

Legislation Guide: Food Businesses in Domestic Settings

Introduction

Many people use their domestic kitchen for small scale commercial ventures and for the making food for charitable fundraisers.

This document guides Council Environmental Health Officers (EHOs) on the application of the Food Act 2003 and associated Food Safety Standards to businesses wanting to operate from domestic premises.

The intent is to promote a consistent approach to these businesses.

Legislation

The primary legislative food safety provisions for home-based food businesses are contained within the Food Act 2003 (the Act) and the Australia New Zealand Food Standards Code (the Code).

In addition, the publication Safe Food Australia - A Guide to the Food Safety Standards (SFA) provides useful guidance for EHOs on the application of the Code to home-based food businesses.

Definitions

For the purpose of this guide the following definitions apply:

Home-based food business: A premises used primarily as a private dwelling which is also to be used for the handling of food for sale for human consumption.

Other terms have the same meaning as defined within the Act and the Code.

The Act and the Code

The definitions of 'food business' and 'sale' of food apply to home food manufacture as do provisions relating to offences, defences, notification and registration.

Likewise, the powers of EHOs to regulate registered and notify only businesses are no different to any other type of food business.

The requirements for notification or registration are discussed in more detail below.

Outcome-Based Approach and Risk Management

It is important to recognise both the Act and more particularly the Code are outcome-based.

This means the focus is placed more on achieving a safe end-product than on issues such as premises design and construction details.

Outcome-based approaches must be supported by ways to assess and respond to food safety hazards.

Risk management provides a way to assess and identify hazards associated with a food production activity. This allows appropriate decisions to be made on issues like premises suitability or menu limitations etc.

The main benefit of adopting an outcome-based approach is it allows food businesses to be established in a variety of settings. Regardless of the setting, the focus is on managing food safety risks and achieving the outcome of safe food.

Enquiries and applications for the establishment of a home-based food business must be treated on merit and assessed using an outcome-based, risk management approach.

Safe Food Australia

Safe Food Australia provides a good outline of the relevant legislative provisions of the Code applying to home-based food businesses. The key provisions include:

- **Definition of a food premises.** (p6 SFA)

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.

- **Application of the Code to different types of food premises.** (SFA p204) (Appendix 10).

This explanatory note confirms that domestic premises can be used for a food business and details some of the exemptions which have been permitted to accommodate these types of businesses.

These exemptions are given because domestic premises generally do not need to withstand the same amount of use and cleaning.

- It is accepted that existing facilities will need to be utilised and structural changes should only be required where there is a direct risk to the food. **Designated hand wash facilities –**

Standard 3.2.2 parts 17 (SFA p74) and 14 (SFA p136) allow domestic premises to be exempted from having designated hand washing facilities, and allow for use of one sink for multiple purposes.

These exemptions can be applied provided there is no significant risk to food safety.

Food handlers must still wash their hands, as this is important in all food businesses.

Separation of the uses of the sink by time is acceptable as long as the sink is available for hand washing while food preparation is in progress and is cleaned and sanitised when necessary to prevent food safety risks.

- **Floors – Standard 3.2.3 10 (SFA p120)**

Floors must be smooth, impervious and unable to absorb grease, water and food particles.

This clause allows written exemptions to be given for domestic premises to the flooring standard in cases where there is no risk to the food.

See Appendix 4 for more information.

- **Water supply – Standard 3.2.3 4 (SFA p108)**

Food premises require an adequate supply of potable water. Potable water is defined as water that is safe for human consumption.

Not having potable water does not necessarily exclude premises from being used as a food business. Provided that the activity that requires the water does not pose a risk to food safety (e.g. some cleaning tasks).

As per all food businesses, the safety of the water should be assessed on a case by case basis and by risk assessment. Generally, reticulated supply can be considered safe, and if appropriately treated, private supplies (e.g. rainwater from tanks) may be used.

The Australian Drinking Water Guidelines provides further guidance.

Potential exemptions from the use of potable water are provided under this clause.

Alternatives to potable water are offered, for example, using boiled water and using chemical sanitisers for cleaning.

See Appendix 5 for more information.

National Construction Code - Application of Tas. Part H102

Tas Part H102 of the National Construction Code (NCC) does not apply to domestic dwellings classified as Class 1 buildings (as per Limitations of Tas Part H102).

In cases where commercial food production is ancillary to the use of the building as a domestic dwelling, assessment should be undertaken against the requirements of the Food Safety Standards taking into account the relevant exemptions.

Notification and Registration

The definition of a food business under the Act includes home food manufacture.

All food businesses must contact their local council to notify. The council will determine the risk rating of the business using the Food Business Risk Classification System (RCS).

RCS will give a rating for a given food business, from P1 (highest risk), through P2, P3, P3N, to P4 (lowest risk).

Under section 86 of the Food Act 2003, food businesses with a classification of P1, P2 or P3 are required to register with their local council. Food businesses with a classification of P3N or P4 are required to notify.

More information on the RCS can found on the Department's website:

www.health.tas.gov.au/publichealth/food_safety

Where notification only is required and is given to Council under Section 84 of the Act, there is no provision in the Act to refuse a notification.

Where businesses are required to register in accordance with the Section 86 Notice, and the application is refused, the Council must give notice of the refusal in writing and set out the reasons for the refusal.

The reasons must be supported by the existing legislative provisions.

Summary Advice

1. There are specific provisions for Home-based food businesses under the legislation and therefore cannot be banned under food safety legislation.
2. Any application for notification or registration must be accepted and considered by Council.
3. Applications should be assessed using an outcome-based, risk management approach.
4. Registration is only required if the businesses is assigned a risk category P1, P2 or P3 under the Tasmanian Food Business Classification System. Where registration is not required, the business must notify.
5. Where additional detail is required, Council can request it from the applicant.

6. The installation of a separate commercial kitchen is not mandated.
7. Structural changes should only be required if there is a direct risk to the safety of the food - as per the intent of the food safety standards.
8. Where there is a direct risk to the food that cannot be managed with good practice, alternatives could be explored.
9. Consider using management plans and conditions on registration to better manage risk.
For example, pets and children must be kept out of the kitchen while making commercial products; hours of operation are limited to school hours only; use only boiled water and so on.
10. Foods for business use must be stored separately from domestic foods. This can be achieved in a number of ways.
For example, place commercial foods and ingredients in marked and sealed containers and allocate cupboard and refrigerator for 'business use only'.

Extracts from Safe Food Australia 2016

Appendix 1: Standard 3.2.3 Purpose

Home Based Food Businesses (p207)

Domestic premises used to handle food for sale may include: bed and breakfast, farm home-stay, home-based childcare, preparation for sale at markets and school canteens.

There are specific exemptions from some of the requirements of this standard for domestic premises based on practicalities.

Kitchens in domestic premises are usually not expected to have to withstand the same amount of use and cleaning as commercial premises and are generally not designed to commercial-standard specifications.

Features such as kick plates and false bases to benches, and domestic model dishwashers are usual in domestic kitchens.

It is suggested **if an enforcement authority seeks any changes in domestic premises, the changes relate to fixing food safety problems** in the premises rather than non-compliance with design and fit out standards.

Appendix 2: Standard 3.2.2 section 17

Hygiene of food handlers — duties of food businesses (p74)

- (1) Subject to subclause (2), a food business must, for each food premises:
 - (a) maintain easily accessible hand washing facilities
 - (b) maintain, at or near each hand washing facility, a supply of:
 - (i) warm running water; and
 - (ii) soap; or
 - (iii) other items that may be used to thoroughly clean hands.
 - (c) ensure hand washing facilities are only used for the washing of hands, arms and face; and
 - (d) provide, at or near each hand washing facility:
 - (i) single use towels or other means of effectively drying hands that are not likely to transfer pathogenic micro-organisms to the hands; and
 - (ii) a container for used towels, if needed.
- (2) **Paragraph (1)(c) does not apply to hand washing facilities at food premises used principally as a private dwelling if the proprietor of the food business has the**

approval in writing of the appropriate enforcement agency.

Appendix 3: Standard 3.2.3 Division 4 section 14

Hand washing facilities (p139)

- (1) Subject to subclause (4), food premises must have hand washing facilities that are located where they can be easily accessed by food handlers:
 - (a) within areas where food handlers work if their hands are likely to be a source of contamination of food; and
 - (b) if there are toilets on the food premises immediately adjacent to the toilets or toilet cubicles.
- (2) Subject to the following subclauses, hand washing facilities must be:
 - (a) permanent fixtures
 - (b) connected to, or otherwise provided with, a supply of warm running potable water
 - (c) of a size that allows easy and effective hand washing
 - (d) clearly designated for the sole purpose of washing hands, arms and face.
- (3) Paragraph (2)(a) does not apply to temporary food premises.
- (4) With the approval in writing of the appropriate enforcement agency, food premises specified in the approval do not have to comply with any requirement of this clause that is also specified in the approval.
- (5) **Only food premises used principally as a private dwelling or are temporary food premises may be specified in an approval for the purposes of subsection (4).**

Domestic premises (p141)

When considering whether to approve an exemption to a requirement for hand washing facilities, enforcement agencies should consider risks to food safety, taking into account the type and scale of the business's activities (all food handling, and cleaning and sanitising operations).

For example, if only one or two people are involved with food handling activities at one time or only food that is not potentially hazardous is handled, the food safety risks may be relatively low. Arrangements for hand washing that may be suitable in this case could include;

- A hand basin adjacent to the kitchen or easily accessible from the kitchen (e.g. in a laundry or bathroom nearby) is available for hand washing
- The kitchen has a double bowl sink with one compartment designated for hand washing only
- The sink can be effectively used for different activities at different times (and sanitised between uses as necessary) to enable hand washing when it is needed,

However, if for example multiple people are engaged in food handling activities within the kitchen and they are handling both raw and ready-to-eat food, the food safety risks resulting from cross-contamination from hands may be considered higher. In this case a designated hand wash basin in the kitchen may be appropriate.

An exemption from having a basin immediately adjacent to the toilet or toilet cubicles may be sought by home-based businesses. The enforcement authority may grant an exemption if they are satisfied that food handlers can use other hand washing facilities without compromising food safety.

Appendix 4: Standard 3.2.3 Division 3 section 10

Floors (p120)

- (1) Floors must be designed and made in a way appropriate for the activities conducted on the food premises.
- (2) Subject to subclause (3), floors must:
 - (a) be able to be effectively cleaned
 - (b) be unable to absorb grease, food particles or water
 - (c) be laid so that there is no ponding of water; and
 - (d) to the extent practicable, be unable to provide harbourage for pests.
- (3) The following floors do not have to comply with subclause (2):
 - (a) floors of temporary food premises, including ground surfaces, that are unlikely to pose any risk of contamination of food handled at the food premises; and
 - (b) **floors of food premises unlikely to pose any risk of contamination of food handled at the food premises provided the food business has obtained the approval in writing of the appropriate enforcement agency for their use.**

Appendix 5: Standard 3.2.3 Division 2 sections 4(2) & 4(3)

Water supply (p138)

The intended outcomes are that potable water is available for activities including washing food, cooking, making ice, cleaning, sanitising and personal hygiene. And that non-potable water is used only where it will not affect food safety.

4(2) Potable water

Subject to subclause (3), a food business must use potable water for all activities that use water conducted on the food premises.

Potable water is defined as water acceptable for human consumption. The water must be safe to drink and must not introduce contaminants into food (as an ingredient or through washing food or other processing activities).

The water must also be safe to use for cleaning and sanitising processes, and hand washing. Potable water must be used for making ice.

The *Australian Drinking Water Guidelines* provides guidance including guideline values for chemicals, microorganisms, turbidity, pH etc. to be met for potable quality (refer to Chapter 10 of the ADWG).

The guidelines describe physical characteristics and microbiological and chemical quality; and include guidance on testing and sampling frequency.

They also contain advice on disinfecting water supplies and other barriers to the transmission of pathogenic organisms.

Businesses using treated town water supply do not usually need to take extra steps to ensure the water is potable unless the supply authority has specifically recommended further treatment. Businesses with untreated water or with non-reticulated water supplies (e.g. rainwater tanks, bores, dams, rivers) may need to test and treat the water to ensure it is suitable for use.

Storage tanks for potable water must be adequately designed, constructed and maintained to prevent contamination. The materials used in making tanks, and the roofs or other surfaces that collect the water, may contaminate the water.

Animals and birds may gain access if the tank is not covered and inlets, outlets and overflows are not screened. Measures should also be taken to keep out leaves, dust, animal and bird droppings, and insects.

Exemption from using potable water

4(3) If a food business demonstrates that the use of non-potable water for a

purpose will not adversely affect the safety of the food handled by the food business, the food business may use non-potable water for that purpose.

Businesses can under subclause 4(3) use non-potable water if they can show the appropriate enforcement agency the water will not affect the safety of food produced.

Businesses are responsible for providing evidence to an enforcement officer that water quality and the use to which it is put will not affect food safety.

Evidence may include the reasons why the water is non-potable and the systems in place to ensure the water will not contaminate food or equipment that comes in contact with food on the premises.

Examples of uses that may be appropriate for non-potable water include refrigeration equipment, fire-fighting and some cleaning.

Example

A small community of 500 people has one food premises, a combined grocery store and takeaway. The community has an untreated town water supply. To ensure no contamination from water, the owner is asked to use boiled water for drinking and food preparation.

The owner has a piped supply of town water to the sinks and hand basins. Eating and drinking utensils and food contact surfaces are sanitised with a chemical sanitiser after washing.

Further Information

Further advice about home-based food businesses can be obtained by contacting the Department's Food Safety Unit on 1800 671 738.

The Standards referred to in this document can be accessed via the *Food Standards Australia New Zealand* website www.foodstandards.gov.au/