

Legislative Assembly for the
Australian Capital Territory

Food Amendment
Regulation 2013 (No 1)

SL2013-8

Explanatory Statement

Circulated by the authority of
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Food Amendment Regulation 2013 (No 1)

Overview

From 1 September 2013, all registered food businesses in the ACT will need to have at least one trained food safety supervisor. New food businesses, registered from 1 September 2013, must appoint a food safety supervisor within 30 days after the day the business is registered.

Food safety supervisors were introduced in the ACT with the passage of the *Food Amendment Act 2012*. The *Food Amendment Act 2012* made several changes to the *Food Act 2001* aimed at improving food safety and increasing regulatory transparency. The *Food Amendment Act 2012* introduced part 9A that outlines the requirements for food safety supervisors.

A food safety supervisor is expected to have advanced skills and knowledge in food safety and be capable of training and supervising staff in safe food handling. Safe food handling helps reduce the risk of food borne illness and its associated cost to the community.

The Food Amendment Regulation 2013 (No 1) supports the food safety supervisor scheme by providing specific requirements on training qualifications and notification of food safety supervisors.

This Regulation also displaces the effect of section 47 of the *Legislation Act 2001*, relating to the incorporation of the Food Standards Code into the *Food Act 2001*.

Clauses

Clause 1 declares the name of the Regulation to be the Food Amendment Regulation 2013 (No 1).

Clause 2 provides for the commencement of the Regulation.

The commencement of the Regulation is staged. Section 4 will commence the day after notification to amend section 7 of the Food Regulation 2001 to displace the effect of section 47 of the *Legislation Act 2001*. The remainder of the Regulation will commence upon the commencement of Part 9A of the *Food Act 2001*.

Clause 3 provides that the legislation that is amended by the Regulation is the Food Regulation 2002.

Clause 4 inserts a new section 7 (2). The new section displaces the effect of Section 47 of the *Legislation Act 2001*.

Section 47 of the Legislation Act requires the Food Standards Code (the Code) to be a notifiable instrument unless provision is made to displace the requirement.

The Code contains the standards that are used by Australian jurisdictions to regulate food. It is an active document and can be amended numerous times a year due to

proposals from members of the public, government and industry. If the Code was incorporated as a notifiable instrument, it would quickly become out of date.

The Code is available for public access from the Commonwealth Legislation Register. A website link to the Code is provided in the new section.

Clause 5 inserts a new part 5 to the Food Regulation 2002. Part 5 provides operational details of the food safety supervisor requirement of the *Food Act 2001*. New sections 19, 20 and 21 provide specific requirements for food businesses required to appoint a food safety supervisor.

New section 19 outlines additional requirements for a person to be a food safety supervisor. Food Safety Supervisors are required to undertake training from an Australian Registered Training Organisation (RTO) and retain proof of their training. The proof of training will be in form of a Statement of Attainment for approved food safety training courses.

Many people, particularly chefs, may have already completed the approved food safety training course during tertiary or vocational study. To ensure currency in food handling skills and knowledge, the statement of attainment will be considered valid for five years from its date of issue. Thereafter, a refresher course will need to be undertaken to continue acting as a food safety supervisor.

It is an offence if a proprietor appoints a food safety supervisor who does not hold a statement of attainment for an approved course or the statement is more than five years old, a maximum penalty of 20 penalty units applies. It is appropriate that the obligation to appoint a food safety supervisor with a valid qualification rests with the proprietor of a food business. The aim of the food safety supervisor requirement is to enhance food safety in the ACT by ensuring businesses have suitably trained staff that can identify, correct and prevent food safety hazards. Non-compliance to this requirement could potentially result in unsafe food practices and the risk of serious public health consequences.

It is proposed that this offence be strict liability. In the ACT food safety regulatory regime, initiatives are designed to ensure that serious public health risks from unsafe food practices are managed appropriately by a food business. The food safety supervisor scheme has the same intention. Strict liability offences are commonly used to ensure the integrity of regulatory schemes. Strict liability offences are considered to engage the presumption of innocence, and the prosecution has to prove, beyond a reasonable doubt, that the person is guilty. With strict liability offences only the physical element of the offence needs to be proved. In designing a strict liability offence, it is desirable that the defendant can be reasonably expected to be aware of the requirements of the law. It is considered that this type of offence is appropriate for ensuring adequately trained food safety supervisors across ACT food businesses. The maximum penalty for this offence is 20 penalty units.

New section 20 requires food business proprietors to give written notice of the commencement of a food safety supervisor to the Chief Health Officer within 7 days.

New section 21 requires food business proprietors to give written notice to the Chief Health Officer of any change to the contact details of a food safety supervisor within seven days of becoming aware of the change. Although food safety supervisors are not required to be present at the business at all times they should aim to be

reasonably available whenever food is handled. The provision of contact details to the Chief Health Officer ensures that food safety supervisors are contactable by Public Health Officers.

Clause 6 inserts new terms for the dictionary to the Regulation. The insertions are: *approved food safety training course*, *food safety supervisor*, *food safety training course* and *statement of attainment*. These terms are definitions included in the *Food Act 2001*, section 116.