

Standard 3.2.2A – Food Safety Management Tools

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

The Authority prepared Proposal P1053 to consider mandating three food safety management tools. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft Standard and a related consequential variation.

2. Variation is a legislative instrument

The approved draft variation is a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and is publicly available on the Federal Register of Legislation (www.legislation.gov.au).

This instrument is not subject to the disallowance or sunset provisions of the *Legislation Act 2003*. Subsections 44(1) and 54(1) of that Act provide that a legislative instrument is not disallowable or subject to sunset if the enabling legislation for the instrument (in this case, the FSANZ Act): (a) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made for the purposes of the scheme. Regulation 11 of the *Legislation (Exemptions and other Matters) Regulation 2015* also exempts from sunset legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Act gives effect to an intergovernmental agreement (the Food Regulation Agreement) and facilitates the establishment or operation of an intergovernmental scheme (national uniform food regulation). That Act also gives effect to Australia's obligations under an international agreement between Australia and New Zealand. For these purposes, the Act establishes the Authority to develop food standards for consideration and endorsement by the Food Ministers Meeting (FMM). The FMM is established under the Food Regulation Agreement and the international agreement between Australia and New Zealand, and consists of New Zealand, Commonwealth and State/Territory members. If endorsed by the FMM, the food standards on gazettal and registration are incorporated into and become part of Commonwealth, State and Territory and New Zealand food laws. These standards or instruments are then administered, applied and enforced by these jurisdictions' regulators as part of those food laws.

3. Purpose

The Authority has approved Standard 3.2.2A to enhance food safety control measures for food businesses that handle potentially hazardous food in the food service and retail sectors.

These measures, called food safety management tools, are applied proportionately to the risk posed by specific food handling activities. They are designed to improve the skills and

knowledge of food handlers and their supervisors, and to assist both businesses and enforcement agencies to more quickly identify failures in the management of potentially hazardous food and take appropriate action. The tools are: food safety training for food handlers engaged in prescribed activities; the appointment of food safety supervisors to advise and supervise the safe handling of specific food; and keeping evidence to substantiate the management of key food handling activities by certain businesses.

4. Documents incorporated by reference

The approved draft Standard does not incorporate any documents by reference.

5. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1053 included one round of public consultation following an assessment and the preparation of a draft standard, a consequential variation and associated report. Submissions were called for on 14 February 2022 for an eight-week consultation period.

A Decision Regulation Impact Statement (DRIS) was prepared by the Authority and has been approved by the Office of Best Practice Regulation (Reference - OBPR21-01217). A copy of the DRIS is available on the FSANZ website.

6. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 44 of the *Legislation Act 2003*.

7. Approved Draft Standard

The draft food regulatory measure would add a new Standard to the Code – Standard 3.2.2A Food Safety Management Tools.

There are two Notes immediately after the title of the proposed new Standard. Note 1 explains that the instrument is a standard under the FSANZ Act, the standards together make up the Code, and refers to section 1.1.1—3 of the Code. Section 1.1.1—3 is a provision about the application of the Code. Note 2 explains the proposed new Standard would apply in Australia only – it would not apply in New Zealand.

Section 3.2.2A—1: This provision establishes that the name of the Standard is the *Australia New Zealand Food Standards Code* – Standard 3.2.2A – Food Safety Management Tools.

The Note to this section explains that the Standard will commence 12 months after the date of gazettal, being the date specified in accordance with section 92 of the FSANZ Act.

Section 3.2.2A—2: This provision sets out definitions for certain key words used in the Standard, and signposts to the definitions of other key words used in the Standard.

Category one business and **category two business** are defined in sections 3.2.2A—6 and 3.2.2A—7 respectively (see below).

Food safety supervisor means a person who holds a 'food safety supervisor certificate' (see below), issued within the immediately preceding period of five years; and who has the authority and ability to manage and give direction on the safe handling of food.

'Handling' is defined in clause 2 of Standard 3.1.1 (see below).

Food safety supervisor certificate means certification as a food safety supervisor (see above) by either a registered training organisation; or an organisation recognised by the relevant authority under the application Act.

‘Relevant authority’ and ‘application Act’ are defined in section 1.1.2 of the Code (see below).

Food safety training course means training in food safety that includes training in each of the following:

- safe handling of food; and
- food contamination; and
- cleaning and sanitising of food premises and equipment; and
- personal hygiene.

‘Food premises’ and ‘handling’ are defined in clause 2 of Standard 3.1.1 (see below).

Potentially hazardous food means food that has to be kept at certain temperatures to either:

- minimise the growth of any pathogenic microorganisms that may be present in the food; or
- prevent the formation of toxins in the food.

This definition of ‘potentially hazardous food’ is consistent with the definition of that term provided in Standard 3.2.2.

Prescribed activity is defined in section 3.2.2A—5 (see below).

Process, in relation to food, means activity conducted to prepare food for sale and includes (but is not limited to) chopping, cooking, drying, fermenting, heating, thawing and washing, or a combination of these activities.

This definition of ‘process’ is similar to the definition of that term provided in Standard 3.2.2.

Ready-to-eat food means food that is ordinarily consumed in the same state as that in which it is sold, but does not include:

- nuts in the shell; or
- whole, raw fruits; or
- vegetables that are intended for hulling, peeling or washing by the consumer.

This definition of ‘ready-to-eat food’ is consistent with the definition of that term provided in Standard 3.2.2.

Notes 1 and 2 in section 3.2.2A—2 signpost relevant definitions contained in other parts of the Code. Note 1 refers readers to the definitions of *application Act*, *authorised officer*, *caterer*, *fund raising event*, *jurisdiction* and *relevant authority* in section 1.1.2—2 of the Code. Note 2 refers readers to the definitions of *food business*, *food premises* and *handling* in clause 2 of Standard 3.1.1.

Section 3.2.2A—3: This provision deals with application of the Standard.

Subsection (1) provides that the Standard applies to category one and category two food businesses in Australia.

Subsection (2) provides that the Standard does not apply to the handling of food for or at a fund raising event.

‘Category one food business’ and ‘category two food business’ are described in sections 3.2.2A—6 and 3.2.2A—7 respectively (see below). ‘Fund raising event’ is defined in section 1.1.2—2 of the Code. ‘Handling’ is defined in clause 2 of Standard 3.1.1.

Section 3.2.2A—4: This provision sets out what constitutes ‘food service’ for the purposes of the Standard.

Subsection (1) provides that ‘food service’, for the purposes of the Standard, means a food business which processes and serves ready-to-eat food direct to a consumer, whether consumed at the food premises or elsewhere.

‘Process’ in relation to food and ‘ready-to-eat’ are defined in section 3.2.2A—2 (see above). ‘Food business’ and ‘food premises’ are defined in clause 2 of Standard 3.3.1.

Subsection (2) provides that, for the purposes of subsection 3.2.2A—4(1), ‘serve’ means the act of setting out or presenting food to or for a person to eat that food; and includes the following activities:

- portioning food from a bulk tray or container into single serves and placing it on plates; or
- presenting food in a bain-marie or other bulk food display unit for self-service; or
- delivery of plated food.

Section 3.2.2A—5: This provision provides that, for the purposes of the Standard, a ‘prescribed activity’ is the handling by the food business of any unpackaged potentially hazardous food that:

- is used in the preparation of ready-to-eat food to be served to a consumer; or
- is ready-to-eat food intended for retail sale by that business.

‘Food business’ is defined in clause 2 of Standard 3.3.1. ‘Potentially hazardous food’ and ‘ready-to-eat food’ are defined in section 3.2.2A—2 (see above).

This definition identifies the target activities of the Standard; that is, activities related to the handling of potentially hazardous food at a stage where there is no further step before consumption of the food that would destroy any pathogens present in the food.

Engagement by a food business in one of the above prescribed activities triggers the requirements in sections 3.2.2A—10, 3.2.2A—11 and 3.2.2A—12 (see below), depending on whether the food business is a category one or two business (see sections 3.2.2A—8 and 3.2.2A—9 below).

Section 3.2.2A—6: This provision sets out the definition of a ‘category one business’ for the purposes of the Standard. A ‘category one business’ means a food business that:

- is a caterer or a food service; and
- processes unpackaged potentially hazardous food into a food that is:
 - potentially hazardous food; and
 - ready-to-eat food.

‘Food business’ is defined in clause 2 of Standard 3.3.1. ‘Caterer’ is defined in section 1.1.2—2 of the Code. ‘Potentially hazardous food’, ‘process’ in relation to food, and ‘ready-to-

eat food' are defined in section 3.2.2A—2 (see above). The meaning of 'food service' is set out in section 3.2.2A—4 (see above).

Examples of category one businesses are restaurants, fast food outlets, and caterers catering food for a function or event.

An example of a category one business would also include a business such as a bakery that makes its own potentially hazardous food, such as a custard tart or quiche.

It is intended that the definition of a 'category one business' will also capture a business that makes and then sells 'ready-to-eat food' to another business, for example a food business which sells premade sandwiches to a café.

Section 3.2.2A—7: This provision sets out the definition of a 'category two business' for the purposes of the Standard. 'Category two business' means a food business that offers for retail sale a food that is:

- potentially hazardous food; and
- ready-to-eat food; and

where that food:

- was received unpackaged by the food business or was unpackaged by the food business after receipt; and
- was not made or processed (other than slicing, weighing, repacking, reheating or hot-holding the food) by the food business.

'Food business' is defined in clause 2 of Standard 3.3.1. 'Potentially hazardous food', 'process' in relation to food, and 'ready-to-eat food' are defined in section 3.2.2A—2 (see above).

An example of a 'category two business' is a retail store that sells unpackaged ham directly to a consumer, such as a delicatessen, even if the ham is wrapped by the business before it is handed to a consumer. The business would be able to do minimal processing, including slice, weigh, repack, reheat or hot-hold the food, and still be classed as a category two business.

Section 3.2.2A—8: This provision identifies which food safety management tools apply to category one businesses. It provides that a 'category one business' (as defined by section 3.2.2A—6) must comply with sections 3.2.2A—10 (Food safety training for food handlers engaged in a prescribed activity), 3.2.2A—11 (Supervision of food handlers), and 3.2.2A—12 (Substantiating food safety management of prescribed activities) (see below).

If a business engages in activities of *both* a category one and category two business (see sections 3.2.2A—6 and 3.2.2A—7 respectively, above), then section 3.2.2A—8 would apply to that business.

Section 3.2.2A—9: This provision identifies which food safety management tools apply to category two businesses. It provides that a category two business (see section 3.2.2A—7 above) must comply with sections 3.2.2A—10 (Food safety training for food handlers engaged in a prescribed activity) and 3.2.2A—11 (Supervision of food handlers) (see below).

However, as stated above, if a business engages in activities of *both* a category one and category two business (see sections 3.2.2A—6 and 3.2.2A—7 respectively, above), then section 3.2.2A—8 (see above) would apply to that business.

Section 3.2.2A—10: This provision sets out the food safety training requirements for food handlers who engage in a prescribed activity (food safety training requirements). It provides that a food business must ensure that each food handler who engages in a prescribed activity has, *before engaging in that activity*:

- completed a food safety training course; or
- skills and knowledge of food safety and hygiene matters commensurate with that specific prescribed activity.

‘Food safety training’ and ‘food safety training course’ are defined in section 3.2.2A—2 (see above). ‘Food business’ and ‘handling’ are defined in clause 2 of Standard 3.3.1. What constitutes a ‘prescribed activity’ is set out in section 3.2.2A—5 (see above).

These food safety training requirements are intended to ensure that food handlers have the food safety skills and knowledge required to handle foods that support the growth of pathogenic microorganisms. In particular, businesses are able to recognise prior learning, such as competency-based food safety training, as an alternative to requiring the food handler to complete a food safety training course.

Both category one and category two businesses (as defined in sections 3.2.2A—6 and 3.2.2A—7 above) would have to comply with these food safety training requirements (see section 3.2.2A—8 and 3.2.2A—9 above).

Section 3.2.2A—11: This provision sets out requirements for food businesses in relation to the supervision of food handlers (supervision requirements). It provides that the food business must:

- appoint a food safety supervisor *before* engaging in a prescribed activity; and
- ensure that the food safety supervisor is reasonably available to advise and supervise each food handler engaged in that prescribed activity.

‘Food safety supervisor’ is defined in section 3.2.2A—2 (see above). What constitutes a ‘prescribed activity’ is set out in section 3.2.2A—5 (see above). ‘Food business’ and ‘handling’ are defined in clause 2 of Standard 3.1.1.

A ‘food safety supervisor’ has an important role in fostering a positive food safety culture, imparting skills and knowledge and improving awareness of foodborne illness and its impacts. The business must not undertake any ‘prescribed activities’ until a ‘food safety supervisor’ has been appointed.

Both category one and category two businesses (as defined in sections 3.2.2A—6 and 3.2.2A—7 respectively, above) would have to comply with these supervision requirements (see section 3.2.2A—8 and 3.2.2A—9 above).

Section 3.2.2A—12: This provision sets out requirements related to substantiating the food safety management of prescribed activities (substantiation requirements).

Subsection (1) requires that, *subject to subsection 3*, a food business engaging in a prescribed activity must make a record that substantiates any matter that the prescribed provisions (as listed in subsection 3.2.2A—12(4) below) require in relation to that prescribed activity.

This requirement does not apply to the handling of food for or at a fund raising event.

‘Fund raising event’ is defined in section 1.1.2—2 of the Code. ‘Food business’ and ‘handling’

are defined in clause 2 of Standard 3.1.1. What constitutes a 'prescribed activity' is set out in section 3.2.2A—5 (see above).

Subsection (2) requires the food business concerned must keep a record required by subsection 3.2.2A—12(1) for three months after the business makes the record.

Subsection (3) provides that the requirement in subsection 3.2.2A—12(1) does not apply to a food business that can demonstrate to the reasonable satisfaction of an authorised officer, on request, that the business has complied with each of the prescribed provisions.

'Authorised officer' is defined in section 1.1.2—2 of the Code. 'Prescribed provisions' are listed in subsection 3.2.2A—12(4) (see below).

The intent of subsection 3.2.2A—12(3) is that businesses engage with authorised officers to determine appropriate alternatives. These could include, for example, providing standard operating procedures or physically demonstrating an activity (e.g. sanitising a piece of equipment), to the reasonable satisfaction of an authorised officer.

Subsection (4) lists the prescribed provisions for the purposes of section 3.2.2A—12. 'Prescribed provisions' are the following provisions in Standard 3.2.2:

- subclause 5(3);
- paragraph 6(2)(a);
- paragraph 7(1)(b)(ii);
- subclause 7(2);
- subclause 7(3);
- subclause 7(4);
- paragraph 8(5)(a);
- paragraph 10(b); and
- clause 20.

The prescribed provisions relate to such matters as temperature control (during food receipt, storage, cooking/reheating, display and transport), food processing and cleaning/sanitising, when engaging in a prescribed activity.

'Process', in relation to food, is defined in section 3.2.2A—2 (see above).

Only category one businesses (as defined in section 3.2.2A—6 above) would have to comply with these substantiation requirements (see section 3.2.2A—8).

However, if a business engages in activities of both a category one and category two business (see sections 3.2.2A—6 and 3.2.2A—7 respectively, above), then that business would also have to comply with these substantiation requirements.

Transitional arrangements

Section 93 of the FSANZ Act provides that a Standard will take effect on the day specified in the notice given under section 92 of that Act in relation to that Standard. The notice given under section 92 of the FSANZ Act in relation to Standard 3.2.2A states that that Standard commences on a date 12 months after gazettal. This means that, if approved, Standard 3.2.2A will commence 12 months after its date of gazettal and that relevant businesses will have a 12 month period from gazettal in which to prepare for that Standard's requirements.