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190-22

Call for submissions – Proposal P1053

Food Safety Management Tools

FSANZ has assessed a proposal to consider food safety management tools for the food service and retail sectors and has prepared two draft food regulatory measures - a new draft Standard and a draft consequential variation to Standard 1.1.17. Pursuant to section 61 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measure.

For information about making a submission, visit the FSANZ website at [current calls for public comment and how to make a submission](#).

All submissions on applications and proposals will be published on our website. We will not publish material that we accept as confidential. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1982*. Submissions will be published as soon as possible after the end of the submission period.

Under section 114 of the FSANZ Act, some information provided to FSANZ cannot be disclosed. More information about the disclosure of confidential commercial information is available on the FSANZ website at [information for submitters](#). For information on how FSANZ manages personal information when you make a submission, see FSANZ's [Privacy Policy](#).

Submissions should be made in writing; be marked clearly with the word 'Submission'. You also need to include the correct application or proposal number and name. Electronic submissions can be made through the FSANZ website via the link [how to make a submission](#). You can also email your submission to submissions@foodstandards.gov.au. FSANZ also accepts submissions in hard copy to our Australia and/or New Zealand offices. There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 11 April 2022

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters. Questions about making a submission or application and proposal processes can be sent to standards.management@foodstandards.gov.au.

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Supporting documents

The [following documents](#) which informed the assessment of this proposal are available on the FSANZ website:

- SD1 Consultation Regulatory Impact Statement (CRIS)
- SD2 Microbiological Risk Profiling
- SD3 Draft implementation guidance for food businesses

Executive summary

The food services sector is vitally important to the Australian economy and our way of life. Many businesses do an excellent job in providing Australians with safe food, however a large proportion of reported foodborne illness cases (77% and up to 3.2 million cases) are linked to the food service and retail sectors (referred to as food service sectors). This is estimated to cost the Australian economy \$1.5 billion per year. Reducing cases of foodborne illness in Australia and ensuring greater consistency across the sector remains a focus for stakeholders in the food regulatory system.

Focussing on food service sectors, Food Ministers requested Food Standards Australia New Zealand (FSANZ) review five food safety measures (three regulatory and two non-regulatory tools) and whether they would provide net benefit if applied in a well targeted manner to businesses in these sectors.

FSANZ prepared and assessed a proposal reviewing the following three regulatory measures for food service businesses:

- a certified food safety supervisor (FSS)
- food handler training (FHT)
- evidence to substantiate food safety management (E).

The two non-regulatory tools have been considered in the consultation regulatory impact statement (CRIS) associated with this proposal.

Proposal assessment

FSANZ assessed the extent of foodborne illness linked to food service businesses and identified key food handling activities where improvement is needed. We examined national food safety requirements and international approaches. We considered the impact of additional tools to improve food safety. Key findings are:

- Food service businesses have been linked to a large proportion of foodborne illness in Australia, and continue to be a significant source of illness. This indicates failures in key food handling activities for potentially hazardous food (PHF).
- There were more and varied sources of contamination, and additional factors supporting bacterial growth and survival, identified in outbreaks from restaurants, commercial caterers or take-away settings, compared to other settings.
- To reduce foodborne illness, interventions targeted to food service sectors must be multi-faceted to address multiple high-risk food handling activities occurring in these sectors.
- Current food safety requirements in the Code lay foundations for the production of safe and suitable food. However, they are inadequate for these sectors, which are unique in preparing food to be served directly to the consumer (for consumption without any further risk mitigation). While some jurisdictions have implemented additional regulatory measures to strengthen national requirements, approaches are not consistent.
- International approaches to food safety management, focus on preventing food safety issues. International guidance under Codex recognises that some food

handling activities (such as temperature control; cleaning and sanitising), require enhanced attention above good hygiene practices.

- Australian jurisdictions with additional requirements to support safe food handling (i.e. food safety supervisor and/or promotion of additional food handler training), have seen improved food safety behaviours. These jurisdictions have supporting resources available to implement these tools, that could be applied nationally.

We considered stakeholder views provided in response to previous consultation during the assessment process. Stakeholders generally support food regulatory measures for food service businesses to be nationally consistent. Industry raised concerns focused on additional burden and costs associated with implementation. There is agreement that skills and knowledge in these sectors need improvement and a greater emphasis on food safety controls to mitigate key risks is needed.

FSANZ's cost-benefit analysis, as summarised in the consultation regulation impact statement (CRIS), indicates that a risk-proportionate approach for implementing additional food safety management tools provides a strong net benefit.

Measures aimed at strong food safety awareness and knowledge of appropriate food handling—from initial receipt, through all stages of processing, storage and service of food to consumers—supports reducing food safety risks. Targeted improvements are needed to help businesses manage critical food safety controls (e.g. food temperatures and sanitisation processes).

Risk-proportionate regulation

FSANZ grouped food service businesses into three broad categories, based on food safety risk and applied the proposed regulatory tools in a risk proportionate manner. Those businesses with higher risks have more stringent requirements and more tools to manage their risks.

Category 1: Food service businesses, such as caterers (onsite and offsite), restaurants, takeaways and retailers who make and serve PHF are considered. Category 1 businesses are associated with the highest food safety risks. Three regulatory measures for food safety management (FSS, FHT, and E) are considered appropriate for these businesses.

Category 2: Retailers of unpackaged ready-to-eat PHF are considered Category 2 businesses. Two new regulatory food safety management tools (FSS and FHT) are considered appropriate for Category 2 businesses.

Category 3: Retailers of pre-packaged ready-to-eat PHF, which remains packaged during sale, are considered Category 3 businesses. No new regulatory measures would be applied to these businesses.

Non-regulatory tools

For each category, regulatory measures would be supported by non-regulatory tools that focus on food safety culture and education. For example, an education campaign targeted at Category 3 businesses could focus on storage and display temperature of PHF. Templates exist (e.g. in Safe Food Australia and on jurisdictional websites) to assist businesses maintain temperature controls and, while not mandatory, could be used by Category 1 businesses to meet the

proposed requirement (E), to substantiate food safety management.

Risk management options

We considered several options, including the status quo, self-regulation and application of the regulatory and non-regulatory measures.

Following assessment of the best available evidence and all relevant information, the preferred approach is to amend the Code to apply the regulatory measures to certain food service businesses. We propose applying these measures in a manner proportionate to their food safety risks and consider that new requirements in the Code are practical, sustainable and readily implementable.

These regulatory tools enhance existing baseline requirements in the Code. They focus on improving businesses food safety skills, knowledge and practices, based on our knowledge of which foods and their hazards are significant contributors to illness from these sectors.

We prepared two draft food regulatory measures – a new draft Standard in Chapter 3 of the Code and a consequential variation to Standard 1.1.1 – to reflect a risk proportionate regulatory approach. These proposed measures are stated to commence 12 months after their gazettal. This means that, if these measures are approved and gazetted, businesses and food regulators will have 12 months to implement them.

FSANZ welcomes views on the assessment and on the proposed measures. These views will inform a decision by the FSANZ Board whether to reject, amend or approve the draft variation.

It is expected that this decision will be made in mid to late 2022. If the Board decides to approve a draft variation to the Code, that decision and variation must be referred to the Food Ministers Meeting for its consideration. If Ministers do not request a review of the variation, gazettal of the variation would occur around October 2022.

This proposal and the draft variation would be apply only in Australia and not in New Zealand.

1 Introduction

This proposal builds on a significant body of work already undertaken within the food regulatory system which has identified measures to manage food safety risks in the food service and retail sectors. Food safety management in these sectors remains a priority for food regulation and is included in [Australia's National Foodborne Illness Reduction Strategy 2018-2021+](#)¹ under sector based initiatives.

1.1 Reasons for preparing the proposal

Ministers requested FSANZ review several food safety measures proposed by the Food Safety Management Working Group (FSM WG) that could be applied in these sectors and whether they would provide net benefit if applied in a targeted manner.

FSANZ commenced proposal P1053 in July 2019, to consider amending the Code to include three additional regulatory measures for these sectors.

1.2 Current arrangements

Current food safety standards in Chapter 3 of the Code (particularly Standard 3.2.2) provide foundational hygiene requirements for food businesses in Australia. These standards aim to lower the incidence of foodborne illness, by placing obligations on all food businesses to ensure only safe and suitable food is sold. These standards are broad and were not developed with consideration of specific risks associated with the food service sector and related sectors.

Current food safety requirements specific to food service and related sectors is nationally inconsistent. Over time, with foodborne illness still occurring, some states and territories introduced additional food safety management requirements to manage food safety problems in food service/retail settings. Further detail is provided in supporting document 1 (SD1).

1.3 Procedure for assessment

This proposal is being assessed under the General Procedure with one public call for submissions (CFS).

1.4 Scope of the proposal

Consistent with the Ministerial request, P1053 is assessing the application of three specific regulatory food safety management tools to those food service and related retail businesses that handle unpackaged and ready to eat potentially hazardous food (PHF). While FSANZ proposals focus on regulatory interventions, the non-regulatory tools to support the regulatory measures are also assessed in this proposal.

Other issues, including allergen management, new technologies and technical issues such as duplication of definitions, will be considered as part of the wider review of Chapter 3 of the Code.

¹ On 29 June 2018 the Forum endorsed Australia's Foodborne Illness Reduction Strategy 2018-2021+.

2 Background

Our understanding of food safety risks in Australia and how best to manage those risks has advanced over the past 20 years. Significant contributions include:

- development and implementation of national food safety standards
- risk-profiling work identifying food businesses with high food safety risks
- evaluations of existing regulatory and non-regulatory measures
- stakeholder consultations
- review of Codex's General Principles for Food Hygiene.

Food safety management is strategically guided by a Ministerial Council/Forum² and its associated committees: the Food Regulation Standing Committee (FRSC) and the Implementation Subcommittee for Food Regulation (ISFR).

Why are these business the focus of this work?

Food service and related retail businesses have many inherent food safety risks. Many of these businesses' food handling activities involve PHF. This type of food, by its nature, can support the growth of harmful microorganisms (pathogens) and the production of harmful bacterial toxins, which can cause foodborne illness. PHF requires careful handling to avoid contamination. It must also be kept under strict temperature control to minimise bacterial growth and prevent toxin formation.

Food service and related retailers provide consumers with PHF that is ready to eat, either raw or without further cooking. That is, there is no further step before consumption that would destroy any pathogens present in the food. The ready-to-eat PHF presents a potentially high food safety risk, especially if it is not immediately consumed.

In addition, businesses in these sectors are, by their nature, challenging work environments. Food handlers often work under time pressure, in limited space, and with high staff turnover. Many businesses in these sectors are relatively small, with numerous competing priorities for owners. These factors all increase potential food safety risks.

What has been done already?

The FSM WG under the FRSC has extensively considered food safety measures for food service and retail settings and identified measures to minimise food safety risk. This significant body of work includes government-commissioned research, technical analyses, stakeholder consultations and policy and guideline development. FSANZ released a discussion paper which outlines in more detail the history of work and key decisions which led to P1053³. A brief summary of key guiding documents and outcomes is below.

² The Australia and New Zealand Ministerial Forum on Food Regulation (the Ministerial Forum) comprises all Australian and New Zealand Ministers responsible for food, and the Australian Local Government Association. It was known previously as the Australia New Zealand Food Regulation Ministerial Council.

³<https://www.foodstandards.gov.au/code/proposals/Documents/P1053%20Consultation%20paper.docx>

Table 1: Chronology of work completed by the food regulatory system

Year	Guiding document	Outcome
2003	Ministerial Policy Guidelines on Food Safety Management in Australia: Food Safety Programs	Identifies four high-risk areas contributing to foodborne illness outbreaks: <ol style="list-style-type: none"> 1. food service to vulnerable populations 2. raw oysters and other bivalves 3. manufactured and fermented meat 4. catering operations <p>FSPs recommended.</p>
2004	FSANZ Proposal P290 Food Safety Programs for Catering Operations to the General Public ⁴	FSANZ raised a proposal to consider food safety programs for catering operations. <p>Proposal put on hold following difficulties in defining the sector and achieving net benefit when applying requirements of a relatively expensive and resource-intensive food safety plan.</p> <p>FSM WG convened and tasked to consider options for alternative tools to manage food safety risks.</p>
	Revised Food Acts	In absence of an agreed national approach, Victoria, NSW, Queensland and the ACT introduce requirements to manage high risk in food service sector. <p>All have requirements for food safety supervisors with competency-based training. Victoria and Queensland also have template-based food safety programs</p>
2007	National Risk Profile Framework	Classified food businesses into four tiers based on food safety risk (P1 to P4)
2011	Ministerial Policy Guideline on Food Safety Management for General Food Service and Closely Related Retail Sectors ⁵	Uses the national framework to narrow the scope for applying additional food safety management tools other than FSPs to higher risk businesses (i.e. priority 1 and 2)
2018	Consideration of Food Safety Standards and Food Safety Management Tools	FSM WG report provided to FRSC. <p>It identified additional food safety management tools to complement Standard 3.2.2 for Priority 1 and Priority 2 businesses to improve food safety. These include:</p> <ul style="list-style-type: none"> • evidence of skills and knowledge (acquired via competency-based training) • evidence of skills and knowledge (acquired via non-competency based training) • evidence to show that key processes are being managed.
2018	Australia's Foodborne Illness Reduction Strategy 2018-2021.	Identifies food service sector as priority for measures reducing foodborne illness

In 2018, Food Ministers⁶ wrote to FSANZ to request consideration of regulatory

⁴ Proposal P290 has not been progressed since 2008, awaiting policy advice (revised 2011) and the outcomes of the FRSC/ISFR FSM WG. This proposal is still outstanding and will require abandoning following the Proposal P1053.

⁵ [https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/9FB67C943A4DA693CA25801B0011D683/\\$File/2011-12-FRSC-Revised%20Food%20Safety%20Management%20for%20Retail-Food%20Sectors.docx](https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/9FB67C943A4DA693CA25801B0011D683/$File/2011-12-FRSC-Revised%20Food%20Safety%20Management%20for%20Retail-Food%20Sectors.docx)

⁶ the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum, now the Food Ministers' Meeting)

and non-regulatory measures identified by the FSM WG ([Forum Communiqué](#)) and to use the integrated model⁷ approach for national implementation.

The [integrated model to support standards development and promote consistent implementation](#) was originally developed for Primary Production and Processing (PPP) Standards (Chapter 4 of the Code). However, it has been adapted for use in the development of other standards in the Code. Its purpose is to:

- assist in facilitating a nationally consistent approach to the implementation and enforcement of PPP Standards
- provide the tools to assist businesses to achieve compliance with the PPP Standard, and
- provide constructive implementation and enforcement advice to FSANZ during the FSANZ Standard development process.

The Integrated Model promotes greater collaboration between FSANZ and the ISFR during Standards development, particularly on implementation matters.

3 Risk assessment

FSANZ's risk assessment is detailed in supporting document 2 (SD2) and summarised below.

3.1 Risk profiling of Australian food service and retail businesses

To assess risks to public health and safety, FSANZ used several tools including risk profiling⁸, quantitative and qualitative risk assessments⁹ and scientific evaluations. The application of these tools depends on the purpose of the assessment and the availability, quality and quantity of relevant data. FSANZ follows established international guidelines including the Codex risk assessment framework.

The P1053 microbiological risk profile assessment (SD2) brings together the best available data on Australian foodborne outbreaks from the national OzFoodNet network. It describes food safety hazards within food service and related businesses and the controls required to manage these hazards. The outbreak data assessed covers 2010 to 2017:

- 2010–2012 data from OzFoodNet annual reports available online
- 2013–2017 data from unpublished data requested by FSANZ (retrieved from the OzFoodNet Outbreak Register on 22/10/2020).

FSANZ reviewed previous (2009) risk classifications of Australian food service and related food retail business sectors, in light of more recent data on foodborne outbreaks. We did this to confirm these sectors still present high food safety risks. We considered if certain food handling activities, characteristic to these business sectors, could be similarly categorised on the basis of food safety risks.

⁷<https://webarchive.nla.gov.au/awa/20151020103533/http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-isc-model.htm>

⁸Risk profiling is defined by FAO/WHO as 'the process of describing a food safety problem and its context, in order to identify those elements of the hazard or risk relevant to various risk management decisions'.

⁹Risk assessment is a scientific process that characterises the risk to public health and safety posed by hazards associated with a food commodity.

3.2 Outcomes of our assessment

3.2.1 Review of OzFoodNet data

Analysis of the OzFoodNet data shows that 77% (970/1257) of confirmed and probable foodborne outbreaks are associated with food prepared in food service and related retail settings. Restaurants accounted for the largest proportion, with the top five settings being:

1. restaurant, attributed to 45% of outbreaks (567/1257)
2. aged care, attributed to 8% (98/1257)
3. commercial caterer, attributed to 7% (82/1257)
4. take-away, attributed to 7% (82/1257)
5. bakery, attributed to 3% (43/1257).

These results are similar to those reported for Australia from 2001–2009, where food prepared in restaurants accounted for 40% (409/1025) of total foodborne outbreaks (Astridge et al. 2011).

There are challenges to identifying and attributing illness to a particular food and this is not always achieved. Where a specific food could be attributed to an outbreak, eggs (raw) were reportedly the highest contributor to foodborne illness in these settings. As such, in Australia raw eggs are considered a high-risk PHF when handled by food service and related food retail businesses. In response to ongoing high rates of egg-related salmonellosis in Australia, including a series of outbreaks due to *Salmonella* Enteritidis in 2018–19, FSANZ is currently reviewing the efficacy of existing regulatory and non-regulatory risk management measures applying to the primary production, processing and distribution of eggs in Australia¹⁰.

Compared to the other food settings, there were more varied sources of contamination, and more factors supporting bacterial growth and survival, identified in outbreaks from restaurants, commercial caterers or take-away settings. These included ingestion of contaminated raw products, inadequate cleaning of equipment, cross contamination from raw ingredients, insufficient cooking, food left at room temperature, and inadequate refrigeration.

The data indicates that foodborne outbreaks associated with food service and related food retail business sectors continue to contribute significantly to the burden of foodborne illness in Australia. The data shows that controls needed to maintain food safety at various points during food preparation and service are not being adequately implemented across these sectors.

To reduce foodborne illness, interventions targeted to these sectors need to be multi-faceted to address multiple high-risk activities. Measures aimed at strong food safety awareness and knowledge of appropriate food handling – from initial receipt through all stages of processing, storage and service of food to consumers – should improve the current situation.

3.2.2 Review of business sector classifications based on food safety risk

In 2011, the Department of Health and Ageing finalised the assignment of risk priority classifications to eight food service and food retail business types using the Framework (described in section 2). These business sectors were all assigned

¹⁰ <https://www.foodstandards.gov.au/foodsafety/standards/Pages/Review-of-Standard-4.2.5-%E2%80%93-Primary-production-and-processing-standard-for-eggs-and-egg-products.aspx>

classifications in the two highest risk categories (Priority 1 and 2). A detailed analysis is provided in SD2.

FSANZ reviewed the priority business classifications for these business sectors, in light of more recent epidemiological data.

Our assessment found much of the background information provided by Ross et al. (2009) is still relevant to the classified businesses, and the majority of priority classifications are still relevant. Those priority classifications are presented in Table 3.

3.2.3 Priority categorisation of food handling activities

The nationally agreed Framework has been adopted for use in some Australian jurisdictions, while other jurisdictions use an alternative classification system. The different approaches across Australian jurisdictions are summarised in Table 2.

Table 2: Summary of risk classification systems used in each Australian jurisdiction

Jurisdiction	Risk classification system used
Australian Capital Territory	Currently uses ANZFA* priority classification system for food businesses (low, medium, high) ¹¹ .
New South Wales	Adopted the nationally agreed risk profiling framework
Northern Territory	Adopted the nationally agreed risk profiling framework.
Queensland	Adopted a hybrid model based on nationally agreed risk profiling framework and ANZFA priority classification system ¹² .
South Australia	Adopted the nationally agreed risk profiling framework.
Tasmania	Adopted the nationally agreed risk profiling framework.
Victoria	Uses VIC food business classifications, Class 1 to 4 with Class 1 being highest risk ¹³ .
Western Australia	Uses an amended ANZFA priority classification system (low, medium, high) ¹⁴ .

* Food Standards Australia New Zealand (FSANZ) was formerly the Australia New Zealand Food Authority (ANZFA).

As the risk classification approach varies across jurisdictions, FSANZ considered an alternate way of categorising businesses based on food safety risks. We categorised the key food handling characteristics of businesses in these sectors, based on the number of food safety controls required, and the proportion of Australian foodborne outbreaks and associated people ill. Results are summarised in Table 3.

Handling activity 1, where PHF is prepared in advance of serving, requires the greatest number of critical controls to manage food safety risks. There is a decreasing number of controls required to manage the safety of PHF with each subsequent handling activity. That is, controls for handling activity 1 > activity 2 > activity 3 > activity 4.

While handling activity 1 requires more controls than handling activity 2, in practice

¹¹ [ANZFA 1578 Info Paper final.pdf \(foodstandards.gov.au\)](https://www.foodstandards.gov.au/ANZFA_1578_Info_Paper_final.pdf)

¹² <https://www.qld.gov.au/health/staying-healthy/food-pantry/starting-a-food-business/food-business-licences/do-i-need-a-food-business-licence>

¹³ Victoria risk classification (class 1 being highest risk): <https://www.health.vic.gov.au/food-safety/food-business-classification>

¹⁴ https://www2.health.wa.gov.au/~media/Files/Corporate/general%20documents/food/PDF/WA_Food_Regulation_Food_Business_Risk_Profiling.pdf

both activities require similar knowledge and application of critical controls. Both activities involve high-risk food that is ready to eat, so these controls are essential to both for food safety. As such, handling activity 1 and 2 have been grouped together in Category 1.

Most businesses in Category 1, who carry out food handling activities 1 and 2, are in the types of settings responsible for the most outbreaks and persons ill (i.e. restaurants, commercial caterers, takeaways, bakeries). Businesses in Category 2 also contribute to foodborne outbreaks, but less frequently. There is little evidence that businesses in Category 3 contribute to outbreaks.

Table 3: Risk categorisation of businesses based on sector and handling activities

Category	Handling activities	Associated priority business sectors and classification
<p>Category 1 Those handling activities that:</p> <ul style="list-style-type: none"> require the greatest number of controls critical to the safety of food prepared by the business, and are most likely to be undertaken by business sectors associated with a high proportion of Australian foodborne illness outbreaks. 	<p>Handling activity 1: process high-risk potentially hazardous food in advance of serving the RTE food to the consumer.</p> <p>Handling activity 2: process and serve high-risk potentially hazardous food as RTE food to the consumer in a time period that does not adversely affect the microbiological safety of the food.</p>	<p>Food service: commercial catering (P1) Food service: eating establishments - RTE prepared in advance (P1) Food service: RTE food is prepared express order – some high-risk food components are raw (P1) Food service: RTE food is prepared express order – all high-risk food components are cooked (P2) Retailer and manufacturer: bakery products (P1)</p>
<p>Category 2 Those handling activities that</p> <ul style="list-style-type: none"> require fewer controls critical to the safety of food prepared by the business compared to Category 1 handling activities, and are most likely to be undertaken by business sectors associated with a relatively lower proportion of Australian foodborne illness outbreaks compared to Category 1. 	<p>Handling activity 3: serve unpackaged high-risk potentially hazardous food as RTE food for retail.</p>	<p>Retailer: bakery products (P2) Retailer: processed delicatessen products (P2) Retailer: processed seafood products (P2)</p>
<p>Category 3 Those handling activities that</p> <ul style="list-style-type: none"> require fewer controls critical to the safety of food prepared by the business compared to Category 2 handling activities, and are most likely to be undertaken by business sectors for which there is little evidence of associated foodborne illness in Australia. 	<p>Handling activity 4: serve packaged high-risk potentially hazardous food as RTE food for retail. The food is packaged prior to receipt by the food business and sold to the consumer in its original packaging.</p>	<p>Retailer: High-risk perishable pre-packaged food (P2)</p>

RTE = ready to eat; P1 and P2 = Priority 1 and Priority 2 businesses, respectively, as characterised under the National Risk Profiling Framework by Ross et al 2009.

3.2.4 Conclusion

FSANZ's risk profiling confirmed the food service and related retail sectors in Australia still present significant public health risks. Our categorisation of business types and activities indicates different businesses within these sectors carry

different risks and can be grouped according to those risks. Our findings enable interventions to be targeted to the most common causal factors of foodborne illness outbreaks, and in a risk-proportionate manner. Such an approach to managing risks ensures additional measures are appropriate for the potential risk posed by each business type.

4 Risk management

FSANZ's general principles and process for our risk management decisions in P1053 are outlined below.

4.1 Principles

The FSANZ assessment considered the expected impacts (positive, negative, direct, indirect) of all options. The full assessment of options is in the CRIS (SD1).

FSANZ established a risk management framework based on three main principles to guide our risk management approach. These principles reflect FSANZ's priority objective of addressing the risk to public health and safety in Australia. They also reflect stakeholder comments on the need for a national approach to safe food production in the food service and related retail sectors, with minimal burden on industry.

Table 4: FSANZ risk management principles

Principle	Outcome
Protection of public health and safety	Reduction in foodborne illnesses attributed to food service/ retail sectors. Improved skills and knowledge and presence of a certified FSS will improve food safety awareness and practices, reducing cases of foodborne illness.
Cost-effective, risk-proportionate measures	Regulatory measures are applied proportionate to identified risks. Those businesses with higher risks have more stringent requirements and more tools to manage their risks.
Consistency	Businesses meet a minimum base level of food safety training. Provides common accountability framework based on scientific risk. Allows for consistent implementation of national requirements.

FSANZ gave regard to the food regulatory system principles for good regulation¹⁵. These principles require us to:

- be efficient in our use of regulation, meaning we will:
 - find an optimal level of regulation so as to achieve the desired outcomes with minimal cost
 - minimise the impact on competition
 - where possible, ensure compatibility with international standards
 - not restrict international or interstate trade
- be effective in our use of regulation, meaning we will ensure food regulation:
 - is able to be complied with and effectively enforced
 - has clearly identifiable outcomes
 - is flexible
 - is regularly reviewed
- be transparent in our regulation making process
- have regulatory processes and requirements that are as clear, understandable and accessible as possible

¹⁵ <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-strategic-statement>

- be equitable.

4.2 Food safety management tools

Food ministers identified three food safety management tools for FSANZ to consider and assess in this proposal. These tools are:

- a certified food safety supervisor (FSS)
- food handler training (FHT)
- evidence to substantiate food safety management (E).

We examined literature to understand the impacts on businesses where these types of tools, or similar, have already been introduced. We assessed the gap between the proposed tools and existing national arrangements (i.e. those in the Code) and those that are state or territory specific. Our assessment of the capacity of each tool to mitigate the key contributors to foodborne illness is outlined below and detailed in SD1.

We also considered international approaches to food safety management which focus on preventing food safety issues. International guidance under Codex recognises that some food handling activities (such as temperature control; cleaning and sanitising) require enhanced attention above good hygiene practices (SD1).

Food Safety Supervisor (FSS)

This tool would require a business to have a certified FSS who is reasonably available to supervise food handlers and manage the safe handling of PHF.

Through training, an FSS would be qualified in recognising and preventing the risks associated with food handling in a food service and retail food business. To become a certified FSS, a food handler would need to spend approximately ten hours to successfully complete training through a registered training organisation (RTO) or jurisdictional government endorsed provider. Approximate cost for time spent and the payment of course fees would be \$506.

Assessment: FSANZ considers mandating a FSS would improve the FSS's management of the overall food safety of the business, across staff and enhance the food safety culture within a business.

Food Handler Training (FHT)

This tool would require a relevant business to ensure that a person handling PHF has undergone food handling training.

Completing FHT would take each food handler approximately 90 minutes to complete and is estimated to cost \$45 (for time spent). Free training is available online, including through jurisdictional food regulator websites, and would supplement information from supervisors or peers.

Assessment: FSANZ considers mandating food handler training with specified content would increase awareness of the importance of, and techniques for, safe food handling.

Evidence to substantiate food safety management (E)

This tool would require businesses to have evidence to substantiate that key

processes, including temperature control, food processing, and cleaning and sanitising are managed.

It is estimated that a business would spend 15 minutes per day implementing this tool. The proposed requirement is not to be considered a small-scale food safety program. FSANZ has targeted the processes that are known key contributors to foodborne illness outbreaks. These processes are also reported anecdotally by food regulators as common areas of non-compliance during audits of in-scope businesses.

Assessment: Recording this information in a template is already recommended best practice in Safe Food Australia, the guide to Standard 3.2.2. Our assessment indicates that mandating this tool would help ensure a business can safely manage these processes, as well as contribute to the food safety culture within the business.

Summary

FSANZ assesses that some enhancement is needed to address the higher inherent and unique risks in the food service sector, without overly burdening businesses. Applying nationally consistent tools, proportionate to food safety risks, is warranted.

Consistent with the FSM WG report, FSANZ assessment considers that the baseline Standard 3.2.2 requirements are not sufficient for managing risks in food service and related retail. Similarly, imposition of detailed Food Safety Programs (FSP - Standard 3.2.1) would be too onerous for this sector and the costs would outweigh the benefits¹⁶.

Each tool is considered practical, readily implemented in the relevant sector, and able to be maintained over time. There are existing resources available (e.g. from FSANZ and jurisdictional food regulatory agencies) to support their use.

These tools enhance existing baseline requirements in the Code. They focus on improving food safety skills, knowledge and practices, based on our knowledge of which foods and their hazards are significant contributors to illness from these sectors, such as raw eggs used in the production of ready to eat foods. Improvements in these areas should provide the biggest impact on reducing foodborne illness.

4.3 Stakeholder views

Further details about stakeholder engagement are in SD1. Experiences and views have been sought on existing issues and tools, and the measures likely to have the greatest impact on food safety outcomes. Consultation activities¹⁷ FSANZ conducted through this proposal (see section 5.1) indicate government stakeholders strongly support mandating a package of regulatory measures in the Code. Industry stakeholders are also supportive of tools to strengthen food safety management, while not adding additional burden.

Stakeholders raised the following key considerations:

¹⁶ Outcome of previous cost-benefit work on FSPs (National Risk Validation Project and the Allen report)

¹⁷ An information paper was released for public consultation early 2019, a consultation paper in January 2020, a targeted stakeholder survey in December 2020.

<https://www.foodstandards.gov.au/code/proposals/Pages/P1053.aspx>

- any regulatory measures need to be proportionate to risk with minimal extra burden to industry
- training for food handlers and FSSs needs to be up-to-date and be offered in a range of formats in recognition of the diverse staff working in food service businesses
- the quality of training provided by registered training organisations needs to be monitored
- simple templates should be available to support evidence-keeping measures; and
- non-regulatory tools should be developed to support regulatory tools.

4.4 Risk management options

The risk management options FSANZ considered are:

Option 1: the status quo

Option 2: self-regulation

Option 3: regulatory approach

Option 3.1: FSS and FHT

Option 3.2: FSS, FHT and E.

FSANZ assessed the extent of foodborne illness linked to food service businesses and identified key food handling activities where food safety needs improvement. We considered the impact of additional tools that would improve food safety during these food handling activities. We also examined national food safety requirements and international approaches.

Our assessment was completed in accordance with the FSANZ Act (summarised in section 6). Public submissions in response to this report will inform our final decision on whether to approve, amend or abandon the proposed draft amendments to the Code.

4.5 Preferred approach

Currently, there are no nationally consistent regulatory measures for the priority classified food service and retail sectors. Chapter 3 of the Code applies broadly to all food businesses, there is no differentiation of national food safety measures to adequately address the unique risks associated with these sectors (section 2 of this report). Given the incidence of, and costs associated with, foodborne illness linked to these businesses, additional requirements over and above those in Chapter 3 is warranted.

Australian jurisdictions with additional requirements to support safe food handling (i.e. food safety supervisor and/or additional food handler training), have seen improved food safety behaviours (SD1). These states have supporting resources available to implement these tools that would readily apply nationally.

Our preferred approach is to amend the Code to require FSS, FHT and evidence to substantiate food safety management for particular business types (Category 1 and 2 businesses). The status quo, and therefore a non-regulatory approach, is considered the preferred option for Category 3 businesses.

Where we are proposing a regulatory approach, we have concluded that a targeted approach based on food safety risk, cost-benefit, and appropriateness is

warranted. This approach identifies which tools would improve food handling practices of different business, providing the ability to target additional measures where needed and warranted. In this way, the regulatory obligations placed on a food business are able to be more proportionately matched to the risk of their activities.

Category 1

Food service businesses, such as caterers (onsite and offsite), restaurants, takeaway; and retailers who make and serve PHF are considered to be Category 1 businesses associated with the highest food safety risks.

Characteristically, these businesses undertake food handling activities that require the most food handling critical controls (five) to produce safe food. There is a strong evidence base for foodborne illness linked to these settings.

Preferred Option: 3.2 All three food safety management tools (FSS, FHT and E) are considered appropriate for these businesses. These tools are considered to be practical, readily implemented in the sector, and able to be maintained over time, and there are existing resources available to support implementation.

Non-regulatory tools that focus on food safety culture and education would increase the efficacy of these regulatory measures.

Category 2

Retailers of unpackaged ready-to-eat PHF are considered in this category. Retailers who only sell pre-packaged food, where the food is not unpackaged at any time during handling by the retailer – are excluded from this category.

Compared to Category 1 businesses, these businesses have fewer critical controls required to produce safe food (three) and less evidence of foodborne illness linked to these settings.

Preferred Option: 3.1 Two regulatory food safety management tools (FSS and FHT) are considered appropriate for Category 2. Non-regulatory tools (food safety culture and education initiatives) would contribute to the effective implementation of these regulatory measures. Templates are available to assist these businesses maintain correct temperature control, but would not be mandated.

Category 3

Retailers of pre-packaged ready-to-eat PHF, which remains packaged are considered to be included in this category.

A retailer which only handles ready-to-eat PHF that is pre-packaged (and remains in the packaging) has one food handling control which is not critical (maintain temperature during storage and display). There is no directly relevant setting in the foodborne illness data to link outbreaks to this setting.

Therefore, there is no threshold to directly evaluate a benefit if applying any regulatory interventions in these settings.

Preferred Option: No regulatory measures, a targeted education campaign focusing on storage and display temperature of PHF in these settings is considered the most appropriate option. Templates are available to assist these businesses maintain correct temperature control, but would not be mandated.

4.6 Not-for-profit organisations and fund raising events

As part of our assessment, FSANZ examined whether the additional food safety management tools should be applied to not-for-profit organisations, and/or any businesses handling food at a fund raising event.

Not-for-profit organisations are organisations that provide services to the community and do not operate to make a profit for its members (or shareholders, if applicable). In some instances, a not-for-profit organisation may operate a food business as an ongoing activity. This ongoing business operation poses similar risks to any business that undertakes handling and service of PHF as ready-to-eat food to consumers.

It's important to note that Standard 3.2.2 requirements for the safe handling of PHF (including temperature control and cleaning and sanitising) apply to food handled at a fund raising event.

A fund raising event is considered a one off event and is defined in Standard 1.1.2 of the Code as '**fund raising event** means an event that raises funds solely for a community or charitable cause and not for personal financial gain'.

FSANZ considers that additional regulatory measures, above what is already required by Standard 3.2.2, are not sustainable or reasonable in this setting. This is because businesses raising money for the community or charitable causes are often run by volunteers. The three tools of this proposal focus on skills and knowledge requirements and evidence tools that assist businesses to safely monitor and manage complex PHF handling processes. It is not practicable to require additional regulatory measures in these circumstances. FSANZ has included an exemption in the draft standard to reflect this.

As a result, FSANZ considers that non-regulatory tools, such as the currently available education material supporting the implementation of Standard 3.2.2 requirements at a fund raising event, are adequate for managing likelihood of foodborne illness in this setting.

The proposed exemption provides a level playing field for all business that handle food for a fund raising event, regardless of whether or not they are a not-for-profit organisation.

5 Risk communication

Consultation activities on this project and the proposed tools have spanned many years and taken many forms to make sure all viable options have been considered.

5.1 Consultation

Consultation is a key part of FSANZ's standards development process. We have consulted with stakeholders throughout this proposal, including two public discussion papers and a targeted survey with food service businesses. All survey responses and submissions to the public discussion papers have been considered by FSANZ as part of our assessment (SD1). Section 3 of this paper summarises stakeholder views.

FSANZ worked closely with state and territory food regulators to ensure the

proposed measures can be implemented in each jurisdiction. Case studies have been provided in the CRIS (Section 8) to indicate where and when the tools would be applied.

FSANZ implemented a revised stakeholder strategy to account for the challenges associated with stakeholder engagement during the COVID-19 pandemic and manage the risk of reduced stakeholder input. The aim was to ensure the effectiveness of any regulatory measures developed.

Subscribers and interested parties have been notified about this call for submissions via the FSANZ Notification Circular, media release and through FSANZ's social media tools and Food Standards News. Stakeholders are encouraged to make a submission in response to this report. All comments are valued and contribute to the rigour of our assessment. All submissions and comments received will be taken into account and be used to inform a decision by the Board whether to approve, amend or reject the draft variation.

5.2 World Trade Organization (WTO)

As members of the WTO, Australia and New Zealand are obliged to notify WTO members where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

Amending the Code to require these food safety management tools in the food service and retail sectors is unlikely to have an impact on international trade as it applies only to Australian domestic food service sectors. Therefore, a notification to the WTO under Australia's obligations under the WTO Application of Sanitary and Phytosanitary Measures Agreement was not considered necessary.

6 FSANZ Act assessment requirements

When assessing this proposal and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in sections 59 and 18 of the FSANZ Act:

6.1 Section 59

6.1.1 Consideration of costs and benefits

The direct and indirect benefits that would arise from a food regulatory measure developed as a result of this proposal outweigh the costs to the community, Government or industry that would arise from the development of the food regulatory measure.

A CRIS accompanies this call for submissions and assessment summary (SD1). It provides a qualitative cost benefit analysis using the information available to FSANZ for its assessment and decision to prepare a draft variation. Additional information from this call for submissions may enable FSANZ to undertake a more quantitative-based impact analysis of the options for the Decision regulation impact statement. This depends, however, on the quality of data/information received from affected parties. The information received may result in FSANZ arriving at a different outcome.

The CRIS for this proposal was approved by the Office of Best Practice Regulation

(OBPR) in December 2021.

FSANZ considered several different risk management options, including the status quo, self-regulation and the introduction of regulatory requirements. Assumptions that underpin our cost benefit analysis are outlined in the CRIS (SD1). The outcomes of the cost benefit analysis indicate that applying food regulatory measures in a tiered approach based on food safety risk would provide a strong net benefit.

Any additional regulation is likely to impact food businesses, consumers and governments, as listed in Table 5 below.

Table 5: Impacts on affected parties

Social group	Notes on impacts
1. Food businesses	<ul style="list-style-type: none"> – Potentially increased operational costs – Cost savings from a reduced risk of a food safety incident – Improved capacity to effectively and efficiently manage and respond to a food safety incident, reducing costs – Potentially additional sales given higher quality food – Reduced risks of market damage caused by others – Harmonised national regulation reduces costs for businesses that operate across multiple jurisdictions.
2. Food consumers	<ul style="list-style-type: none"> – Improved safety of products reducing likelihood of illness – Potentially increased costs of purchase – Potentially higher quality food available
3. Government	<ul style="list-style-type: none"> – Potentially increased implementation and enforcement costs for new regulation – Improved capacity to effectively and efficiently manage a food safety incident, reducing costs – Savings in health care expenditure

6.1.2 Other measures

There are no other measures (whether available to FSANZ or not) that would be more effective than a food regulatory measure developed or varied as a result of the proposal. Our assessment of all potential options is in SD1.

6.1.3 Any relevant New Zealand standards

This proposal relates to Chapter 3 of the Code which applies to Australia only. The amendments made by the draft variation, if approved, will not apply in New Zealand. No relevant New Zealand standards were identified in assessing the Proposal.

6.1.4 Any other relevant matters

Other relevant matters are considered in section 8.2 and 8.3 below.

In assessing P1053, FSANZ also had regard to the following:

- the recommendations of the food safety management working group and
- the subsequent request by Ministers to consider the potential regulatory measures¹.

While FSANZ had regard to the latter in its assessment (to the extent that they are relevant), they were not the only matters taken into account and we made our own

independent assessment in accordance with the FSANZ Act.

6.2 Subsection 18(1)

FSANZ has considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

6.2.1 Protection of public health and safety

FSANZ considers that preparing the draft standard is consistent with this objective.

FSANZ assessed the best available evidence and information on the food safety risks and current risk management measures applied to food handling activities in the food service and retail businesses. Several significant foodborne illness outbreaks associated with these sectors have occurred between 2010 and 2017 which resulted in 9497 cases of illness, 1914 hospitalisations and 56 reported fatalities.

All food businesses in Australia are required to comply with food safety requirements in Chapter 3 of the Code, along with relevant requirements in jurisdictional Food Acts. However, the continued incidence of foodborne illness linked to these sectors suggests, for these food handling activities, the minimum requirements of Chapter 3 alone may not appropriately address food safety risks and protect public health and safety.

Implementing a nationally consistent suite of food safety management tools will help a business better manage these risks, reducing likelihood of consumers getting sick from consumption of food in these settings (SD1). This intervention is intended to be preventive rather than reactive in nature, given the compliance and enforcement powers already available in each jurisdiction.

6.2.2 The provision of adequate information relating to food to enable consumers to make informed choices

FSANZ considers this objective is not directly relevant to this proposal. Providing information to consumers about safe food practices in these settings is not likely to reduce foodborne illness (discussed in SD1).

6.2.3 The prevention of misleading or deceptive conduct

FSANZ has not identified any issues relevant to this matter.

6.3 Subsection 18(2) considerations

FSANZ has also had regard to the following considerations under subsection 18(2):

6.3.1 The need for standards to be based on risk analysis using the best

available scientific evidence

The FSANZ P1053 risk assessment profiles risks to public health and safety associated with Australian food service and related food retail businesses. FSANZ uses several tools to assess risks to public health and safety, including risk profiling¹⁸, quantitative and qualitative risk assessments¹⁹ and scientific evaluations. The application of these tools to the assessment of the risks to public health and safety utilised the best available evidence.

6.3.2 The promotion of consistency between domestic and international food standards

There is considerable variation in international legislation for food safety management in the food service and retail sectors. FSANZ has considered international standards, including those of Codex, in the assessment (further discussed in SD1).

6.3.3 The desirability of an efficient and internationally competitive food industry

FSANZ has not identified any issues relevant to this matter.

6.3.4 the promotion of fair trading in food

FSANZ has not identified any issues relevant to this matter.

6.3.5 Any written policy guidelines formulated by the Forum on Food Regulation

Two policy guidelines apply to our assessment of P1053:

- *Ministerial Policy Guidelines on Food Safety Management in Australia: Food Safety Programs* (endorsed December 2003). This identified high risk sectors that should be required to have a food safety program (FSP) to manage risks. Identification was based on the *National Risk Validation Project* using epidemiological data primarily from the 1990s. The four high risk sectors included: food service to vulnerable populations, raw oysters and other bivalves, manufactured and fermented meat, and catering operations to the general public. Standards have been gazetted requiring FSPs in all sectors except the catering sector.
- *Policy Guideline on Food Safety Management for General Food Service and Closely Related Retail Sectors* (endorsed November 2011). The 2011 guideline promotes the use of a range of food safety management options, proportionate to risk, for Priority 1 and Priority 2 food service and retail food businesses including additional food safety management tools between the baseline requirements of Standards 3.2.2 and 3.2.3 and a food safety program.

FSANZ has considered these guidelines in our assessment.

¹⁸ Risk profiling is defined by FAO/WHO as 'the process of describing a food safety problem and its context, in order to identify those elements of the hazard or risk relevant to various risk management decisions'.

¹⁹ Risk assessment is a scientific process undertaken to characterise the risk to public health and safety posed by foodborne hazards associated with a food commodity.

7 Draft standard

The draft standard and consequential variation are at Attachment A. Each is intended to take effect 12 months from gazettal.

Draft explanatory statements to the draft Standard and the consequential variation are at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislation.

7.1 Transitional arrangements

As explained above, the draft standard and consequential variation are intended to take effect 12 months after gazettal. This means that affected parties will have 12 months from gazettal in which to prepare for the new requirements.

7.2 Implementation

The integrated model for standards development and implementation ensures that, should the Board approve a draft Standard, guidance is readily available on how the proposed standard might be implemented. A Food Safety Management Implementation Working Group (IWG) has been established by ISFR. While draft implementation guidance has been developed, this guidance may change depending on final outcome of the draft standard and its content.

This guidance aims to assist businesses and regulators to understand how the proposed standard might be implemented consistently at a national level and is provided as supporting document 3 (SD3)

8 References

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Attachments

- A. Draft variations to the *Australia New Zealand Food Standards Code*
- B. Draft Explanatory Statements

Attachment A – Draft variations to the *Australia New Zealand Food Standards Code*



Food Standards (Proposal P1053 – Food Safety Management Tools) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this Standard under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on a date 12 months after the date of gazettal.

Dated [To be completed by the Delegate]

[Name of Delegate]

Delegate of the Board of Food Standards Australia New Zealand

Note:

This Standard will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**. This means that this date is the gazettal date for the purposes of the above notice.

Standard 3.2.2A Food Safety Management Tools

Note 1 This instrument is a standard under the *Food Standards Australia New Zealand Act 1991* (Cth). The standards together make up the *Australia New Zealand Food Standards Code*. See also section 1.1.1—3.

Note 2 This Standard applies in Australia only.

3.2.2A—1 Name

This Standard is *Australia New Zealand Food Standards Code – Standard 3.2.2A – Food Safety Management Tools*.

Note Commencement:
This Standard commences on a date that is 12 months after the date of gazettal, being the date specified as the commencement date in notices in the *Gazette* and the *New Zealand Gazette* under section 92 of the *Food Standards Australia New Zealand Act 1991* (Cth). See also section 93 of that Act.

3.2.2A—2 Definitions

In this Standard:

category one business—see 3.2.2A—6.

category two business—see 3.2.2A—7.

food safety supervisor means a person who:

- (a) holds a food safety supervisor certificate that has been issued within the immediately preceding period of 5 years; and
- (b) has the authority and ability to manage and give direction on the safe handling of food.

food safety supervisor certificate means certification as a food safety supervisor by:

- (a) a registered training organisation; or
- (b) an organisation recognised by the *relevant authority under the application Act.

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

- (a) safe handling of food; and
- (b) food contamination; and
- (c) cleaning and sanitising of food premises and equipment; and
- (d) personal hygiene.

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

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

prescribed activity—see 3.2.2A—5.

process, in relation to food, means activity conducted to prepare food for sale and includes chopping, cooking, drying, fermenting, heating, thawing and washing, or a combination of these activities.

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:

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

Note 1 In this Code (see section 1.1.2—2):

application Act means an Act or Ordinance of a *jurisdiction under which the requirements of this Code are applied in the jurisdiction.

authorised officer, in relation to a jurisdiction, means a person authorised or appointed under an application Act or other legislation of the relevant *jurisdiction for the purposes of enforcement of a provision of the relevant application Act, or for purposes that include that purpose.

caterer means a person, establishment or institution (for example, a catering establishment, a restaurant, a canteen, a school, or a hospital) which handles or offers food for immediate consumption.

fund raising event means an event that raises funds solely for a community or charitable cause and not for personal financial gain.

jurisdiction means a State or Territory of Australia, the Commonwealth of *Australia*, or *New Zealand*.

relevant authority means an authority responsible for the enforcement of the relevant application Act.

Note 2 In this Chapter (see clause 2 of Standard 3.1.1):

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 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.

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.

3.2.2A—3 Application of this Standard

- (1) This Standard applies to a food business in Australia that is a category one business or a category two business.
- (2) This Standard does not apply to the handling of food for or at a *fund raising event.

3.2.2A—4 Food service

- (1) For the purposes of this Standard, **food service** means a food business which processes and serves ready-to-eat food direct to a consumer, whether consumed at the food premises or elsewhere.
- (2) For the purposes of subsection (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:
 - (a) portioning food from a bulk tray or container into single serves and placing it on plates; or
 - (b) presenting food in a bain-marie or other bulk food display unit for self-service; or
 - (c) delivery of plated food.

3.2.2A—5 Prescribed activities

For the purposes of this Standard, a prescribed activity is the handling by the food business of any unpackaged potentially hazardous food that:

- (a) is used in the preparation of ready-to-eat food to be served to a consumer; or

- (b) is ready-to-eat food intended for retail sale by that business.

3.2.2A—6 Category one business

For the purposes of this Standard, a **category one business** means a food business that:

- (a) is a *caterer or a food service; and
- (b) processes unpackaged potentially hazardous food into a food that is:
 - (i) potentially hazardous food; and
 - (ii) ready-to-eat food.

3.2.2A—7 Category two business

For the purposes of this Standard, a **category two business** means a food business that offers for retail sale a food that is:

- (a) potentially hazardous food; and
- (b) ready-to-eat food; and

where that food:

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

3.2.2A—8 Food safety management tools required for category one businesses

A category one business must comply with sections 3.2.2A—10, 3.2.2A—11 and 3.2.2A—12.

3.2.2A—9 Food safety management tools required for category two businesses

A category two business must comply with sections 3.2.2A—10 and 3.2.2A—11.

3.2.2A—10 Food safety training for food handlers engaged in a prescribed activity

The food business must ensure that each food handler who engages in a prescribed activity has, before engaging in that activity:

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

3.2.2A—11 Supervision of food handlers

The food business must:

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

3.2.2A—12 Substantiating food safety management of prescribed activities

- (1) Subject to section 3, if the food business engages in a prescribed activity, the food business must make a record that substantiates any

matter that the prescribed provisions require in relation to that prescribed activity.

- (2) The food business must keep a record required by subsection (1) for 3 months after the business makes the record.
- (3) Subsection (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.
- (4) For the purposes of this section, the prescribed provisions are the following provisions of Standard 3.2.2:
 - (a) subclause 5(3);
 - (b) paragraph 6(2)(a);
 - (c) paragraph 7(1)(b)(ii);
 - (d) subclause 7(2);
 - (e) subclause 7(3);
 - (f) subclause 7(4);
 - (g) paragraph 8(5)(a);
 - (h) paragraph 10(b); and
 - (i) clause 20.

Food Standards (Proposal P1053 – Food Safety Management Tools – Consequential Amendments) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by the Delegate]

[Name of Delegate]

Delegate of the Board of Food Standards Australia New Zealand

Note:

This Standard will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**. This means that this date is the gazettal date for the purposes of the above notice.

1 Name

This instrument is the *Food Standards (Proposal P1053 – Food Safety Management Tools – Consequential Amendments) Variation*.

2 Variation to Standards in the *Australia New Zealand Food Standards Code*

The Schedule varies a Standard in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences immediately after the commencement of Standard 3.2.2.A.

SCHEDULE

Standard 1.1.1—Structure of the Code and general provisions

[1] Subsection 1.1.1—2(2)

Omit:

Standard 3.2.2 Food Safety Practices and General Requirements

Substitute:

Standard 3.2.2 Food Safety Practices and General Requirements

Standard 3.2.2.A Food Safety Management Tools

Attachment B – Draft Explanatory Statements

Draft 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 the use of three food safety management tools. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared a draft Standard and a draft consequential variation to Standard 1.1.1.

2. Purpose

The Authority has prepared draft 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.

3. Documents incorporated by reference

The draft Standard does not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the Act, the Authority's consideration of Proposal P1053 will include one round of public consultation following an assessment and the preparation of a draft Standard, a draft consequential variation and an associated assessment summary.

A consultation Regulation Impact Statement (RIS) was prepared and is available on the FSANZ website.

5. 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 94 of the FSANZ Act.

6. The 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 establishes that the name of the proposed new Standard is the *Australia New Zealand Food Standards Code – Standard 3.2.2A – Food Safety Management Tools*. There also includes a Note after this section explaining that the Standard commences 12 months after the date of gazettal, being the date specified as the commencement date in notices in the *Gazette* and the New Zealand Gazette in accordance with sections 92 and 93 of the FSANZ Act.

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

Category one business and **category two business** are defined in proposed 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 proposed 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.

Two notes are included at the end of proposed section 3.2.2A—2, which sets out a copy of relevant definitions contained in other parts of the Code.

Note 1 refers to section 1.1.2—2 of the Code and sets out a copy of the definitions in that section for **application Act, authorised officer, caterer, fund raising event, jurisdiction** and **relevant authority**.

Note 2 refers to clause 2 of Standard 3.1.1 and sets out a copy of the definitions in that section for **food business, food premises** and **handling**.

Section 3.2.2A—3 is about the application of proposed new Standard 3.2.2A.

Proposed section 3.2.2A—3 states that the proposed new Standard applies to category one and category two food businesses in Australia, but 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 proposed 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 sets out what constitutes ‘food service’ for the purposes of proposed new Standard 3.2.2A.

Proposed subsection 3.2.2A—4(1) provides that ‘food service’, for the purposes of the proposed new 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 proposed section 3.2.2A—2 (see above). 'Food business' and 'food premises' are defined in clause 2 of Standard 3.

Proposed subsection 3.2.2A—4(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 sets out what constitutes 'prescribed activities' for the purposes of proposed new Standard 3.2.2A.

Proposed subsection 3.2.2A—5 provides that, for the purposes of the proposed new 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 proposed section 3.2.2A—2 (see above).

This definition identifies the target activities of the proposed new 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 proposed 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 proposed sections 3.2.2A—8 and 3.2.2A—9 below).

Section 3.2.2A—6 sets out the definition of a 'category one business' for the purposes of proposed new Standard 3.2.2A.

Proposed section 3.2.2A—6 provides that 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 proposed section 3.2.2A—2 (see above). The meaning of 'food service' is set out in proposed 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 proposed definition of a 'category one business' would 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 sets out the definition of a 'category two business' for the purposes of proposed new Standard 3.2.2A.

Proposed section 3.2.2A—7 provides that a '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 proposed 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 identifies which food safety management tools apply to category one businesses.

Proposed section 3.2.2A—8 provides that a 'category one business' (see proposed section 3.2.2A—6 above) must comply with proposed 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 proposed sections 3.2.2A—6 and 3.2.2A—7 respectively, above), then proposed section 3.2.2A—8 would apply to that business.

Section 3.2.2A—9 identifies which food safety management tools apply to category two businesses.

Proposed section 3.2.2A—9 provides that a category two business (see proposed section 3.2.2A—7 above) must comply with proposed 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 proposed sections 3.2.2A—6 and 3.2.2A—7 respectively, above), then proposed section 3.2.2A—8 (see above) would apply to that business.

Section 3.2.2A—10 sets out the food safety training requirements for food handlers who engage in a prescribed activity (food safety training requirements).

Proposed section 3.2.2A—10 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 proposed 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 proposed 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 proposed sections 3.2.2A—6 and 3.2.2A—7 above) would have to comply with these food safety training requirements (see proposed section 3.2.2A—8 and 3.2.2A—9 above).

Section 3.2.2A—11 sets out requirements for food businesses in relation to the supervision of food handlers (supervision requirements).

Proposed section 3.2.2A—11 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 proposed section 3.2.2A—2 (see above). What constitutes a ‘prescribed activity’ is set out in proposed 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 proposed sections 3.2.2A—6 and 3.2.2A—7 respectively, above) would have to comply with these supervision requirements (see proposed section 3.2.2A—8 and 3.2.2A—9 above).

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

Proposed subsection 3.2.2A—12(1) requires that, *subject to section 3*, a food business engaging in a prescribed activity must make a record that substantiates any matter that the prescribed provisions (as listed in proposed 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 proposed section 3.2.2A—5 (see above).

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

Proposed subsection 3.2.2A—12(3) provides that the requirement in proposed 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 proposed subsection 3.2.2A—12(4) (see below).

The intent of proposed 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.

Proposed subsection 3.2.2A—12(4) lists the prescribed provisions for the purposes of proposed 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 proposed section 3.2.2A—2 (see above).

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

However, if a business engages in activities of both a category one and category two business (see proposed 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

The proposed notice for draft Standard 3.2.2A states that the 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.

Food Standards (Proposal P1053 – Food Safety Management Tools – Consequential Amendments) Variation

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 the use of three food safety management tools. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared a draft Standard and a draft consequential variation to Standard 1.1.1.

2. Purpose

The Authority has prepared a draft variation called *Food Standards (Proposal P1053 – Food Safety Management Tools – Consequential Amendments) Variation* to make a consequential amendment to Standard 1.1.1 to account for the commencement of Standard 3.2.2A

3. Documents incorporated by reference

The draft consequential variation does not incorporate any documents by reference

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the Act, the Authority's consideration of Proposal P1053 will include one round of public consultation following an assessment and the preparation of a draft Standard, a draft consequential variation and an associated assessment summary.

A consultation Regulation Impact Statement (RIS) was prepared and is available on the FSANZ website.

5. 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 94 of the FSANZ Act.

6. Variation

Clause 1 provides that the name of the variation is *Food Standards (Proposal P1053 – Food Safety Management Tools – Consequential Amendments) Variation*.

Clause 2 provides that the Code is amended by the Schedule to the variation.

Clause 3 provides that the variation will commence immediately after draft Standard 3.2.2A takes effect.

Item 1 of the Schedule will amend subsection 1.1.1—2(2) of Standard 1.1.1 of the Code to include in that subsection a reference to Standard 3.2.2A. The subsection lists all the standards of the Code arranged into Chapters, Parts and a set of Schedules. The list does not currently contain a reference to Standard 3.2.2A.

The effect of the amendment, if the draft Standard 3.2.2A and the draft variation are both approved, will be that Standard 3.2.2A will be listed in subsection 1.1.1—2(2) immediately after the reference in that subsection to Standard 3.2.2.