



Food Unit Communiqué

SUBJECT: FOOD ACT 2008 AND PARENTS & CITIZENS' ASSOCIATIONS

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Introduction

The Western Australian *Food Act 2008* (the Act) was proclaimed on 23 October 2009 (except part 8 which relates to auditing). The Act aligns Western Australia's food regulatory system with the rest of the nation.

The objectives of the Act include the following:

- (a) to ensure food for sale is both safe and suitable for human consumption,
- (b) to prevent misleading conduct in connection with the sale of food and;
- (c) to provide for the application of the *Australia New Zealand Food Standards Code* (the Code)

Previously, these objectives were addressed under parts of the *Health Act 1911*, the *Health (Food Hygiene) Regulations 1993* and the *Health (ANZ Food Standards Code Adoption) Regulations 2001*. If you fully complied with the previous legislation, you will comply with the Act, however, you need to be aware of significant changes that have been made to the structure, enforcement and application of food legislation.

Food Safety Standards

The *Food Safety Standards* (the Standards) replace the requirements of the *Health (Food Hygiene) Regulations 1993*. These Standards form part of the Code and apply throughout Australia. The Standards are outcomes based and not prescriptive like the *Health (Food Hygiene) Regulations 1993*. The outcomes for these requirements are described in Standards 3.2.2 and 3.2.3. This means that as a food business, you will be able to explore different ways to comply with the legislation, as long as you can demonstrate to an Authorised Officer how you meet the Standards.

Food Safety Programs are legally required for specific high-risk food businesses such as hospitals, child care centres, nursing homes and specific high risk food processes. Although not a legal requirement for all food businesses, they are an effective tool for all food businesses and can be used to demonstrate compliance with the standards and provide evidence to prove that your business is taking all reasonable measures to ensure the food you produce is safe.

Notification and Registration Requirements

All food businesses must notify the Local Government in writing of their intent to operate as a food business. A Notification Form will be sent out that will detail the information that is





required. The information relates to contact details and details about the type of food handling your business undertakes. It is an offence under the Act not to provide this information. The Local Government will then decide whether the food business will need to be registered. Food businesses exempted from registration are mandated in the new *Food Regulations 2009* (the Regulations).

Enforcement

Authorised Officers have a number of enforcement options available to them. Depending on the severity of the non-conformance with the legislation, officers may issue or undertake any of the following:

- an Improvement Notice may be served to the proprietor of a food businesses for not complying with the legislation and require certain measures to be taken within a certain time frame for example, to clean and sanitise a piece of equipment within 48 hours;
- a Prohibition Order requires that no food be handled in the circumstances defined in the order until a clearance order has been issued. A Prohibition Order may be issued if an Improvement Notice has not been complied with within the specified time or if the initial non-conformance is severe enough to cause a danger to public health. It is an offence not to comply with a Prohibition Order;
- an Infringement Notice (a fine) will be issued if a Prohibition Order is not complied with. Infringement Notices may also be issued for any of the prescribed offences listed in the new Food Regulations, and a list of the associated penalties are also contained in the Regulations; and
- legal action through the courts is reserved for the more serious breaches of the requirements of the Act, the Regulations or the Standards.

Charity and Community Events

Charity and Community Events will be exempt from some of the requirements under the new legislation provided that all the money raised is for a community or charitable cause and the foods produced are not potentially hazardous (i.e. low risk cakes and slices) or are cooked thoroughly for immediate consumption (i.e. sausage sizzles). These exemptions are:

- (a) the fees associated with Notification (not assessment / surveillance fees)
- (b) Skills and Knowledge Requirements of food handlers in the Standards
- (c) labelling requirements - however information relating to food allergens must be provided to potential customers and the easiest way to provide this is on a label. If the product contains royal jelly this must be provided on a label.

Volunteers who donate food such as cakes and slices for fundraisers are only permitted to make these foods from home as long as the food they are producing is not potentially hazardous. If you are unsure about whether a food product is potentially hazardous please contact your Local Government for information.

Examples of food products deemed potentially hazardous include but are not restricted to cream cakes, fried rice, soups and casseroles.





Volunteers are required to meet the health and hygiene requirements for food handlers such as taking all practicable measures to ensure that they do not contaminate food when producing food.

Example 1: A local P&C wishes to have a casserole night to raise money for new equipment. Volunteers have to produce the food in a registered Food Business (NOT at home) and must also have the appropriate skills and knowledge (e.g. knowing that food needs to be stored at below 5°C or above 60°C).

Example 2: A Grade 5 class wishes to hold a cake stall to raise money for a camp and the cakes and slices to be sold are all low risk (i.e. do not contain fresh cream or custard). Volunteers are permitted to produce these foods at home and are exempt from skills and knowledge requirements. The volunteers manning the stall must be aware if any of the products they are selling contain any allergens.

Further Information

Food Act 2008 and the *Food Regulations 2009* are available at: www.slp.wa.gov.au (Click on WA Legislation and Legislative Information Databases).

Food Safety Standards are available at: www.foodstandards.gov.au (Use the Quick Links drop down menu for Food Safety Standards, Fact Sheets, Safe Food Australia and Industry User Guides)

Department of Health www.public.health.wa.gov.au (Click on Food)

Local Government Websites www.walqa.asn.au/about_lg/council_websites

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Any feedback / concerns, please utilise the "Food Unit Query" form which can be downloaded from our website:

http://www.public.health.wa.gov.au/2/786/3/food_informatio.pm

