



FOOD UNIT NOTICE

**SUBJECT: Application of the Food Safety Standards -
*transitional advice for Local Government***

Notice Number: 08.03

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Distribution of Notice: Local Government

Purpose

To provide clarification on the application and enforcement of Chapter 3, the Food Safety Standards (FSS), of the *Australia New Zealand Food Standards Code* (the Code) for the period until the proclamation of the *Food Act 2008* is complete.

Background

The FSS are mandatory standards that set out the minimum requirements for food businesses operating within Australia.

In 2001, Western Australia adopted the Code in full through the *Health (ANZ) Food Standards Code Adoption) Regulations 2001* (the regulations). Regulation 4 of the regulations specifically state that:

'The Australia New Zealand Food Standards Code, as in force from time to time and as amended by Part 3, is adopted and forms part of these regulations.'

Explanation of Current Status

It is evident a perception may exist that food businesses within Western Australia are not currently required to comply with the FSS. This is incorrect. Regulation 6 of the regulations states Chapter 3 of the Code must be read in conjunction with the *Health (Food Hygiene) Regulations 1993* and that in the instance of any inconsistency between the two, the regulations prevail to the extent of the inconsistency. This does not translate however, to any matter within Chapter 3 of the Code not being an enforceable requirement.

Provision for ensuring compliance with the Code within WA is presented in regulation 7 of the regulations; which provides the relevant enforcement authority the power to issue a compliance notice on a person contravening the Code *'to do anything necessary to rectify the situation'*. It is an offence for a person to contravene any notice issued and a penalty is specified for such an offence. Attachment 1 contains a flowchart that provides guidance to the application of this regulation.

This scenario will apply until the *Food Act 2008*, which brings Western Australia food legislation in line with the national Model Food Provisions, is proclaimed in full and the *Health (Food Hygiene) Regulations 1993* are repealed.



It is important the ability to enforce the FSS is understood as an enforcement agencies will need to ensure that recent amendments to the FSS are being complied with by relevant food businesses within their jurisdictions. For example, from the 5th October 2008 the requirements contained within Standard 3.3.1 – *Food Safety Programs for Food Service to Vulnerable Persons* will be mandatory for certain food businesses. A position on the application of Standard 3.3.1 is presently being finalised and once complete will be communicated directly to all affected stakeholders.

Note: The information contained in this document covers the food legislation requirements for Western Australia. It is current on the date of publication but may change without notice. The Department of Health is not liable for any costs arising from or associated with decisions based on information here and users should obtain expert advice to satisfy all requirements of the relevant food legislation applicable.

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Attachment 1: Flowchart for the Application of the FSS of the Code

