

South Australia

Food Regulations 2002

under the *Food Act 2001*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Food Regulations 2002*.

3—Interpretation

In these regulations—

Act means the *Food Act 2001*;

constituent council has the same meaning as in the *Local Government Act 1999*;

Department means the department of the Minister to whom the administration of the Act has been committed;

relevant regulatory subsidiary means a regional subsidiary established by two or more councils under the *Local Government Act 1999* in connection with the operation and enforcement of the *Food Act 1985* or the *Food Act 2001*;

small business means a business where not more than 20 people are engaged in handling food (and for the purposes of this definition the relevant number of people will be determined by counting people who work full-time in handling food, or the full-time equivalents of such people).

Part 2—Provisions relating to administration of Act

4—Prescription of enforcement agencies

- (1) For the purposes of the definition of **enforcement agency** under the Act—
 - (a) the Department; and
 - (b) all municipal and district councils under the *Local Government Act 1999*; and
 - (c) all relevant regulatory subsidiaries,are prescribed.
- (1a) For the purposes of sections 79 and 81 of the Act—
 - (a) in the case of food businesses conducted outside council areas—the Department is prescribed as the appropriate enforcement agency;
 - (b) in the case of all other food businesses—
 - (i) unless subparagraph (ii) applies—the relevant local government authority for the council area where the food business is conducted is prescribed as the appropriate enforcement agency;
 - (ii) if the Minister so determines—the Department is prescribed as the appropriate enforcement agency.
- (2) For the purposes of section 86 of the Act—
 - (a) if a food business is conducted outside the area of a council, then the Department is prescribed as the **appropriate enforcement agency** with respect to that food business;
 - (b) if a food business is conducted in one, and only one, council area, then the relevant local government authority is prescribed as the **appropriate enforcement agency** with respect to that food business;
 - (c) if a food business is conducted in more than one council area, then the relevant local government authority for each council area where the food business is conducted is prescribed as an **appropriate enforcement agency** with respect to that food business.
- (3) For the purposes of subregulation (2)—
 - (a) if a food business is a food transport business, then that business will be taken to be conducted—
 - (i) at a depot used for the purposes of the food transport business; or

- (ii) if there is no such depot, at the place where the vehicles used for the purposes of the food transport business are principally based or, if there is no such place, at each place where a vehicle used for the purposes of the business is usually parked when not in use;
 - (b) if a food business (not being a food transport business) involves the preparation of food in one or more locations and then the transportation or delivery of the food to another place or places, then that business will be taken to be conducted at any location where the food is prepared;
 - (c) in any other case, a food business will be taken to be conducted at any place where food intended for sale is handled, or where food is sold, on a permanent or regular basis.
- (4) For the purposes of subregulations (1a) and (2) the **relevant local government authority** is—
 - (a) if a relevant regulatory subsidiary has been established in relation to the relevant area—that subsidiary;
 - (b) in any other case—the council established under the Local Government Act 1999 in relation to the relevant area.
- (5) In this regulation—**council area** means—
 - (a) if a relevant regulatory subsidiary has been established in relation to the relevant area—the combined area of the areas of the subsidiary's constituent councils;
 - (b) in any other case—the area of a council established under the *Local Government Act 1999*;

food transport business means a business that involves the transport of food for fee or reward through the use of a food transport vehicle.

5—Head of enforcement agency

For the purposes of the definition of **head of an enforcement agency** under the Act—

- (a) the chief executive of the Department is prescribed as the head of that enforcement agency; and
- (b) the chief executive officer of a municipal or district council under the *Local Government Act 1999*, other than where the council is constituent council of a relevant regulatory subsidiary, is prescribed as the head of that enforcement agency; and
- (c) the person designated by the constituent councils of a relevant regulatory subsidiary as the principal officer of the subsidiary is prescribed as the head of that enforcement agency.

6—Prescription of public institutions

For the purposes of the definition of **public institution** under the Act—

- (a) public hospitals; and

- (b) correctional institutions within the meaning of the *Correctional Services Act 1982*,
are prescribed.

7—Meaning of primary food production

For the purposes of section 7(1) of the Act, the *Primary Produce (Food Safety Schemes) Act 2004* is prescribed.

8—Application of Act to water suppliers

Pursuant to subsection (2)(c) of section 11 of the Act, the following bodies and persons are prescribed for the purposes of that section:

- (a) councils; and
- (b) a person employed or engaged by a council to supply water for human consumption; and
- (c) NRG Flinders Operating Services Pty. Ltd., in relation to the supply of water at Leigh Creek; and
- (d) a Joint Venturer under the *Roxby Downs (Indenture Ratification) Act 1982*, in relation to the supply of water within the area of the District Council of Roxby Downs.

Part 3—Adoption of Food Standards Code

9—Adoption of Food Standards Code

- (1) Subject to subregulation (2), the Australia New Zealand Food Standards Code as defined in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth (as that code is in force from time to time) is adopted for the purposes of the definition of *Food Standards Code* under the Act.
- (2) The code referred to in subregulation (1) is adopted with the following modifications:
 - (a) Volume 1 of the code is modified in the same manner as it was modified by items 8 and 10 of Schedule 1 of the *Food Regulations 1986* immediately before the repeal of the *Food Act 1985* by the *Food Act 2001*;

Note—

Item 8 provides for the substitution of Standard H1 (and relates to milk and liquid milk products) and item 10 provides for the variation of Standard H5 (and relates to goat's milk).

- (b) Volume 2 of the code is modified—
 - (i) by inserting after subclause (1) of clause 4 of Standard 2.5.1 the following subclause:
 - (1a) Subclause 4(2) does not apply to goat's milk.;
 - (ii) by inserting after the present contents of clause 3 of Standard 3.1.1 the following subclause:

- (2) However, this Chapter does not apply to a food business to the extent that the food business is constituted by—
 - (a) an activity or process that is regulated by or under the *Primary Produce (Food Safety Schemes) Act 2004*; or
 - (b) an activity or process that is exempt from the operation of Parts 5, 7 and 8 of the *Food Act 2001* by virtue of the operation of regulation 13 of the *Food Regulations 2002*,

(even if the activity or process involves the substantial transformation of food).;
- (iii) by striking out subclause (2) of clause 2 of standard 3.2.1 and substituting the following subclause:
 - (2) This Standard applies—
 - (a) to food businesses that are determined by the appropriate enforcement agency to have a priority classification in a manner consistent with a priority classification system determined by the relevant authority under section 79(2) of the Act; or
 - (b) if another Standard specifically requires food businesses to which that other Standard applies to comply with Standard 3.2.1.;
- (iv) by inserting after subclause (2) of clause 3 of Standard 3.2.2 the following subclause:
 - (3) This clause comes into operation in the State of South Australia on 1 December 2003.;
- (v) by inserting after subclause (4) of clause 4 of Standard 3.2.2 the following subclauses:
 - (5) This clause comes into operation in the State of South Australia on 1 September 2003.
 - (6) This clause operates in the State of South Australia subject to the provisions of regulation 14 of the *Food Regulations 2002*.

Part 4—Miscellaneous

9A—Application fee for food safety auditors

- (1) For the purposes of section 73(3) of the Act, the prescribed fee is \$130.
- (2) The prescribed fee does not apply to an application by a Public Service employee for the purpose of carrying out the functions of a food safety auditor.

9B—Prescribed form

For the purposes of section 81(2) of the Act, the prescribed form may be determined according to the discretion of the Minister.

10—Notification of food business

For the purposes of section 86(3) of the Act, the prescribed period is 14 days after the date of the transfer or change (as the case may be).

11—Inspection fee

- (1) An enforcement agency may impose an inspection fee for the carrying out of any inspection of any premises or food transport vehicle by an authorised officer appointed by the enforcement agency reasonably required in connection with the operation or administration of the Act.
- (2) A fee under subregulation (1)—
 - (a) must not exceed the reasonable costs of the enforcement agency with respect to the inspection by the authorised officer and in any event must not exceed—
 - (i) in the case of a small business—\$80;
 - (ii) in any other case—\$200; and
 - (b) may be recovered by the enforcement agency as a debt from the occupier of the premises, or from the owner or operator of the food transport vehicle (as the case may be).

12—Specific provision relating to meat

- (1) Pursuant to section 113(2)(b) of the Act, a person must not sell for human consumption the meat of an animal that is not referred to in the definition of *meat* in the Food Standards Code.
Maximum penalty: \$2 500.
Expiation fee: \$210.
- (2) Subregulation (1) does not apply to or in relation to—
 - (a) game; or
 - (b) the meat of a crocodile.
- (3) Subregulation (1) does not apply if the food in question is to be exported to another country.
- (4) In this regulation—

game means a goat, rabbit, hare, kangaroo, wallaby or bird that has not been confined or husbanded in any way;

meat includes the flesh of an animal.

13—Application of Act to certain food businesses

- (1) Pursuant to section 113(2)(p) of the Act, Parts 5, 7 and 8 of the Act do not apply to a person undertaking on farm land or on a boat an activity or process that constitutes a food business for the purposes of the Act (even if the activity or process involves the substantial transformation of food).

- (2) Subregulation (1) does not apply insofar as any activity or process involves—
 - (a) the packing or treating of food in circumstances within the ambit of section 7(2)(b) of the Act; or
 - (b) the handling of food that is to be sold directly to the public.
- (3) In this regulation—

boat includes any form of vessel;

farm land means land (including land covered wholly or partially by water) used wholly or mainly for the purposes of primary production.

14—Transitional provision—Notification of food business

- (1) This regulation contains provisions of a transitional nature consequent on the commencement of section 86 of the Act.
- (2) The proprietor of a food business that commences operations between 1 September 2003 and 30 November 2003 (inclusive) is not required to provide the notice required by subsection (1) of section 86 of the Act until 1 December 2003 (and the proprietor may conduct that business until that date despite the provisions of that subsection).
- (3) If subsection (3) of section 86 of the Act applies with respect to a food business between 1 September 2003 and 30 November 2003 (inclusive), the prescribed period under that subsection for giving notice of the relevant transfer or change is the period ending on 1 December 2003 or the period of 14 days after the date of the transfer or change, whichever is the longer.

15—Transitional provision—Authorised officers

- (1) A person holding office as an authorised officer under the *Food Act 1985* immediately before the commencement of this regulation will be taken to have been appointed as an authorised officer for the purposes of the *Food Act 2001* (and section 94(1) of the Act will not apply with respect to such a person).
- (2) A certificate of authority under the *Food Act 1985* held by an authorised officer within the ambit of subregulation (1) will be taken to be a certificate of authority provided under section 95 of the *Food Act 2001*.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Food Regulations 2002* revoked the following:

Food Regulations 1986

Food Hygiene Regulations 1990

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2002	216	<i>Gazette 21.11.2002 p4246</i>	1.12.2002: r 2(1) except r 11—1.1.2003: r 2(3) and except rr 4(2)—(5), 10 and 14—1.9.2003: r 2(2)
2005	166	<i>Gazette 14.7.2005 p2391</i>	1.8.2005: r 2
2007	234	<i>Gazette 27.9.2007 p3842</i>	27.9.2007: r 2
2009	16	<i>Gazette 26.2.2009 p778</i>	1.7.2009: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 2		
<i>r 2</i>	<i>omitted under the Legislation Revision and Publication Act 2002</i>	<i>1.8.2005</i>
r 4		
r 4(1a)	inserted by 234/2007 r 4(1)	27.9.2007
r 4(4)	varied by 234/2007 r 4(2)	27.9.2007
r 7	varied by 166/2005 r 4	1.8.2005
	substituted by 234/2007 r 5	27.9.2007
Pt 3		

r 9		
r 9(2)	varied by 166/2005 r 5	1.8.2005
	varied by 234/2007 r 6(1), (2)	27.9.2007
Pt 4		
rr 9A and 9B	inserted by 234/2007 r 7	27.9.2007
<i>r 16</i>	<i>omitted under the Legislation Revision and Publication Act 2002</i>	<i>1.8.2005</i>

Historical versions

1.8.2005