



New South Wales

Food Amendment (Vulnerable Persons Food Safety Scheme) Regulation 2008

under the

Food Act 2003

Her Excellency the Governor, with the advice of the Executive Council, and the approval of the Premier, has made the following Regulation under the *Food Act 2003*.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

Explanatory note

The object of this Regulation is to amend the *Food Regulation 2004* to prescribe a food safety scheme under the *Food Act 2003* in relation to the preparation and provision of food to certain classes of vulnerable persons, including persons in certain hospitals, nursing homes and hospices.

The provisions of Standard 3.3.1 of the *Australia New Zealand Food Standards Code* of the Commonwealth relating to food service to vulnerable persons come into effect on 5 October 2008. This Regulation modifies that Standard, for the purposes of its application in New South Wales, so that it does not apply to child care centres and it provides lead-in times for implementation of food programs for the food businesses to which it does apply.

This Regulation also requires food businesses to which the Standard applies to be licensed under the *Food Regulation 2004* and contains other requirements relating to the analysis of certain food handled in the course of those businesses and the auditing of those businesses.

This Regulation is made under the *Food Act 2003*, including sections 102, 139 (the general regulation-making power) and 141.

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Clause 1 Food Amendment (Vulnerable Persons Food Safety Scheme) Regulation
2008

Food Amendment (Vulnerable Persons Food Safety Scheme) Regulation 2008

under the

Food Act 2003

1 Name of Regulation

This Regulation is the *Food Amendment (Vulnerable Persons Food Safety Scheme) Regulation 2008*.

2 Commencement

This Regulation commences on 18 August 2008.

3 Amendment of Food Regulation 2004

The *Food Regulation 2004* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 4 Modification of Food Standards Code

Insert after clause 4 (2):

- (3) Standard 3.3.1 of the Food Standards Code is modified by:
 - (a) inserting after clause 3 (2):
 - (3) Despite subclause (1), clause 3 of Standard 3.2.1 is to be read as not requiring a person who is carrying on a food business to which this Standard applies at 5 October 2008 to implement or comply with a food safety program until:
 - (a) in the case of a food business that is a same-day aged care establishment (as defined in the Schedule)—1 September 2009 or such later date as is notified in writing to the person by the NSW Food Authority, or
 - (b) in any other case—1 March 2009 or such later date as is notified in writing to the person by the NSW Food Authority.
 - (b) omitting the matter relating to child care centres in the Schedule to that Standard.

[2] Clause 6 Definitions

Insert at the end of paragraph (d) of the definition of *food business*:

, or

- (e) a vulnerable persons food business within the meaning of Part 8.

[3] Clause 18 Content of food safety program

Insert “for a food business referred to in paragraph (a), (b), (c) or (d) of the definition of *food business* in clause 6” after “A food safety program”.

[4] Clause 18

Insert at the end of clause 18:

Note. A vulnerable persons food business within the meaning of Part 8 is required by Standard 3.3.1 of the Food Standards Code to comply with Standard 3.2.1 of that Code which contains requirements for the development and implementation of food safety programs.

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Schedule 1 Amendments

[5] **Clause 19 Certification of food safety program**

Omit clause 19 (1). Insert instead:

- (1) The Food Authority must certify a food safety program for a food business to which a licence or proposed licence relates if the Food Authority is satisfied that:
 - (a) in the case of a food business referred to in paragraph (a), (b), (c) or (d) of the definition of *food business* in clause 6, the food safety program complies with clause 18, or
 - (b) in the case of a vulnerable persons food business, the food safety program complies with Standard 3.2.1 of the Food Standards Code.

[6] **Clause 21 Calculation and notification of licence fees**

Omit clause 21 (1). Insert instead:

- (1) A licence fee for a licence that authorises the carrying on of:
 - (a) a dairy business (within the meaning of Part 4) is to be calculated in accordance with clause 58, or
 - (b) a meat business (within the meaning of Part 5) is to be calculated in accordance with clause 132, or
 - (c) a plant products business (within the meaning of Part 6) is to be the fee determined from time to time by the Food Authority, or
 - (d) a seafood business (within the meaning of Part 7) is to be calculated in accordance with clause 161 and, where applicable, clause 162, or
 - (e) a vulnerable persons food business (within the meaning of Part 8) is to be the fee determined from time to time by the Food Authority.

[7] **Clause 22 Review of decisions**

Insert “or to be held” after “held” in clause 22 (e).

[8] **Clause 131 Audits**

Insert “that authorises the carrying on of a meat business” after “licence” in clause 131 (1).

[9] **Part 8**

Insert after clause 169:

Part 8 Vulnerable persons food safety scheme

Division 1 Preliminary

170 Definitions

In this Part:

licence means a licence granted under Part 3 that authorises the carrying on of a vulnerable persons food business.

vulnerable persons food business is defined in clause 172.

Vulnerable Persons Food Safety Scheme Manual means the document of that name published by the Food Authority, as in force from time to time.

171 Vulnerable persons food safety scheme

The provisions of Part 3 and this Part are prescribed as a food safety scheme under Part 8 of the Act.

172 Meaning of “vulnerable persons food business”

In this Part, *vulnerable persons food business* means a food business to which Standard 3.3.1 of the Food Standards Code will apply when inserted into that Code (as modified by this Regulation).

Note. See clause 4 which contains modifications relating to Standard 3.3.1 of the Food Standards Code.

Division 2 Sampling and analyses

173 Vulnerable persons food business to undertake analyses of food

- (1) The holder of a licence must, at the holder’s own expense, ensure that samples of food handled in the course of the vulnerable persons food business authorised by the licence are analysed:
 - (a) except as provided by paragraph (b), in accordance with the requirements of the Vulnerable Persons Food Safety Scheme Manual, or
 - (b) in accordance with the terms of a notice served on the holder of the licence under subclause (2).

Maximum penalty: 25 penalty units.

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Schedule 1 Amendments

- (2) The Food Authority may, by notice in writing served on the holder of a licence, specify the frequency at which analyses are to be carried out for the purposes of this clause and the manner in which they are to be carried out.

174 Reports of analyses

- (1) The holder of a licence must ensure that every analysis carried out for the purposes of clause 173 is carried out in a laboratory approved by the Food Authority for the particular type of analysis to be undertaken.

Maximum penalty: 25 penalty units.

- (2) The holder of a licence must, in accordance with subclause (3), notify the Food Authority of the results of any analysis carried out by or on behalf of the holder of the licence for the purposes of clause 173 if the results of the analysis indicate that:

- (a) the sample analysed failed to meet any applicable requirements of the Food Standards Code, or
- (b) the sample analysed failed to meet any applicable requirements of the Vulnerable Persons Food Safety Scheme Manual.

Maximum penalty: 25 penalty units.

- (3) A notification under subclause (2) must:
 - (a) be made orally as soon as possible after the holder becomes aware of the results of the analysis, and
 - (b) be made in writing within 7 days after the holder becomes aware of the results of the analysis.

Division 3 Miscellaneous

175 New South Wales Vulnerable Persons Food Safety Scheme Consultative Committee

- (1) The Food Authority is to establish a body to be known as the New South Wales Vulnerable Persons Food Safety Scheme Consultative Committee (*the Consultative Committee*) for the purposes of the consultation referred to in section 105 of the Act in relation to the food safety scheme prescribed under this Part.
- (2) The Consultative Committee is to be comprised principally of persons nominated by the relevant industry, and endorsed by the Food Authority, to represent the main sectors of the industry.

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- (3) The Consultative Committee may also comprise such officers of the Food Authority and the Department of Health, and representatives of other bodies or industry organisations and of consumers, as the Food Authority allows.
 - (4) The Consultative Committee may establish subcommittees to assist it in the exercise of its functions.
 - (5) The Food Authority is to appoint a Chairperson and Secretary of the Consultative Committee.
 - (6) The procedure for the calling and holding of meetings of the Consultative Committee is to be as determined by the Food Authority in consultation with the relevant industry.

176 Inspections and audits in relation to vulnerable persons food businesses

- (1) The Food Authority may arrange for an authorised officer to carry out any or all of the following types of inspection or audit before or after granting a licence in respect of a vulnerable persons food business:
 - (a) an inspection of the premises and equipment involved in the food business, and the activities carried on in the course of the food business,
 - (b) an audit of the food safety program, or proposed food safety program, for the food business.
- (2) This clause is not intended to limit any powers of an authorised officer to carry out an inspection under Part 4 or 5 of the Act.

[10] Existing Parts 8 and 9

Renumber existing Parts 8 and 9 as Parts 9 and 10, respectively, and clauses 170–176 as clauses 177–186.

[11] Clause 184 Offences (as renumbered)

Omit “Parts 3–7” from clause 184 (1). Insert instead “Parts 3–8”.

[12] Schedule 1 Penalty notices

Omit “(Clause 175)”. Insert instead “(Clause 185)”.

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Schedule 1 Amendments

[13] Schedule 1

Insert at the end of the Table to Part 2:

Clause 173 (1)	5
Clause 174 (1)	5
Clause 174 (2)	5

[14] Schedule 15 Savings and transitional provisions

Omit “(Clause 177)”. Insert instead “(Clause 186)”.

[15] Schedule 15

Insert before clause 1:

Division 1 Provisions consequent on enactment of Food Amendment (Food Safety Schemes) Regulation 2005

[16] Schedule 15, Division 2

Insert after clause 7 of Schedule 15:

Division 2 Provisions consequent on enactment of Food Amendment (Vulnerable Persons Food Safety Scheme) Regulation 2008

8 Licensing of existing vulnerable persons food businesses

If a person who is carrying on a vulnerable persons food business (within the meaning of Part 8) on 18 August 2008 makes an application to the Food Authority:

- (a) in accordance with this Regulation, and
- (b) before 18 October 2008,

for a licence to carry on the business, the person is taken to be the holder of a licence authorising the carrying on of the business until the Food Authority determines the application.

9 Development of food safety programs for existing vulnerable persons food businesses

Despite clause 10 (2), the Food Authority may grant a licence to an applicant who is carrying on a vulnerable persons food business (within the meaning of Part 8) on 18 August 2008, being a business for which the Food Authority considers there should

be a food safety program, even though the applicant has not prepared a proposed food safety program.