Administration Charge (s.139(1)(c1)).

Council will have the power to reduce or waive the Improvement Notice fee, or to extend the time for payment (s.66A(2)).

Combining fees
and charges

There will be no restrictions on how councils can combine fees and charges.

support and assistance

What support and assistance will be provided for councils?

The Authority will provide free support, assistance and selected training for councils in food regulation matters, funded separately by the State government.

What assistance is there for perceived conflict of interest?

Perceived conflicts of interest

The Authority will assist councils to manage perceived conflicts of interest concerning food regulation matters where they cannot be managed by council's own processes. Refer to Part Two – 'Draft advisory guidelines'.

What happens if a council is unable to meet its responsibilities?

Resource assistance in unforeseen circumstances

Where unforeseen circumstances limit a council's capacity to meet their obligations for a limited period of time, councils can approach the Authority and seek its agreement on the level of support the Authority will provide. Refer to Part Two – 'Draft advisory guidelines'.

Strong communication channels

Technical advice

The Authority will continue providing technical advice to councils on a 24/7 basis.

What will be on the new FRP website?

Effective communication

Existing communication channels between councils and the Authority will be maintained, ie 'real-time' emails, monthly newsletters, direct access to key Authority contacts, face-to-face regional and state food meetings and the council/EHO contacts database.

New website

A new secure FRP website is expected to be launched early in 2008. It will hold training resources, FRP information, newsletters, contact information, food recalls, Q&A, vacancies, EHO career promotion, food handler training resources, regulations, guidelines, minutes and agendas for regional and state liaison group meetings, links, etc.

Training and networking

Ongoing training and networking

The Authority will continue assisting councils in networking by facilitating the management of the calendar for scheduled meetings such as the Regional Food Groups, State Liaison Group and the Food Regulation Forum.

The Authority will continue providing free selected training at the Regional Food Group meetings and other appropriate events.

Facilitation of networks for 'New EHOs' and 'Trainee EHOs' will continue to be provided by the Authority.

What enforcement support can the Authority provide?

Enforcement support

It's understood there is a range of enforcement matters that are beyond the normal capacity of councils. An independent report is nearing completion, outlining strategies on how the Authority can provide enforcement support for councils (and those matters that should be the domain of the Authority). The report is expected to provide guidance on the extent and range of resource and financial measures the Authority can provide. The plan is to implement an enforcement support program for councils early in 2008.

Financial support for best practice in the food regulation role

Special projects grants program

The program will provide financial support to projects that assist the development and adoption of systems, processes and practices to help EHOs and other staff involved in food regulation, to streamline their work to achieve best practice across the State.

The consultant's report on this program is nearly completed. It is planned to implement this program early in 2008.

Promoting EHO careers

EHO career promotion

EHO careers will continue to be promoted by the Authority through University scholarships, participation in EHO national and state workforce shortage initiatives, the New EHO and Trainee EHO networks, sponsorship, and other identified strategies.

abbreviations, explanatory notes and glossary

Abbreviations

AQIS	Australian Quarantine Inspection Service
DAL	The Institute of Clinical Pathology and Medical Research (ICPMR) Division of Analytical Laboratories, NSW Health
FBI	Foodborne illness investigation
FSANZ	Food Standards Australia New Zealand

Explanatory notes

- Reference to 'council(s)' or 'local government' includes the Director-General of the Department of Environment and Climate Change in respect of Kosciuszko National Park
- Section references in the information pack refer to the *Food Amendment Act 2007*

Glossary

References used in the glossary are:

- *NSW Food Act 2003*
- *Food Amendment Act 2007*
- *Food Regulation 2004*
- FSANZ Food Standards Code

Advisory guidelines

- Guidelines which are advisory in nature

Enforcement agency

- a. The NSW Food Authority
- b. A relevant body appointed as an enforcement agency under Division 2 of Part 9 of the *NSW Food Act 2003*
- c. any person or body, or a person or body within a class of persons or bodies, prescribed by the regulation for the purposes of this definition (other than a relevant body within the meaning of Division 2 of part 9)

Food

1. Includes:

- a.** any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared)
- b.** any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a)
- c.** any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid
- d.** chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum
- e.** any substance or thing declared to be a food under a declaration in force under section 3B of the *Food Standards Australia New Zealand Act 1991* of the Commonwealth, whether or not the substance, thing or chewing gum is in a condition fit for human consumption

2. However, 'food' does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth

3. To avoid doubt, 'food' may include live animals and plants

Food business

A business, enterprise or activity that involves:

- a.** the handling of food intended for sale, or
- b.** the sale of food

regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.

Food Regulation Forum

A committee established by the Minister whose members consist of the Director General, and others as specified in s.115A, and whose functions are specified in s.115B of the *NSW Food Act 2003*.

Function

Includes power, authority or duty.

Mandatory protocols

Protocols established which are compulsory.

Member of staff of the Food Authority

A person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in a Division of the Government Service to enable the Food Authority to exercise its function.

Premises

Includes:

- a.** land (whether or not vacant)
- b.** the whole or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature)
- c.** a pontoon
- d.** a vehicle (other than a food transport vehicle while it is engaged in the transport of food)

Proprietor of a food business

Includes:

- a.** the person carrying on the food business
- b.** if that person cannot be identified the person in charge of the food business

Relevant body

A local council, or the Director-General of the Department of Environment and Climate Change (but only in respect of Kosciuszko National park).

Sell

Includes:

- a.** barter, offer or attempt to sell
- b.** receive for sale
- c.** have in possession for sale
- d.** display for sale
- e.** cause or permit to be sold or offered for sale
- f.** send, forward or deliver for sale
- g.** dispose of by any method for valuable consideration
- h.** dispose of to an agent for sale on consignment
- i.** provide under a contract of service
- j.** supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work
- k.** dispose of by way of raffle, lottery or other game of chance
- l.** offer as a prize or reward
- m.** give away for the purpose of advertisement or in furtherance of trade or business
- n.** supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment
- o.** supply food (whether or not for consideration) in the course of providing services to patients in public hospitals (within the meaning of the *Health Services Act 1997*) or inmates in correctional centres (within the meaning of the *Crimes (Administration of Sentences) Act 1999*)
- p.** sell for the purpose of resale



For further information contact:

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