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Food Act 1984

CLASSES OF FOOD PREMISES AND REQUIREMENTS

Declaration and exemptions

Explanatory memorandum

On 1 July 2010 amendments to the **Food Act 1984** (the Act) by Part 2 of the **Food Amendment (Regulation Reform) Act 2009** will commence operation. This enables the following instrument to be made under the Act. It is to apply from 1 July 2010 and establish a new food premises classification system.

The new classification system means that regulatory requirements can be better matched to the level of food safety risk associated with the food handling activities at different types of premises.

One main purpose of the following instrument is to establish four separate classes of food premises. The general effect is as follows:

- class 1: hospitals, child care centres and listed facilities for the aged, at which ready-to-eat potentially hazardous food is served;
- class 2: other premises that handle potentially hazardous unpackaged foods;
- class 3: premises handling unpackaged low risk foods, selling potentially hazardous pre-packaged foods, or the warehousing or distribution of pre-packaged foods; and
- class 4: premises that only retail pre-packaged low risk foods, and certain other low risk or occasional activities.

The instrument sets out a range of associated matters including requirements regarding food safety programs, audits, assessments and exemptions.

In declaring the classes of food premises, regard has been had to –

- the food handling activities undertaken at the premises and in particular the degree of risk associated with those activities;
 - the nature of the food business operating from the premises; and
 - other relevant considerations.
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SPECIAL

NOTICE UNDER FOOD ACT 1984
Classes of food premises and requirements
Declaration and exemptions

I, Lance Wallace, Acting Secretary to the Department of Health, under sections 19C, 19H, 19V and 38 of the **Food Act 1984** (the Act) –

Classes of food premises

1. declare the following classes of food premises for the purposes of section 19C(1), having regard to the matters specified in that provision:
 - (a) the food premises specified in schedule 1 to this instrument are class 1 food premises;
 - (b) the food premises specified in schedule 2 to this instrument are class 2 food premises;
 - (c) the food premises specified in schedule 3 to this instrument are class 3 food premises;
 - (d) the food premises specified in schedule 4 to this instrument are class 4 food premises;

Regulatory requirements

2. under section 19C(2), specify that-
 - (a) class 1 food premises and class 2 food premises are required to have a food safety program and a food safety supervisor;
 - (b) class 3 food premises are required to keep the minimum records required under Division 2 of Part IIIB of the Act; and
 - (c) class 1 food premises and class 2 food premises are exempt from the requirement under section 39 to be inspected annually (before the registration is renewed);

Types of food safety programs

3. under section 19C(3)(a), specify a standard food safety program and a non-standard food safety program as the types of food safety programs that may be used by class 1 food premises and class 2 food premises;

Audit and assessment requirements for premises with food safety programs

4. under section 19C(3) and sections 19H(1), (2) and (4)(a), specify in schedule 5 to this instrument –
 - (a) the food safety audit and food safety assessment requirements for each type of food safety program permitted to be used by class 1 food premises and class 2 food premises; and
 - (b) the default requirements relating to the frequency and timing of audits and assessments;

Alternative requirements about frequency of audits or assessments for premises with food safety programs taking into account food safety performance

5. under section 19C(3) and sections 19H(1), (2) and (4)(b), specify in schedule 6 to this instrument the range of frequencies and intervals for food safety audits and food safety assessments that may otherwise be applied by the registration authority, taking into account food safety performance, for any particular class 1 food premises or class 2 food premises (instead of the default requirements);

Assessments of class 1 food premises with standard food safety program

6. under section 19C(3) and section 19H(1) and (3), specify the following as the circumstances in which a food safety assessment may be conducted by a food safety auditor:
 - (a) the food premises is a class 1 food premises;

- (b) a standard food safety program is being used at the food premises;
- (c) the auditor is an approved food safety auditor whose certificate under section 19P states that he or she is competent to conduct an audit of the class or category to which the food premises belongs; and
- (d) the food safety assessment is only one of the two or more food safety assessments that are required annually for a class 1 food premises under section 19H and this instrument;

Exemption from the need for a food safety supervisor for certain community groups

- 7. under section 19V, exempt the proprietors of the class of food premises described in clause 8 of this instrument from the need to have a food safety supervisor for the period of 5 years;
- 8. the class of food premises for the purposes of clause 7 is those food premises that have all of the following characteristics:
 - (a) the premises is a class 2 food premises; and
 - (b) the proprietor is a community group; and
 - (c) the majority of persons involved in the handling of the food sold at the premises are volunteers; and
 - (d) the food handling activity takes place at the premises for a maximum of two consecutive days at any one time;

Exemption of class 4 food premises from registration

- 9. under section 38(1), exempt class 4 food premises from the requirement to be registered under Part VI of the Act.

Definitions

Words and phrases used in this declaration and instrument of exemption have the meaning specified in schedule 7 to this instrument.

This declaration and instrument of exemption takes effect on 1 July 2010.

Dated 18 June 2010

LANCE WALLACE
Acting Secretary to the Department of Health

SCHEDULE 1**Class 1 food premises**

- (a) A facility listed in the table in this schedule at which potentially hazardous food is prepared for, or served to, patients, residents, or other persons receiving services at the facility (other than that part of the premises that is a canteen or other place at which food is available to be served to members of the public or staff of the facility); or
- (b) a food premises at which the principal activity is preparing ready-to-eat food for either, or a combination of, the following purposes:
- (i) the food is intended to be served to patients, residents, or other persons receiving services at any of the facilities listed in the table in this schedule; or
 - (ii) the food is intended to be delivered to aged persons in their homes or other persons who, due to illness, frailty or impairment are unable to prepare their own food and – the food served or intended to be delivered includes potentially hazardous food; or
- (c) a supported residential service at which potentially hazardous food is prepared for, or served to, residents, and the majority of those residents are aged persons.

Table	
1.	A hospital , including: <ol style="list-style-type: none"> (a) a public hospital; (b) a public health service; (c) a denominational hospital; (d) a private hospital; (e) a day procedure centre; or (f) a multipurpose service – within the meaning of section 3 of the Health Services Act 1988.
2.	An aged care service that provides care in a residential facility. example A nursing home or hostel for the aged.
3.	Any other aged care establishment : <ol style="list-style-type: none"> (a) at which accommodation is provided to aged persons on a permanent or temporary basis in conjunction with regular personal care or nursing services; or (b) at which rehabilitation or therapeutic services are provided to aged persons; or (c) where on-call assistance, including meals, is provided on request to aged residents.
4.	A children's service

SCHEDULE 2

Class 2 food premises

A food premises at which any unpackaged potentially hazardous food is handled, other than –

- (a) a class 1 food premises; or
- (b) a food premises at which the only handling of unpackaged potentially hazardous food is of a kind which renders the premises a class 3 food premises or a class 4 food premises.

SCHEDULE 3**Class 3 food premises**

A food premises at which one or more of the following food handling activities occurs:

- (a) the handling of unpackaged low risk food; or
- (b) the warehousing or distribution of pre-packaged foods; or
- (c) the sale of pre-packaged potentially hazardous food; or
- (d) the sale of shell eggs; or
- (e) offering members of the public a free sample of a potentially hazardous food for immediate consumption if –
 - (i) that food is, or will be, available for sale at the premises in a packaged form; and
 - (ii) the sample is offered for no more than four hours; or
- (f) the sale of ready-to-eat, potentially hazardous food by a community group if –
 - (i) all of the food is cooked on site with the intention of being served immediately;
 - (ii) the majority of persons involved in the handling of the food are volunteers; and
 - (iii) this activity takes place at the premises for a maximum of two consecutive days at any one time –

but does not include a food premises at which the only handling of food is of a kind which renders the premises a class 4 food premises.

SCHEDULE 4

Class 4 food premises

A food premises at which the only food handling activities are one or more of the following:

- (a) the sale to members of the public of:
 - (i) pre-packaged low risk food; or
 - (ii) sausages that are cooked and served immediately, with or without onions cooked at the same time, and bread and sauce – when cooked and sold at a temporary food premises or by a non-profit body; or
 - (iii) packaged or covered cakes (other than cakes with a cream filling) at a temporary premises by a community group; or
 - (iv) biscuits, tea or coffee (with or without milk or soymilk) at a temporary premises by a community group; or
- (b) a wine tasting for members of the public, which may include the serving of cheese or low risk food that has been prepared and is ready to eat; or
- (c) the sale to members of the public or the wholesale of whole (uncut) fruit or vegetables; or
- (d) the handling of low risk food or cut fruit or vegetables and the serving of that food to children at a sessional children's service.

SCHEDULE 5**Audit or assessment requirements for class 1 food premises and class 2 food premises**

- (a) A class 1 food premises that uses a standard food safety program must have two food safety assessments conducted annually, which must be conducted within the registration period for the premises;
- (b) a class 1 food premises that uses a non-standard food safety program must have –
 - (i) one food safety audit conducted annually, and one food safety assessment conducted annually; and
 - (ii) the audit and assessment must be conducted within the registration period for the premises;
- (c) a class 2 food premises that uses a standard food safety program must have a food safety assessment conducted once annually, which must be conducted within the registration period for the premises;
- (d) a class 2 food premises that uses a non-standard food safety program must have a food safety audit conducted once annually, which must be conducted within the registration period for the premises; and
- (e) for the purposes of paragraphs (b) and (d), the required annual food safety audit does not include an audit conducted in the circumstances referred to in section 38E(1) whilst a food premises has a conditional registration to enable the registration authority to be satisfied under section 38 that it may register the premises.

SCHEDULE 6**The range of frequencies and intervals that may be applied
(instead of the default requirements) by a registration authority for audit or
assessment of a particular class 1 food premises or class 2 food premises**

- (a) Subject to paragraph (c), in the case of class 1 food premises or a class 2 food premises, where a non-standard food safety program is in use at the premises –
- (i) a total of up to four food safety audits or food safety assessments within the registration period; and
 - (ii) these audits or assessments must be at intervals of at least three months – provided that within the registration period–
 - (iii) in the case of class 1 food premises – at least one food safety assessment is conducted and at least one food safety audit conducted; and
 - (iv) in the case of class 2 food premises – at least one food safety audit is conducted;
- (b) in the case of a class 1 food premises or a class 2 food premises where a standard food safety program is in use at the premises –
- (i) a total of up to four food safety assessments within the registration period; and
 - (ii) these assessments must be at intervals of at least three months – provided that within the registration period –
 - (iii) in the case of a class 1 food premises – at least two food safety assessments are conducted; and
 - (iv) in the case of a class 2 food premises – at least one food safety assessment is conducted; and
- (c) for the purposes of paragraph (a), the reference to number of audits does not include an audit conducted in the circumstances referred to in section 38E(1) whilst a food premises has a conditional registration to enable the registration authority to be satisfied under section 38 that it may register the premises.

SCHEDULE 7

Definitions

aged care service has the same meaning as in section 1–3 and schedule 1 of the **Aged Care Act 1977** of the Commonwealth;

children’s service means a children’s service within the meaning of section 3 of the **Children’s Services Act 1996** attended by children aged five years of age or less, other than –

- (a) a school, service or activity to which that Act does not apply;
- (b) a recreational activity, such as a camp or party;
- (c) a service at which, ordinarily, the children attending are entirely or mostly different on each occasion care is provided, such as a resort at which children of guests of the resort are temporarily cared for in the absence of their parents or usual carers; or
- (d) an outside school hours service that provides care or education to students outside school hours;

class 1 food premises means food premises declared to be class 1 food premises in this instrument;

class 2 food premises means food premises declared to be class 2 food premises in this instrument;

class 3 food premises means food premises declared to be class 3 food premises in this instrument;

class 4 food premises means food premises declared to be class 4 food premises in this instrument;

community group means:

- (a) a not-for-profit body; or
- (b) a person or unincorporated group of persons undertaking a food handling activity solely for the purposes of raising funds for charitable purposes or for a not-for-profit body;

low risk food

means food that is unlikely to contain pathogenic micro-organisms and will not normally support their growth due to food characteristics;

examples

grains, cereals, carbonated beverages, jams, dried fruits, packaged pasteurised milk, ice-cream manufactured from pasteurised or heat-treated milk, pasteurised or heat treated soy milk, and cut fruit or vegetables (which are not subject to any further processing);

not-for-profit body means an incorporated or unincorporated body or association that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the constitution of the body or association, prohibited from making any distribution, whether in money, property or otherwise, to its members;

pathogenic micro-organisms means any bacteria, viruses, yeasts and moulds that are capable of causing disease;

potentially hazardous food –

- (a) means 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; and
- (b) includes all food other than low risk food.

examples

- raw and cooked meat (including poultry and game) or foods containing raw or cooked meat such as casseroles, curries and lasagne;

- smallgoods such as Strasbourg, ham and chicken loaf;
- dairy products such as custard, or dairy-based desserts such as cheesecakes and custard tarts, but not packaged pasteurised milk or ice-cream manufactured from pasteurised or heat-treated milk;
- seafood (excluding live seafood), including seafood salad, patties, fish balls, stews containing seafood and fish stock;
- processed fruits and vegetables such as fruit salads, fruit juices;
- cooked rice and pasta;
- foods containing eggs, beans, or other protein-rich foods such as quiche, fresh pasta and soy bean products; and
- foods such as sandwiches, rolls and cooked and uncooked pizza that contain the foods listed above;

pre-packaged food is food that has been sealed within a package prior to entering the business, and remains in that package until after it is sold;

ready-to-eat food is food that is ready for consumption, and includes food that may be re-heated, portioned or garnished or food that undergoes similar finishing prior to being served;

registration period means a 12-month period commencing on –

- (a) the date that the registration of the food premises or transfer of the registration of the food premises under the Act takes, or has taken, effect; or
- (b) if the registration of the premises has been renewed under the Act, the date on which the most recent renewal takes, or has taken, effect –

regardless of whether the registration, transfer of registration or renewal of registration decision was made before or after 1 July 2010;

sessional children's service means a children's service which only provides a service –

- (a) for children aged between three and five years of age; and
- (b) at which each child may attend for no more than five hours in a day;

supported residential service has the same meaning as in section 3 of the **Health Services Act 1988**;

unpacked food is food that is not pre-packaged food;

warehouse is a building where goods requiring dry or cold storage are kept, pending distribution to another food premises.

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