



Regulatory Impact Statement – Food Amendment (Vulnerable Persons Food Safety Scheme) Regulation 2008

Public consultation - Summary of issues raised in submissions

Summary of support for regulatory options

Option 1 – No support in submissions for this option

Option 2 – Department of Ageing, Disability and Home Care (DADHC), Aged and Community Services Association NSW and ACT Inc (ACS), Campbelltown City Council, NSW Council of Social Service – latter believes that a mix of option 2 and 3 should be implemented

Option 3 – NSW Council of Social Service – believes that a mix of option 2 and 3 should be implemented

Preference for an option not listed – Hammond Care, NSW Meals on Wheels Association (NSW MoW)

Analysis of issues raised in public submissions

Issue	Organisation	NSW Food Authority analysis and response	Amendment to Regulation
MACRO ISSUES			
1. Local councils may already conduct random food safety inspections of facilities resulting in	Hammond Care Aged and Community	Discussions with the Commonwealth Aged Care Standards and Accreditation Agency indicates there will be minimal, if any, duplication between audits required by both Agencies.	No

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<p>unnecessary duplication. In addition, Commonwealth Aged Care Standards and Accreditation Agency monitors aged care facilities for compliance</p>	<p>Services Association NSW and ACT Inc (ACS)</p>	<p>Currently local councils may conduct random inspections of hospitals and aged care facilities. Recent amendments to the <i>Food Act 2003</i> and <i>Food Regulation 2004</i> will see a reduction in duplication as local councils will not inspect facilities that are licensed under the Food Regulation 2004. Once the Vulnerable Persons Food Safety Scheme Regulation is introduced, the responsibility for food safety in these facilities will rest with the NSW Food Authority and not Councils.</p>	
<p>2. New licence fees unable to be absorbed by Industry – additional costs could raise service costs, or impact on the number of services that can be provided. ACS request that licence fees are waived for 'very small' facilities employing less than 1 FTE food handler.</p>	<p>Aged and Community Services Association NSW and ACT Inc (ACS)</p> <p>NSW Council of Social Service (NCOSS)</p>	<p>In October 2001 a food safety funding review chaired by the Hon. John Kerin, recommended that funding should be provided on a shared basis by industry and Government. Industry funding, collected through licence fees, inspection fees, audit fees and levies, covers the costs of implementing food safety schemes; conducting inspections; as well as conducting routine and verification audits of food businesses.</p> <p>In line with these recommendations, the costing included in the VP-RIS has predicated licence fees '... set at no more than is reasonably required for the Food Authority to ensure food safety programs implemented across New South Wales are robust' (page 29).</p> <p>The NSW Food Authority has been consulting and working with industry for a number of years and established Vulnerable Persons Reference and Technical Working Groups, which had input into the fee structure. A new fee structure was developed which best reflected current industry practice and resources, and resulted in lower licence fees set for the 'very small' or 'small' business categories, which includes most non-profit organisations.</p> <p>If fees were to be waived for a category of business, for example, very small businesses, they would need to be raised in other categories, including small and medium businesses. This would result in a disproportionate impost on these businesses. As such, the NSW Food Authority does not support waiving fees for very small businesses.</p> <p>Licence fees are set according to the number of paid full time equivalent food handlers involved in preparing or serving food at a facility. In addition, a one-off \$50 licence application fee is also charged. The</p>	<p>No</p>

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		<p>proposed annual licence fee schedule is as follows:</p> <p>Very small, 3 or less Full time food handlers - \$239</p> <p>Small, 4-10 Full time food handlers - \$306</p> <p>Medium, 11-30 Full time food handlers - \$565</p> <p>Large, 31-49 Full time food handlers - \$820</p> <p>Extra large, 50+ Full time food handlers - \$1077</p>	
<p>3. NCOSS states that Option 2 provides good compliance and will also give some support to businesses. NCOSS is concerned however that many small to medium sized businesses would not approach the Authority for assistance, in case it led to further enforcement action taken against the business.</p>	<p>NSW Council for Social Service</p>	<p>NCOSS proposes a mix of option 2/3, as this would give the compliance and enforcement mechanisms to the Standard, and also provide the right level of support to businesses through an industry association. NCOSS suggests that the NSWFA consider funding a function within each of the relevant industry peak bodies that currently exist to provide this support.</p> <p>The Food Authority has calculated its fee structure on the basis of Option 2. It does not have additional revenue to fund a mix of Options 2 and 3, nor to fund a function within industry peak bodies to provide support to business. In order to implement this suggestion, fees would need to be increased to industry as a whole. As such, a mix of Option 2/3 is not supported.</p>	<p>No</p>
<p>4. NSW MoW is concerned that the timeline for implementation is 'unexpected', as they were working to implementation date of 5 October 2008.</p> <p>DADHC has requested an extra six month transitional</p>	<p>Department of Ageing, Disability and Home Care (DADHC)</p> <p>NSW Meals on Wheels (MoW) Association</p> <p>NSW Council of Social Service</p>	<p>The Standard requires businesses affected by it to develop and implement a food safety program. It is proposed that the regulation require businesses to be affected by this Standard to apply for a licence with the NSW Food Authority within two months of the regulation commencing (18 August is currently proposed).</p> <p>It is also proposed that businesses affected by the Standard, other than same day aged care centres, will have developed their programs ready for implementation and audit within six months (1 March 2009 is currently proposed).</p>	<p>Yes</p>

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period for their aged day care facilities	(NCOSS)	<p>Whilst the Authority has worked closely with the NSW Meals on Wheels Association to assist services where possible, assisting the aged day care sector to implement food safety programs has been a challenge due to the lack of a peak body for aged day care.</p> <p>In light of concerns raised, the Authority has agreed to extend the transitional period for aged day care from six months to twelve months, which allows aged day care facilities a longer period in which to develop and begin implementing their food safety programs (1 September 2009 is currently proposed).</p>	
5. Concern that the proposed legislation denies residents the right to eat food of their choice.	Aged and Community Services Association NSW and ACT Inc (ACS)	<p>The NSW Food Authority acknowledges that the choice of food eaten by residents may be impacted by the proposed Vulnerable Persons Food Safety Scheme (the Scheme). However, the issue needs to be carefully balanced with the over-arching aim of the Scheme, which is to reduce the risk of foodborne illness for vulnerable persons.</p> <p>As such, the Authority has developed a policy for the service of high risk foods, which is informed by the fact sheet prepared by Food Standards Australia New Zealand (FSANZ) called <i>Listeria and Food – advice for people at risk</i>.</p> <p>Businesses who wish to serve a food considered high risk will need to identify this through their hazard analysis and must demonstrate that they have adequate controls in place in order to serve the high risk food. This will allow businesses flexibility in the food they serve, and will also allow for innovation by industry. For example, if new controls and scientific advances are developed and the Authority is satisfied that these render certain foods safe for service to vulnerable persons, these foods may be permitted to be served.</p> <p>The intention of the Scheme is to protect vulnerable people from the very serious risk of foodborne illness. However, once that is achieved, the Authority aims to allow residents of hospitals and aged care facilities as wide a range of food choices as possible.</p>	No – guidelines to be reflected in Authority's Manual

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Hammond Care expressed a concern about residents in aged care facilities having access to kitchens for local or domestic use.	Hammond Care	<p>Allowing Residents Access to Small, Domestic Kitchens</p> <p>The Authority will continue to allow facilities to offer such access, on the proviso that the business can demonstrate that food provided for sale by the business is safe and suitable.</p>	
MICRO ISSUES			
<p>6. The definition of full-time equivalent (FTE) food handlers for the calculation of licence fees where multi-skilled care workers are used, should be based on the amount of time spent by these staff in preparing or serving food.</p> <p>The NSW Meals on Wheels (MoW) Association says that the definition of 'food handler' should not include volunteers who are involved in the distribution of meals when calculating the cost of the annual fees.</p>	<p>Aged and Community Services Association NSW and ACT Inc (ACS)</p> <p>NSW Meals on Wheels (MoW) Association</p>	<p>Multi-purpose staff will only have the time spent in processing or serving food included in the licence fee calculation. Information on how to calculate licence fees will be included in the NSW Food Authority Manual, which guides the implementation of the proposed Regulation.</p> <p>Only paid staff are included in the licence fee calculations. Time spent by volunteers are not included in licence fee calculations.</p>	No - to be included in the NSW Food Authority Manual
<p>7. Frequency of Audits for 'B' rated facilities</p> <p>ACS recommends that the audit frequency for businesses rated 'B', once they are judged able to be assessed by third party auditors, be audited annually</p>	Aged and Community Services (ACS) Association	<p>The Authority's performance based audit model, which is based on a priority risk classification system, allows for annual audits where businesses can demonstrate they have an 'A' rated food safety program in place. The Authority uses the audit process to identify defects within a food safety program, and support business to improve its performance, where possible to an 'A' rating.</p> <p>The Authority does not support that a business remain at a 'B' rating over the long term. A 'B' rating means that a food business is operating with a</p>	Not supported - no amendment to Regulation

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rather than six monthly.		<p>number of defects, which can in long term undermine the robustness of its food safety program, and may lead to system failures.</p> <p>It is felt that the differential in the number of inspections for 'A' and 'B' rated businesses is a significant incentive for food businesses to improve performance. In addition, Food Standards Australia New Zealand recommends that high risk food businesses be audited six monthly.</p>	
8. ACS seeks representation on the NSW Vulnerable Persons Food Safety Scheme Consultative Committee	Aged and Community Services (ACS) Association	<p>The RIS states that the NSW Food Authority is to establish the NSW Vulnerable Persons Food Safety Scheme Consultative Committee.</p> <p>The Committee is to be 'comprised principally of persons nominated by the relevant industry, and endorsed by the Food Authority, to represent main sectors of the industry.</p> <p>The ACS requests that it be represented on the Committee. The NSW Food Authority will put this nomination forward, at the appropriate time.</p>	No
9. The NSW Meals on Wheels (MoW) Association is concerned that same day aged care establishments, which provide only recreational or social activities will be affected by the Regulation.	NSW Meals on Wheels (MoW) Association	Standard 3.3.1 defines same day aged care establishments as 'establishments where aged persons attend for day or part-day rehabilitative or therapeutic treatment'. Therefore the Regulation will not affect facilities which simply provide social or recreational opportunities.	No