

Standard 3.1.1

Interpretation and Application

(Australia only)

Purpose

This Standard sets out the interpretation and application provisions that apply to the other food safety standards set out in this Chapter of the Code. The objective of the food safety standards is to ensure that only safe and suitable food is sold in Australia.

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Clauses

1 Interpretation

In this Chapter the definitions of the following terms apply:

appropriate enforcement agency means an enforcement agency prescribed by the regulations under the Act for the purposes of enforcement of the Act or similar purposes.

authorised officer means a person authorised or appointed under the Act or other legislation for the purposes of enforcement of the Act, or similar purposes, such as an ‘authorised officer’, ‘environmental health officer’ or ‘inspector’.

clean means clean to touch and free of extraneous visible matter and objectionable odour.

contaminant means any biological or chemical agent, foreign matter, or other substances that may compromise food safety or suitability.

contamination means the introduction or occurrence of a contaminant in food.

equipment means a machine, instrument, apparatus, utensil or appliance, other than a single-use item, used or intended to be used in or in connection with food handling and includes any equipment used or intended to be used to clean food premises or equipment.

food business means a business, enterprise or activity (other than primary food production) that involves:

- (a) the handling of food intended for sale, or
- (b) the sale of food,

regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.

food handler means a person who directly engages in the handling of food, or who handles surfaces likely to come into contact with food, for a food business.

food handling operation means any activity involving the handling of food.

food premises means any premises including land, vehicles, parts of structures, tents, stalls and other temporary structures, boats, pontoons and any other place declared by the relevant authority to be premises under the Food Act kept or used for the handling of food for sale, regardless of whether those premises are owned by the proprietor, including premises used principally as a private dwelling, but does not mean food vending machines or vehicles used only to transport food.

food safety standards means the standards contained in Chapter 3 of the *Australia New Zealand Food Standards Code*.

handling of food includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.

hazard means a biological, chemical or physical agent in, or condition of, food that has the potential to cause an adverse health effect in humans.

pests include birds, rodents, insects and arachnids.

primary food production means the growing, cultivation, picking, harvesting, collection or catching of food, and includes the following:

- (a) the transportation or delivery of food on, from or between the premises on which it was grown, cultivated, picked, harvested, collected or caught,
- (b) the packing, treating (for example, washing) or storing of food on the premises on which it was grown, cultivated, picked, harvested, collected or caught, and
- (c) any other food production activity that is regulated by or under an Act prescribed by the regulations for the purposes of this definition.

However, primary food production does not include:

- (a) any process involving the substantial transformation of food (for example, manufacturing or canning), regardless of whether the process is carried out on the premises in which the food was grown, cultivated, picked, harvested, collected or caught, or
- (b) the sale or service of food directly to the public, or
- (c) any other food production activity prescribed by the regulations under the Act for the purposes of this definition.

proprietor of a food business means:

- (a) the person carrying on the food business, or
- (b) if that person cannot be identified – the person in charge of the food business.

sell means:

- (a) barter, offer or attempt to sell, or
- (b) receive for sale, or
- (c) have in possession for sale, or
- (d) display for sale, or
- (e) cause or permit to be sold or offered for sale, or
- (f) send, forward or deliver for sale, or
- (g) dispose of by any method for valuable consideration, or
- (h) dispose of to an agent for sale on consignment, or
- (i) provide under a contract of service, or
- (j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work,
- (k) dispose of by way of raffle, lottery or other game of chance, or
- (l) offer as a prize or reward, or
- (m) give away for the purpose of advertisement or in furtherance of trade or business, or
- (n) supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment, or
- (o) supply food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions, where 'public institution' means 'public institution' as defined in the Act, if it is so defined; or
- (p) sell for the purpose of resale.

single-use item means an instrument, apparatus, utensil or other thing intended by the manufacturer to only be used once in connection with food handling, and includes disposable gloves.

2 Meaning of safe and suitable food

- (1) For the purposes of the Food Safety Standards, food is not safe if it would be likely to cause physical harm to a person who might later consume it, assuming it was:
- (a) after that time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use; and
 - (b) consumed by the person according to its reasonable intended use.
- (2) However, food is not unsafe merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons.
- (3) In subsection (1), *processes* include processes involving storage and preparation.
- (4) For the purposes of the Food Safety Standards, food is not suitable if it:
- (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use, or
 - (b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use, or
 - (c) is the product of a diseased animal or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption, or
 - (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.
- (5) However, food is not unsuitable for the purposes of the Food Safety Standards merely because:
- (a) it contains an agricultural or veterinary chemical in an amount that does not contravene the Food Standards Code, or
 - (b) it contains a metal or non-metal contaminant (within the meaning of the Food Standards Code) in an amount that does not contravene the permitted level for the contaminant as specified in the Food Standards Code, or
 - (c) it contains any matter or substance that is permitted by the Food Standards Code.

Editorial note:

Terms that are defined in this Standard are terms that are used only in this Standard or in more than one food safety standard. Terms that are used in only one of the other food safety standards are defined in the standard in which they are used.

‘Act’ is defined in Standard 1.1.1 as meaning the Act under the authority of which the Code is applied.

Under the Inter-Governmental Agreement developed in response to the Food Regulation Review (Blair) Report, jurisdictions will agree to adopt definitions of the following terms into their Food Acts: ‘food’, ‘food business’, ‘food safety standards’, ‘handling’, ‘proprietor’ and ‘unsafe food’.

Jurisdictions may adopt the definition of ‘unsuitable food’ into their Food Acts if they wish.

The definitions of these terms in this Standard are based upon their proposed definitions in the Model Food Bill. It is intended to remove the definitions of these terms from this Standard once jurisdictions include the relevant Model Food Bill definitions in their Food Acts.

3 General application of the Food Safety Standards

The Food Safety Standards apply in accordance with this Standard to all food businesses in Australia but not in New Zealand.

Editorial note:

All the requirements of Standards 3.2.2 and 3.2.3 except the notification and skills and knowledge requirements will commence six months from gazettal of those standards. The notification and skills and knowledge requirements will commence 18 months after gazettal.

4 Compliance

- (1) The proprietor of a food business must ensure the food business complies with all the requirements of the Food Safety Standards except those in Subdivision 1 of Division 4 of Standard 3.2.2 (Food Safety Practices and General Requirements).
- (2) Food handlers must comply with all the requirements set out in Subdivision 1 of Division 4 of Standard 3.2.2.