

## Powers of authorised officers

Under the *Food Act 2003*, the role of the NSW Food Authority is to ensure that food in NSW is safe and correctly labelled.

### Legislation for the Authority's work

Authority officers enforce the *Food Act 2003* and the Food Regulation 2010 relating to the sale and production of food.

The Act and Regulation:

- set out the legal obligations of owners and employees engaged in the food industry,
- set out the Authority's functions and responsibilities,
- describe the legislative objectives and outcomes and set out the maximum penalties for noncompliance, and
- assign various powers to the Authority and its authorised officers to administer and enforce the law.

### The role of an authorised officer

The NSW Food Authority's authorised officers are appointed by the Chief Executive Officer to ensure that all persons working in the food industry meet their obligations under the *Food Act 2003*. This includes the obligation to ensure that their products are properly labelled, safe and suitable for human consumption.

Officers may visit a food business to investigate a particular incident, eg foodborne illness, or as part of a specific program. They may investigate complaints about labelling and food production or conduct an audit or inspection without prior warning.

Officers may also:

- provide information, education and advice on the requirements of food safety law and food standards,
- explain the Authority's role and services,
- provide advice on how to develop and improve systems to comply with food production and labelling requirements,
- monitor compliance with or investigate breaches of legislation, including conducting interviews with management and staff,
- investigate cases of foodborne illness,
- investigate reports of unclean or unhealthy conditions, and
- initiate enforcement action, such as improvement notices, prohibition orders, penalty notices and prosecutions.

The officer may be accompanied by a NSW Police officer or anyone considered necessary. They will talk to a range of people in order to gather information, provide advice or take appropriate action to improve food safety.

**All officers carry a Certificate of Authority with photographic identification to produce upon request.**

### Powers of an authorised officer

A NSW Food Authority authorised officer has the power to:

- enter and investigate any premises or food transport vehicle which they believe is being used in connection with the handling of any food intended for sale,
- request someone's name and residential address, conduct interviews and make inquiries,
- take photographs, films or audio or visual recordings,
- take measurements, and make sketches or drawings or any other type of record,
- gather information, examine and take or copy any records or documents and retain them for any reasonably necessary time,
- examine food intended for sale, labelling or advertising material, including opening packaging,
- open and examine any equipment,
- take samples of any food or thing,
- take samples of water, soil or anything that is part of the environment to determine whether that environment poses a food safety risk,
- open, or ask to be opened, any container used for foods, or any package,
- stop and detain any vehicle used for storage and transport of food,
- undertake investigations and inquiries to ascertain whether an offence has been or is being committed under the Act or Regulation,



- seize food, vehicles, equipment, package or labelling or advertising material that is evidence of an offence under the Act, and
- issue notices:
  - requiring owners and operators to remedy noncompliance with the Act and Regulation,
  - prohibiting food production and sale continuing until the breach is fixed, and
  - for on-the-spot fines for breaches of the legislation.

In carrying out their duties, officers may call on scientific experts, NSW Police or anyone else necessary.

### Payment for samples

When obtaining a sample of food an officer must offer to pay for it. If the market value is over \$10, the amount payable for the sample is limited to \$10.

### Entering property or premises

Officers have wide powers of entry. When officers attend a food business the operator of that business should ensure that all staff are:

- briefed about the rights of officers, and
- aware of their obligation to comply with a requirement of an authorised officer, including the obligation to provide access to any part of the food business.

If, during an investigation, an officer identifies a breach of the Act, that officer will collect evidence of the:

- nature and seriousness of the breach, and
- steps taken by the food business to ensure that they meet their obligations under the Act, including their obligation to ensure that the food they produce or sell is safe to consume, suitable and properly labelled.

Any enforcement action taken by the Authority will be taken in accordance with its *Compliance and Enforcement Policy*.

### Offences against authorised officers

It is an offence for a person, without a reasonable excuse, to:

- fail to comply with a requirement of an authorised officer
- resist, obstruct, or attempt to obstruct, impersonate, threaten, intimidate or assault an authorised officer in the course of his or her duties
- without the permission of an authorised officer, detain, remove or tamper with any food, vehicle, equipment, package or labelling or advertising material or other thing that has been seized
- provide any information or produce any document that the person knows is false or misleading

### Penalties for offences against officers

Offences against officers undertaking their duties under the *Food Act 2003* can incur a maximum penalty of 500 penalty units (\$55,000).

### Qualifications of Authority's authorised officers

Many Authority officers hold tertiary qualifications in health and food safety related disciplines. To qualify as an authorised officer they must undergo an intensive training program. Officers regularly attend specialist courses and briefings to make sure their skills and knowledge are at the forefront of food industry best practice.

Officers are based in one metropolitan and several regional offices throughout NSW.

### Complaints about authorised officers

Complaints about an authorised officer can be sent to:

Executive Director Compliance, Investigation & Enforcement  
 NSW Food Authority  
 PO Box 6682  
 Silverwater NSW 1811  
 1300 552 406

### About the NSW Food Authority

The NSW Food Authority is the government organisation that helps ensure NSW food is safe and correctly labelled.

It works with consumers, industry and other government organisations to minimise food poisoning by providing information about and regulating the safe production, storage, transport, promotion and preparation of food.

### More information

- visit the NSW Food Authority's website at [www.foodauthority.nsw.gov.au/industry](http://www.foodauthority.nsw.gov.au/industry)
- phone the helpline on 1300 552 406

### Other resources

- The Food Standards Code, *Food Act 2003* and Food Regulation 2010 can be found at: [www.foodauthority.nsw.gov.au/industry/food-standards-and-requirements/legislation/](http://www.foodauthority.nsw.gov.au/industry/food-standards-and-requirements/legislation/)
- The NSW Food Authority *Compliance and Enforcement Policy* can be found at [www.foodauthority.nsw.gov.au/industry/audits-inspections-compliance/compliance/](http://www.foodauthority.nsw.gov.au/industry/audits-inspections-compliance/compliance/)

### Note

This information is a general summary and cannot cover all situations. Food businesses are required to comply with all of the provisions of the Food Standards Code and the *Food Act 2003* (NSW).



# Food safety compliance - SHFT

## About the NSW Food Authority

The NSW Food Authority (the Authority) is the state government organisation that helps ensure NSW food is safe and correctly labelled.

It works with consumers, industry and other government organisations to minimise food poisoning by providing information about regulating the safe production, storage, transport, promotion and preparation of food.

## Role of the Food Regulation Partnership

The Food Regulation Partnership (FRP) became effective on 1 July 2008 when The Authority appointed local councils as enforcement agencies under the NSW *Food Act 2003*.

This means that councils now have a mandated role and are responsible for regulating the food retail and food service sector in their local government area. This includes inspections and complaint investigation of retail food businesses in their area.

However in the Sydney Harbour Federation Trust area the retail sector is regulated by the Authority.

## What are the FRP's objectives?

- Safer food for consumers - reduce the impact of foodborne illness caused by the retail food sector
- Strengthen the food safety response capacity in NSW
- Better use of local and state government resources, including avoiding duplication of food regulation services

## Definition of a food business

A food business is any business, enterprise or activity that involves the handling of food intended for sale, or the sale of food.

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

## Legal responsibilities of a food business proprietor

All food businesses in NSW must comply with the *Food Act 2003*, Food Regulation 2004 and the Food Standards Code (the Code). Although the Code is a national code it is enforced at a state and local level. In NSW this role falls on the NSW Food Authority and local councils.

Copies of the *2003 Food Act* and Food Regulation 2004 are available at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au). Copies of the Food Standards Code can be downloaded free of charge at [www.foodstandards.gov.au](http://www.foodstandards.gov.au)

## Inspections

### Authorised officers

The *Food Act 2003* allows an enforcement agency to appoint authorised officers; they have the power to inspect food businesses for compliance with the legislation (refer to factsheet *Powers of authorised officers*).

### Inspection frequency

Inspection frequency is based on a number of factors such as the type of food being handled and sold (eg pre-packaged vs. freshly made) and previous compliance history of the business.

For most medium to high risk food businesses, such as cafes a, restaurants and takeaway shops, the inspection frequency is twice per year.

If serious food safety issues are identified during an inspection the inspection frequency will increase.

### What happens during an inspection?

Whilst carrying out inspections, authorised officers focus on a number of areas to ensure compliance with the food legislation. In particular officers will examine whether there is compliance to Food Safety Standards (Chapter 3 of the Food Standards Code, standard 3.2.2 and 3.2.3).



These include critical areas such as:

- cleaning and sanitising of food contact surfaces
- temperature control (eg temperature of stored and displayed foods)
- hygiene of food handlers (eg hand washing)
- pest control
- construction and maintenance of the premises
- food handling practices (eg minimising cross contamination)
- sale of unsafe or unsuitable food

### What happens if non-conformances are identified?

If an authorised officer identifies something that needs to be rectified, they may use a variety of tools to help achieve compliance. These tools include:

- Reinspection
- Warning letter
- Improvement notice
- Prohibition order
- Seizure notice
- Penalty notice
- Prosecution

The compliance action an authorised officer takes is based on a number of factors including the risk to food safety and the compliance history of the business. If previous requests have been made to resolve an issue the officer may escalate to a higher level of compliance action.

For information on the circumstances in which compliance action may be initiated refer to the *NSW Food Authority Compliance and Enforcement Policy* can be viewed at:  
[http://www.foodauthority.nsw.gov.au/Documents/industry\\_pdf/compliance-enforcement-policy.pdf](http://www.foodauthority.nsw.gov.au/Documents/industry_pdf/compliance-enforcement-policy.pdf)

## Fees and charges

### Notification of food handling operations

Food businesses have an obligation to notify the Authority of their activities. There is no charge if this is done directly through the Authority's website at:  
<http://www.foodauthority.nsw.gov.au/industry/food%2Dstandards%2Dand%2Drequirements/business%2Dnotification/>

However written notifications attract a processing fee of \$50 (or \$10 per premises if the notification relates to 5 or more premises) as specified in the Food Regulation 2004 (cl.18).

### Inspection fees

Enforcement agencies have the power to recover the costs of providing their food regulation function. The Authority's inspection fee is outlined in the Food Regulation 2010 (cl.11) at [http://www.austlii.edu.au/au/legis/nsw/consol\\_reg/fr2010148/s11.html](http://www.austlii.edu.au/au/legis/nsw/consol_reg/fr2010148/s11.html).

Note that this may increase annually in accordance with the annual percentage increase (if any) in the Consumer Price Index.

The current inspection fee as at August 2012 is \$266 per hour plus GST, with a minimum charge of half an hour.

### Improvement Notice fee

A person/business, which 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 *Food Act 2003* (s.66AA) and the amount is specified at \$330 in the Food Regulation 2010 (cl.6). This fee 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 reinspection.

Enforcement agencies have the power to reduce or waive the Improvement Notice fee, or to extend the time for payment.

## Enquiries / More information

If you have any enquiries please contact the NSW Food Authority's Local Government Unit via the Helpline on 1300 552 406 or [contact@foodauthority.nsw.gov.au](mailto:contact@foodauthority.nsw.gov.au).

The officer can assist you with any questions you have about inspection findings or compliance action. Talking with them can assist in clarifying what work need to be undertaken and the required time frame for completion of the work.

Visit the NSW Food Authority's website at [www.foodauthority.nsw.gov.au](http://www.foodauthority.nsw.gov.au)



**Food Premises Assessment Report**

FPAV v.2, 04/11



Trading name		Email	
Person interviewed		Date/time	
Proprietor/company		Phone	
Address		Ref no.	
		Inspection type	
Food Safety Supervisor		Cert no.	

**General Requirements**

- Food business has notified details to NSW Food Authority [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)
- Food Safety Supervisor is notified and FSS certificate is on the premises
- Food handlers have skills and knowledge to handle food safely
- No sale of food that is damaged, deteriorated or perished; no use of cracked or dirty eggs or food past use by date

**Food Handling Controls FSS 3.2.2 cl 5-12**

- Food is protected from the possibility of contamination; *food receipt, storage, display and transport*
- Names and addresses are available for manufacturer, supplier or importer of food
- Potentially hazardous food (PHF) is under temperature control: *food receipt, storage, display and transport; less than 5 degrees, above 60 degrees Celsius. Frozen foods are hard frozen*
- Processing of foods; *items thawed correctly; processed quickly; no contamination risk.*
- Cooked PHF is cooled rapidly
- Reheating of PHF is rapid - oven, stove top or microwave but not bain marie
- Self serve food bar is supervised, has separate utensils and sneeze guard
- Food wraps and containers will not cause contamination
- Food for disposal is identified and separated from normal stock

**Health and Hygiene FSS 3.2.2 cl 13-18**

- Food handlers wash and dry hands thoroughly using hand wash facilities
- Food handlers avoid unnecessary contact with ready to eat food or food contact surfaces by use of utensils, a gloved hand, food wraps etc
- Food handlers do not spit or smoke in food handling areas or eat over exposed food or food contact surfaces
- Food handlers have clean clothing, waterproof covering on bandages
- Food handlers wash hands before *commencing/recommencing* work and after: *using the toilet, coughing, sneezing, smoking, handling raw meat, cleaning etc*
- Food handlers do not handle food if ill (eg vomiting, gastro)
- Hand washing facilities easily accessible and used only for washing of hands, arms and face
- Hand washing facilities (including those at toilets) have warm running water through single spout, single use towels (or air dryer) and soap

**Cleaning and Sanitising FSS 3.2.2 cl 19-20**

- Premises, fixtures, fittings and equipment maintained to an appropriate standard of cleanliness
- Food contact surfaces, eating and drinking utensils in a clean and sanitary condition/appropriate sanitising method in use (eg chemicals or dishwasher)

**Miscellaneous FSS 3.2.2 cl 22-23**

- Accurate temperature measuring device readily accessible (eg digital probe thermometer) Accurate to +/- 1 degree Celcius
- Single use items protected from contamination and not reused (eg drinking straws, disposable utensils)

**Animal and Pests FSS 3.2.2 cl24**

- Live animals not permitted in areas in which food is handled
- Practical pest exclusion measures used (eg screens, doorseals)
- Practical measures to eradicate and prevent habourage of pests used (eg housekeeping, stock rotation, pest controller)
- No signs of insect infestation or rodent activity in premises

**Design and Construction FSS 3.2.3**

- General design and construction of premises appropriate
- Adequate supply of potable water available
- Premises has adequate sewerage and waste water disposal system
- Premises has adequate storage facilities for garbage and recyclable matter
- Premises has sufficient lighting
- Floors are able to be effectively cleaned
- Walls and ceilings are sealed and able to be effectively cleaned
- Fixtures, fittings and equipment are able to be effectively cleaned and, if necessary, sanitised
- Adequate ventilation provided within the premises
- Premises has adequate storage facilities (eg chemicals)

**Maintenance FSS 3.2.2 cl 21**

- Premises, fixtures, fittings and equipment in a good state of repair and working order
- No chipped, broken or cracked eating or drinking utensils observed

**Labelling FSC Chapter 1**

- Food labelling complies with the Food Standards Code

**Additional notes**

Indicate compliance using , non compliance , or not observed

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Indicate compliance using , non compliance , or not observed

**Shaded checklist items have potential to impact directly on food safety and should be addressed as a priority**

Further action required? YES/NO \_\_\_\_\_

**I have read this report and understand the contents.**

Owner/Employee signature: \_\_\_\_\_

Officer's name: \_\_\_\_\_

Council: \_\_\_\_\_

Officer's signature: \_\_\_\_\_ Phone: \_\_\_\_\_

NB: Assessment report contains findings from date/time of inspection only



Food Premises Assessment Report  
Explanatory Notes and Definitions  
(Food Standards Code Ch3 standards 3.2.2 and 3.2.3)

This assessment report is based on guidance in the Safe Food Australia (2001) publication: A Guide to the Food Safety Standards. The Guide should be consulted if assistance with interpretation of the food safety standards is required. The assessment is set up as a checklist. In some cases an item will be supported with a list in italics of areas where compliance is required. It might not be possible to observe all the areas in a single inspection. Despite the presence of a list each item is a single issue of compliance. The assessment focuses on the foodborne illness risk factors identified by the US Centres for Disease Control. The key targets for inspection are: inadequate cooling & cold holding temperatures; food prepared ahead of planned service; inadequate hot holding temperatures; poor personal hygiene & infected food handlers; inadequate reheating and inadequate cleaning of equipment.

### **Food Handling Controls**

5. Protection from the possibility of contamination includes appropriately covering food so that it is protected from potential contamination sources and includes keeping ready to eat foods separated from raw foods.
7. 'Potentially hazardous food' is food that has to be kept at certain temperatures to minimise the growth of any pathogenic microorganisms that may be present in the food or to prevent the formation of toxins in the food. Examples of potentially hazardous food include meat, seafood, dairy and foods such as salads and some cut fruits.
7. Temperature control means maintaining potentially hazardous food at a temperature of:
- (a) 5°C or below or
  - (b) 60°C or above or
  - (c) another temperature if the food business demonstrates that maintenance of the food at this temperature for the period of time for which it will be maintained, will not adversely affect the microbiological safety of the food.
9. A food business must when cooling cooked potentially hazardous food, cool the food:
- (a) within two hours – from 60°C to 21°C; and
  - (b) within a further four hours – from 21°C to 5°C
10. A food business must when reheating previously cooked and cooled potentially hazardous food to hold it hot, use a process that rapidly heats the food to a temperature of 60°C or above, eg heating in an oven, microwave or on a stove top.
11. A food business must, when displaying unpackaged ready to eat food for self service:
- (a) ensure the display of food is effectively supervised so that any food that is contaminated by a customer or is likely to have been contaminated is removed from display without delay;
  - (b) provide separate serving utensils for each food or other dispensing methods that minimise the likelihood of the food being contaminated; and
  - (c) provide protective barriers that minimise the likelihood of contamination by customers.

### **Health and Hygiene Requirements**

14. Thorough hand washing includes using the designated hand washing facility to wash hands, fingers and wrists using warm water and soap for a recommended 15 seconds, thorough rinsing of hands under warm water and drying thoroughly on single use towel or air dryer.
18. A food handler must wash his or her hands whenever their hands are likely to be a source of contamination of food. This includes:
- before working with ready to eat food after handling raw food
  - immediately after using the toilet
  - before commencing or recommencing handling food
  - immediately after smoking, coughing, sneezing, using a handkerchief or tissue, eating, drinking or using tobacco, and
  - after touching his or her hair, scalp or a body opening.
19. A food business must ensure the following persons do not engage in the handling of food for the food business where there is a reasonable likelihood of food contamination:
- (a) a person known to be suffering from a foodborne disease, or who is a carrier of a foodborne disease; and
  - (b) a person known or reasonably suspected to have a symptom that may indicate he or she is suffering from a foodborne disease.

### **Cleaning and Sanitising**

22. Food premises and fixtures, fittings and equipment must be maintained to a standard of cleanliness where there is no accumulation of:
- (a) garbage, except in garbage containers; (b) recycled matter, except in containers; (c) food waste; (d) dirt; (e) grease; or
  - (f) other visible matter
23. Clean and Sanitary condition means a surface or utensil is;
- (a) clean; and (b) has had applied to it heat and/or chemicals or other process so that the number of microorganisms has been reduced to a safe level.

### **Design and Construction**

30. General requirements for design and construction of food premises must;
- (a) be appropriate for the activities for which the premises are used; (b) provide adequate space; (c) permit effective cleaning and, if necessary, sanitising and (d) to the extent that is practicable exclude dirt, dust, fumes, smoke, not permit the entry or harbourage of pests.
31. Adequate supply of potable water means water that is acceptable for human consumption and available at an adequate volume, pressure and temperature for hand washing, cleaning and food processing requirements.
33. Adequate storage facilities for garbage and recyclable matter means facilities that will contain the volume and types of garbage and recyclable material produced by the food business and not provide a breeding ground for pests and be capable of being easily and effectively cleaned.
34. Lighting must be sufficient to enable food handlers to readily see whether areas or equipment are clean, to detect signs of pests and to clearly see food and equipment they are handling.
38. Adequate ventilation (natural or mechanical) must be provided to remove fumes, smoke, steam and vapours from the food premises.