



# INFORMATION FOR FOOD BUSINESSES

## *REQUIREMENTS OF FOOD ACT 2008*

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# Western Australia's Food Legislation

## General Overview

New food legislation introduced in October 2009 in Western Australia aims to ensure consumers are provided with safe food whilst allowing for a flexible approach for food business to meet food safety requirements. The key tenets of the new approach to food regulation include:

- *The inclusion of new food business types, and*
- *Decision making and application of fees and charges by the Shire being made on the basis of risk.*

The new *Food Act 2008* is similar to recently revised food legislation in other States of Australia. The *Australia New Zealand Food Standards Code* introduces new Food Safety Standards nationally. The new legislation requires all food businesses to handle food and maintain the food premises in accordance with the Food Safety Standards contained in the *Australia New Zealand Food Standards Code*; and all food businesses in order to sell food are required to be either listed on the Shire's "notification register" or have a current "food registration certificate". All food businesses should make themselves familiar with the content of Standard 3.

A number of food businesses types which weren't previously required to be registered are now captured in the new legislation and are required to be registered with the Shire under the Act. Exempted food businesses, although not required to be licensed are required to be on the Shires "notification register". Fees may not necessarily be applicable for exempted food businesses but safe handling of food and training of food handlers is now the responsibility of any person who handles food for sale.

All food handling activities that involve food for sale require risk profiling as an integral part of this process. Risk profile, historical performance and risk reduction programs (such as Food Safety Programs) will determine assessment frequency and sampling priority.

## Legislation

Food legislation in WA includes:

- *Food Act 2008 ("the Act")*
- *Food Regulations 2009*
- *Australia New Zealand Food Standards Code ("the Code")*, which includes the following Food Safety Standards:
  - Standard 3.1.1 Interpretation and Application
  - Standard 3.2.2 Food Safety Practices and General Requirements
  - Standard 3.2.3 Food Premises and Equipment.

The following documents may also provide guidance in the interpretation of the legislation:

- Safe Food Australia, A Guide to the Food Safety Standards (interpretation of the Food Safety Standards)
- Australian Standard 4674 (AS 4674-2004) – Design, construction and fit-out of food premises.

### ***Who enforces food legislation?***

- Local Government and the WA Department of Health both have Environmental Health Officers, as appointed authorised officers, who have responsibilities under the *Food Act 2008* for the administration, monitoring and enforcement of food safety legislation.
- The Shire of Wandering is responsible for
  - food businesses,
  - animal food processing premises, and
  - retail pet meat shops located in the Shire.
- The WA Department of Health is responsible for
  - Public hospital food business
  - Dairy primary production business
  - Dairy processing business
  - Dairy transport business
  - Primary production & manufacturing of seafood which includes bivalve molluscs.
- WA Department of Health is responsible for ensuring compliance with the labelling and composition requirements under the Food Standards Code and for co-ordinating investigation of food-borne illness outbreaks.

### ***What are the powers of authorised persons?***

WA Department of Health and Local Government authorised persons have the power to:

- enter a food business for an inspection
- search any part of a food business
- inspect, measure, test, photograph or film any part of the place
- take samples
- copy a document
- bring any equipment and materials that are required with them
- require a person to help them
- question staff
- stop motor vehicles used as food businesses
- seize evidence
- destroy seized items
- require name and address
- require production of documents
- to require information.

### **Registration and Notification**

All food businesses, other than an “*exempted food business*”, must be **approved** and **registered** by the Shire prior to operating as a food business.

Although “*exempted food businesses*” are not required to be **registered** they are required to provide **notification**, detailing specified information on the approved form, to the Shire.

All food businesses whether **registered** or **exempted** are required to comply with the Food Safety Standards of the *Australia New Zealand Food Standards Code*.

### **Public Liability Insurance**

It is a standard requirement for food businesses or Community Groups selling food on Shire property to provide a copy of a current insurance policy, stating that a Public Liability amount of \$10,000,000 is provided.

In the case of Community Groups, assistance and guidance with obtaining the required insurance is available from Council's insurer (LGIS).

#### *LGIS*

*Level 3, 170 Railway Parade*

*West Leederville WA 6007*

*Telephone: 08 9483 8888*

It should be noted that Council's insurer has advised that Council's own insurance cannot be relied upon to cover non Local Government entities.

### ***Construction/alteration/fit-out of Food Businesses***

If you are considering constructing, fitting out or altering a Food Business you must obtain Shire approval prior to commencing any works. Refer to section 3 of the Fit-out Guide for further details but in summary approvals required include:

- Planning Approval
- Food Business Fit-Out Approval
- Plumbing Approval
- Trade Waste Approval (Water Corp)
- Notification/Registration – *Food Act 2008*
- Advertising Signs Approval
- Footpath Dining Permits

Plans (two copies, to a dyeline standard) are required to be submitted together with your application for approval. Your architect, drafts person or shopfitter will be able to assist you in providing the following:

- Site plan - scale 1:100 - including car parking, refuse area, adjacent land uses, toilet facilities
- Floor plan - scale 1:50
- Sectional elevation plans – scale 1:50- including equipment, fridges, cabinets
- Hydraulic plans (plumbing details) - scale 1:50
- Mechanical exhaust ventilation plans - scale 1:50

Further detailed information required for approval to fit out, alter or const a food business is contained in section 3.2.3 *Food Premises and Equipment* of the Food Safety Standards. This guide which incorporates the Food Safety Standard has been developed for businesses involved in the design, construction and fit-out of food businesses. This fit-out guide is available on line at [www.wandering.wa.gov.au](http://www.wandering.wa.gov.au) or from the Shire offices.

### ***What is a registrable food business?***

The Act (section 109) makes it an offence to conduct a food business at any premises unless the food business is registered with the enforcement agency, which in most cases is the Shire. This enables the local government to ensure that all food businesses trading from premises within the Shire comply with the requirements of the *Australia New Zealand Food Standards Code* (the Code).

Once a food business has provided 'notification' to the Shire on the form provided they will be assessed and unless an 'exempt food business' they will receive a Certificate of Registration which will contain conditions of approval. Fees are required to be paid annually but only one certificate will be issued unless details change.

### ***Changes to the food business***

It is the responsibility of a food business owner to notify the Shire of changes to the business such as:

- Change of ownership;
- Change to operations likely to affect priority risk rating;
- Closing of the business;
- Change to owners details.

### ***Registration Period***

The registration period for food businesses in the Shire of Wandering is 1 January to 31 December each year.

### ***How do I go about notifying or obtaining registration?***

The Shire has one combined form available for notification / registration. Forms are available by phoning the Shire on 9884 1056 or from [www.wandering.wa.gov.au](http://www.wandering.wa.gov.au) .

### ***Examples of registrable food businesses***

The following industry sectors are examples of food businesses requiring registration from the Shire:

#### ***Food manufacturers:***

- manufacturers of food products

#### ***Sale of unpackaged food, including but not limited to:***

- a restaurant or delicatessen
- a catering business
- a takeaway food shop, such as a pizza shop
- a motel providing meals with accommodation
- a food business that involves selling food, such as hamburgers, from a motor vehicle or unpackaged food from a vending machine
- a private hospital
- school tuckshop
- temporary food stalls
- day care centres
- food businesses run by charitable organisations

- serving food to vulnerable persons
- food transportation businesses

### **What are exempt food businesses?**

The Act provides for certain types of food businesses to be exempt from registration and these types of food businesses are prescribed within the *Food Regulations 2009* (the Regulations).

Exempt food businesses, although not subject to **registration** requirements, are still subject to the **notification** requirements contained within Standard 3.2.2 of the *Australia New Zealand Food Standards Code* (the Code). Exempted food businesses **must** notify the Shire of their intention to undertake food business activities prior to doing so. Notification Forms are available from the Shire or the Shire website [www.wandering.wa.gov.au](http://www.wandering.wa.gov.au)

Exempt from registration are food businesses that:

- Are conducted solely for charitable or community purposes and prepare non-potentially hazardous foods or foods that, after being appropriately cooked, are served for immediate consumption (*regulation 10*);
- Sell non-potentially hazardous food that cannot be handled in the course of conducting the food business because the food is contained in a closed package. (*regulation 11*);
- Provide complimentary drinks in conjunction with another kind of business (*regulation 12*);
- Which are conducted at registered establishments (*regulation 13*).

*NOTE: Exemption relates only to the registration provisions. Exempt food businesses will still have to comply with the Act (and subsequently the Food Standards Code); including the notification requirements.*

### **What is the purpose of notification?**

Notification ensures that anyone handling food for sale, who may be exempt from registration, are provided with appropriate information and guidance on how to prepare food safely. It also assists such persons in understanding their legal obligations in relation to selling food to the public, and the Food Safety Standards of the *Australia New Zealand Food Safety Code*.

The notification process also ensures that enforcement agencies are aware of all food business activities being conducted within their district; which is important for food safety surveillance and compliance activities.

### **Examples of food businesses requiring notification**

These types of 'exempt' food businesses require notification but not registration:-

- *Fundraising events* -
  - provided it is to solely raise money for charity or community; and
  - the food is not 'potentially hazardous'; or
  - after being appropriately cooked the food is for immediate consumption.

*For example: a fundraising sausage sizzle.*

- *Packaged food only -*

- provided it is not 'potentially hazardous' food; and
- it is contained in an enclosed package and cannot be handled.

*For example: a newsagent selling packaged drinks and sweets.*

- *Complimentary drinks –*

- provision of complimentary drinks in conjunction with another business conducted on the premises which is not a food business.

*For example: a hairdresser serving complimentary coffee.*

- *Conducted at registered establishments -*

- A food business conducted at or form part of a registered establishment.

*For example: utilising a registered kitchen to make pickles*

### **Risk Reduction Program**

Food safety assessment will no longer involve Environmental Health Officers simply inspecting for compliance with prescriptive regulations. Food safety assessment is to be risk based; that is priority will be given to those food businesses who pose a greater risk in relation to the production of safe and suitable food for sale as a consequence of the type of food produced, fit out standards, compliance history and operators qualifications and knowledge

As mentioned above, one of the factors that can be used to determine an appropriate assessment frequency is whether or not a food business has **successfully implemented** a risk reduction program. Risk reduction programs may include the following:

- A Food Safety Program that complies with Standard 3.2.1;
- A food handler training program;
- Key food handling personnel (i.e. supervisors, chefs etc) obtaining competencies in food safety training.

The successful implementation of any of the above programs may translate to a reduction in the risk posed by a particular food business. However, the Shire will not simply reduce the assessment frequency of a food business because of the adoption of any risk reduction programs.

The successful implementation of any of the above programs may translate to a reduction in the risk posed by a particular food business. However, the Shire will not simply reduce the assessment frequency of a food business because of the adoption of any risk reduction program. A food business **must** be able to demonstrate to the Shire an appropriate level of good food safety practices within the business **prior** to any reduction being considered.

It is important again to note that in Western Australia, Food Safety Programs (FSP) are not be mandatory for all food businesses. However, those businesses not required to implement a FSP in order to comply with the Code are still encouraged to develop and implement a FSP in order to assist them with their management of food safety risk.

## **Food Safety Programs**

In December 2003 the Australia New Zealand Food Regulation Ministerial Council endorsed the *Ministerial Policy Guidelines on Food Safety Management in Australia* (Ministerial Policy Guidelines).

The Ministerial Policy Guidelines identify those food businesses that should be required to have a food safety program, as defined in Standard 3.2.1, based on the food safety risk that they pose.

### ***What premises are required to have a Food Safety Program?***

Food businesses involved in food service where potentially hazardous food is served to vulnerable populations were identified as being high risk. Three other food industry sectors were also identified:

- production, harvesting, processing and distribution of raw oysters and other bivalves
- catering operations serving food to the general public
- production of manufactured and fermented meat.

The food businesses identified in Standard 3.3.1 that are required to have a food safety program include those businesses involved in food processing and service to six or more vulnerable people at any given time.

Vulnerable people are defined by the standard in terms of the facility in which they are cared for or as clients of a delivered meals organisation. The facilities listed in the standard include:

- hospital facilities, including acute care, psychiatric, hospice, chemotherapy and renal dialysis facilities
- aged care facilities, including nursing homes, respite care, same-day aged care and low care aged care facilities
- child care facilities, including long day care, occasional day care and employer-sponsored child care.

Standards are currently being developed for catering operations serving food to the general public.

## **Food Safety Training**

Food Safety Standard 3.2.2 section 3 requires a food business proprietor or person in charge to ensure that persons undertaking or supervising food handling operations have:-

- Skills in food safety and food hygiene matters; and
- Knowledge of food safety and food hygiene matters,

commensurate with their work activities.

There are a number of options for food safety training. The Shire has subscribed to **I'M ALERT** Food Safety Training which is offered free of charge on Council's web site [www.wandering.wa.gov.au](http://www.wandering.wa.gov.au).

Other food training packages are available from:

[www.eha.com.au](http://www.eha.com.au)

[www.foodsafety.edu.au](http://www.foodsafety.edu.au)



## **Premises Types**

### ***Mobile Food Van***

Mobile vendors selling food are defined as a food business. The *Food Safety Standards 3.2.3* state that mobile food vendors are not considered as temporary premises. The term is used to mean permanent food businesses that can be moved to new locations and might return to a base overnight. Their design, construction and fit-out are usually restricted by space, weight and having to be self-sufficient in water supplies and waste disposal

Refer to separate document “Temporary Food Stalls & Mobile Food Vendors” Information.

### ***Temporary Food Stalls***

Temporary food stalls are defined as a food business and generally they are structures set up for a specific, **occasional event** such as a fete or fair where the cost of providing premises to a permanent standard is unnecessary for food safety. There are specific exemptions from some of the requirements of *Food Safety Standard 3.2.2* for temporary food businesses based on practicalities.

### ***Residential Food Business***

The Act does not specifically prohibit food preparation in residential premises, however it requires all food businesses to ensure compliance with the Act.

Therefore people who prepare food for sale within residential premises are deemed to be food businesses for the purposes of the Act.

The Act adopts the Australia New Zealand Food Standards Code (the Code) in full; which means that all food businesses must comply with its requirements. Chapter 3 of the Code contains the structural and hygiene outcomes that all food businesses must meet. Allowance is made within the Code for some exemptions relating to requirements for food premises that are used principally as a private dwelling if the proprietor has the approval in writing of the appropriate enforcement agency (e.g. Standard 3.2.2 clause 17(2)).

The DoH policy on food businesses that operate from premises that are used principally as a private dwelling is that approval for the exemptions contained within the Code should only be granted for those food businesses that have been classified as ‘low risk’.

The Shire will take a number of things into consideration including:

- Whether the local town planning scheme will allow the proposed activity within a residential area;
- Whether the structure of the premises is appropriate for the proposed activities;
- The relative risk of the food preparation (only “low risk” activities considered); and
- Whether the activity is for commercial gain or is for fundraising/charitable purposes.

Notification and registration is also required with the Shire of Wandering, unless the food business is an “Exempt Food Business”, then notification only is required.

## Fixed Commercial Food Business

Are a defined premises with a fixed address/location, which have been fitted out with Shire approval to a standard required by the *Food Act 2008* and Food Safety Standard 3.2.3 “Food Premises and Equipment”. Examples of fixed food businesses include: manufacturing premises, take away shops, restaurants, hotels, bakeries etc.

## Definitions

The term **premises** includes:

- *land;*
- *the whole or part of any building, tent, stall or other structure (whether of a permanent or temporary nature);*
- *a pontoon; or*
- *a vehicle (other than a food transport vehicle while it is engaged in the transport of food).*

The term **vulnerable person** includes:

- for hospital patients,
- aged care recipients,
- children in child care centres, and
- vulnerable people receiving other services,

provided the food is intended for **six or more vulnerable persons**.

The term **enforcement agency** relates as follows:

- The Shire of Wandering is responsible for
  - food businesses,
  - animal food processing premises, and
  - retail pet meat shops located in the Shire.
- The WA Department of Health is responsible for
  - Public hospital food business
  - Dairy primary production business
  - Dairy processing business
  - Dairy transport business
  - Primary production & manufacturing of seafood which includes bivalve molluscs.
- WA Department of Health is responsible for ensuring compliance with the labelling and composition requirements under the Food Standards Code and for co-ordinating investigation of food-borne illness outbreaks.

The Code defines **potentially hazardous food** as:

*Food that has to be kept at certain temperatures to minimise the growth of any pathogenic micro-organisms that may be present in the food or to prevent the formation of toxins in the food.*

The Act defines a **food business** as:

*A business, enterprise or activity that involves the handling of food intended for sale, or the sale of food, regardless of whether the business, enterprise or activity (other than a business, enterprise or activity that is primary food production) is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.*

A **Food Safety Program** is:

*defined in Standard 3.2.1 and is based on the principle that food safety is best ensured through the identification and control of hazards in the production, manufacturing and handling of food as described in the Hazard Analysis and Critical Control Point (HACCP) system. A Food Safety Program is implemented and reviewed by the business and is subject to periodic audit by a suitably qualified food safety auditor.*

The Act defines the **sale of food** as food which is:

- *Bartered, offered or attempted to sell;*
- *Received for sale;*
- *In possession for sale;*
- *Displayed for sale;*
- *Permitted or caused to be sold or offered for sale;*
- *Sent, forwarded or delivered for sale;*
- *Disposed of by any method for valuable consideration;*
- *Disposed of to an agent for sale on consignment;*
- *Provided under a contract of service;*
- *Supplied food as a meal or part of a meal to an employee for consumption by the employee at the employee's place of work;*
- *Disposed of by way of raffle, lottery or other game of chance;*
- *Offered as a prize or reward;*
- *Given away for the purpose of advertisement or in furtherance of trade or business;*
- *Supplied food under a contract together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment;*
- *Supplied food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions; and*
- *Sell for the purpose of resale.*

## **Fees and Charges**

Some food businesses are exempt from registration fees and some from notification fees. Each year the Shire will determine applicable fees and charges to apply. Current fees and charges are able to be viewed from the Shire website [www.wandering.wa.gov.au](http://www.wandering.wa.gov.au)

## Penalties

The Act and Regulations make new penalty provisions including the ability for enforcement agencies to issue Penalty Infringement Notices (PINS). For example:

- Conduct of an unregistered food business (s109) is *\$10,000 for an individual and \$50,000 for a body corporate or a Penalty Infringement Notice (PIN) of \$500 & \$1,000 respectively;*
- *Failing to give written notification to the enforcement agency in the approved form (s107) is \$10,000 for an individual and \$50,000 for a body corporate or a Penalty Infringement Notice (PIN) of \$250 & \$1,000 respectively;*
- Failing to notify of changes (s113) is *\$20,000 for an individual and \$100,000 for a body corporate or a Penalty Infringement Notice (PIN) of \$500 & \$1,000 respectively;*

There are other penalties for offences contained in the Act.

## ANIMAL FOOD PROCESSING & RETAIL PET MEAT

- The proprietor of a business must ensure no pet meat branded as fit for consumption by animals is sold as food from premises at which the business is conducted.
  - Penalty - a fine *\$5,000 or a Penalty Infringement Notice (PIN) of \$500 & \$1,000 respectively;*

There are **notification** requirements in the Act in relation to the following:

- The proprietor of animal food processing premises, or of a retail pet meat shop is required to notify the enforcement agency in the approved form.
  - Penalty - a fine *\$5,000 or a Penalty Infringement Notice (PIN) of \$500 & \$1,000 respectively*

## DEFINITIONS

- *Animal Food Processing Premises* – which defined as:
  - a pet meat processing establishment; or
  - a knackery
- *Pet Meat Processing Establishment* – which means premises at which pet meat is processed, identified, handled, packed or stored.
- *Retail Pet Meat Shop* – which means premises at which pet meat that is not in a closed package is sold by way of retail sale (whether or not pet meat that is in a closed package is also sold).
- *Pet Meat* – means raw meat or raw game meat that is intended for consumption by animals that are domesticated or kept in captivity.

## SUMMARY

Part 5 Division 4 of the *Food Regulations 2009* sets standards in relation to the staining of pet meat. It is important to make yourself familiar with these requirements if you handle pet meat.

Subdivision 3 requires that pet meat in a closed package, if sold from a food business is separated by means of an impervious barrier between that and the food. It also requires Pet Meat to be packaged in the following manner if it is to be sold from a food business:

- In a closed package undamaged;
- The package to be made of impervious material; and  
Sealed in such a way that the package cannot be opened and resealed and liquid cannot escape from the package; and
- the package has “Pet Meat – Not FOR Human Consumption” prominently displayed on it in letters not less than 5 mm in height.

**Offence: The proprietor of a food business must ensure that no pet meat other than that in a closed package as above is processed, handled, stored or sold in or from the premises in or from which food is processed, handled, stored or sold.**

- Penalty – a fine of *\$5,000 or a Penalty Infringement Notice (PIN) of \$500 & \$1,000 respectively;*

Subdivision 4 requires the proprietor of an animal food processing premises to establish and maintain a system for tracing pet meat. Failing to comply:-

- a penalty - a fine of *\$5,000 or a Penalty Infringement Notice (PIN) of \$500 & \$1,000 respectively;*