

## **Standard 3.1.1**

### ***Interpretation and Application***



# Standard 3.1.1

## Interpretation and Application

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### (Australia only)

### Purpose

This Standard sets out the interpretation and application provisions that apply to the other food safety standards set out in this Chapter of the Code. The objective of the food safety standards is to ensure that only safe and suitable food is sold in Australia.

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### Clauses

#### 1 Interpretation

In this Chapter the definitions of the following terms apply:

**appropriate enforcement agency** means an enforcement agency prescribed by the regulations under the Act for the purposes of enforcement of the Act or similar purposes.

**authorised officer** means a person authorised or appointed under the Act or other legislation for the purposes of enforcement of the Act, or similar purposes, such as an 'authorised officer', 'environmental health officer' or 'inspector'.

**clean** means clean to touch and free of extraneous visible matter and objectionable odour.

**contaminant** means any biological or chemical agent, foreign matter, or other substances that may compromise food safety or suitability.

**contamination** means the introduction or occurrence of a contaminant in food.

**equipment** means a machine, instrument, apparatus, utensil or appliance, other than a single-use item, used or intended to be used in or in connection with food handling and includes any equipment used or intended to be used to clean food premises or equipment.

**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 handler** means a person who directly engages in the handling of food, or who handles surfaces likely to come into contact with food, for a food business.

**food handling operation** means any activity involving the handling of food.

**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.

**food safety standards** means the standards contained in Chapter 3 of the *Australia New Zealand Food Standards Code*.

**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.

**hazard** means a biological, chemical or physical agent in, or condition of, food that has the potential to cause an adverse health effect in humans.

**pests** include birds, rodents, insects and arachnids.

**primary food production** means the growing, cultivation, picking, harvesting, collection or catching of food, and includes the following:

- (a) the transportation or delivery of food on, from or between the premises on which it was grown, cultivated, picked, harvested, collected or caught,
- (b) the packing, treating (for example, washing) or storing of food on the premises on which it was grown, cultivated, picked, harvested, collected or caught, and
- (c) any other food production activity that is regulated by or under an Act prescribed by the regulations for the purposes of this definition.

However, primary food production does not include:

- (a) any process involving the substantial transformation of food (for example, manufacturing or canning), regardless of whether the process is carried out on the premises in which the food was grown, cultivated, picked, harvested, collected or caught, or
- (b) the sale or service of food directly to the public, or
- (c) any other food production activity prescribed by the regulations under the Act for the purposes of this definition.

**proprietor** of a food business means:

- (a) the person carrying on the food business, or
- (b) if that person cannot be identified — the person in charge of the food business.

**sell** means:

- (a) barter, offer or attempt to sell, or
- (b) receive for sale, or
- (c) have in possession for sale, or
- (d) display for sale, or
- (e) cause or permit to be sold or offered for sale, or
- (f) send, forward or deliver for sale, or
- (g) dispose of by any method for valuable consideration, or
- (h) dispose of to an agent for sale on consignment, or
- (i) provide under a contract of service, or
- (j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work, or
- (k) dispose of by way of raffle, lottery or other game of chance, or
- (l) offer as a prize or reward, or
- (m) give away for the purpose of advertisement or in furtherance of trade or business, or
- (n) supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment, or
- (o) supply food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions, where 'public institution' means 'public institution' as defined in the Act, if it is so defined; or
- (p) sell for the purpose of resale.

**single-use item** means an instrument, apparatus, utensil or other thing intended by the manufacturer to only be used once in connection with food handling, and includes disposable gloves.

## 2 Meaning of safe and suitable food

(1) For the purposes of the Food Safety Standards, food is not safe if it would be likely to cause physical harm to a person who might later consume it, assuming it was:

- (a) after that time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use; and
- (b) consumed by the person according to its reasonable intended use.

(2) However, food is not unsafe merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons.

(3) In subsection (1), *processes* include processes involving storage and preparation.

(4) For the purposes of the Food Safety Standards, food is not suitable if it:

- (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use, or
- (b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use, or
- (c) is the product of a diseased animal or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption, or
- (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.

(5) However, food is not unsuitable for the purposes of the Food Safety Standards merely because:

- (a) it contains an agricultural or veterinary chemical in an amount that does not contravene the Food Standards Code, or
- (b) it contains a metal or non-metal contaminant (within the meaning of the Food Standards Code) in an amount that does not contravene the permitted level for the contaminant as specified in the Food Standards Code, or
- (c) it contains any matter or substance that is permitted by the Food Standards Code.

**Editorial note:**

Terms that are defined in this Standard are terms that are used only in this Standard or in more than one food safety standard. Terms that are used in only one of the other food safety standards are defined in the standard in which they are used.

'Act' is defined in Standard 1.1.1 as meaning the Act under the authority of which the Code is applied.

Under the Inter-Governmental Agreement developed in response to the Food Regulation Review (Blair) Report, jurisdictions will agree to adopt definitions of the following terms into their Food Acts: 'food', 'food business', 'food safety standards', 'handling', 'proprietor' and 'unsafe food'.

Jurisdictions may adopt the definition of 'unsuitable food' into their Food Acts if they wish.

The definitions of these terms in this Standard are based upon their proposed definitions in the Model Food Bill. It is intended to remove the definitions of these terms from this Standard once jurisdictions include the relevant Model Food Bill definitions in their Food Acts.

### 3 General application of the Food Safety Standards

The Food Safety Standards apply in accordance with this Standard to all food businesses in Australia but not in New Zealand.

**Editorial note:**

All the requirements of Standards 3.2.2 and 3.2.3 except the notification and skills and knowledge requirements will commence six months from gazettal of those standards. The notification and skills and knowledge requirements will commence 18 months after gazettal.

### 4 Compliance

(1) The proprietor of a food business must ensure the food business complies with all the requirements of the Food Safety Standards except those in Subdivision 1 of Division 4 of Standard 3.2.2 (Food Safety Practices and General Requirements).

(2) Food handlers must comply with all the requirements set out in Subdivision 1 of Division 4 of Standard 3.2.2.

## Purpose

Standard 3.1.1 sets out the interpretation and application provisions that apply to the other food safety standards in this chapter of the *Australia New Zealand Food Standards Code*, that is, Standard 3.2.2 *Food Safety Practices and General Requirements* and Standard 3.2.3 *Food Premises and Equipment*.

## Contents

### 1 Interpretation

Standard 3.1.1 defines terms that are used only in this standard or in both the other food safety standards. Terms that are used in only one of the other standards are defined in the standard in which they are used.

The definitions given in the food safety standards apply to the interpretation of these standards whether or not the words are defined in State and Territory food legislation.

Some of the definitions refer to the 'Act'. The Act is defined in Standard 1.1.1 as the Act which gives the authority to apply the *Australia New Zealand Food Standards Code*.

If a term has not been defined within this standard or any of the other standards, refer to the most recent edition of *The Macquarie Dictionary*, published by The Macquarie Library Pty Ltd.

### Definitions

Underlined words are also defined in this standard.

**appropriate enforcement agency** means an enforcement agency prescribed by the regulations under the Act for the purposes of enforcement of the Act or similar purposes.

Each State and Territory Food Act specifies the agency responsible for the enforcement of the Act and any regulations or standards referred to in the Act.

The enforcement authority will usually be the same authority that enforced previous food hygiene regulations in the respective State or Territory.

This term is used in Standard 3.2.2 clause 4 **Notification** and in relation to exemptions from requirements in subclauses 15(5), 17(2) and 17(3). It is also used in relation to exemptions from requirements in Standard 3.2.3 paragraph 10(3)(b) and subclause 14(4).

**authorised officer** means a person authorised or appointed under the Act or other legislation for the purposes of enforcement of the Act, or similar purposes, such as an 'authorised officer', 'environmental health officer' or 'inspector'.

Each State and Territory Act specifies the persons who have the authorisation to enforce the Act and associated regulations or standards.

The term is used in Standard 3.2.2 subclause 5(2) **Food receipt**, clause 12 **Food recall** and subclause 18(2) in relation to information provided by a food handler.

**clean** means clean to touch and free of extraneous visible matter and objectionable odour.

The definition clarifies that 'clean' is not about the microbiological standard of the surface but about the standard that can be assessed by sight, touch and smell.

'Cleanliness', 'cleaned' and 'cleaning' are also used in the standards, with the same intent as 'clean'.

The term is used in Standard 3.2.2 in regard to hand washing and equipment, fittings and fixtures. It is also used as part of the definition of 'clean and sanitary condition' in subclause 20(2). 'Clean' is also used in Standard 3.2.3 in regard to the design and construction of food premises, garbage storage, equipment, utensils and food storage areas of vehicles to allow effective cleaning.

**contaminant** means any biological or chemical agent, foreign matter, or other substances that may compromise food safety or suitability.

'Contaminant' is used in the definition of 'unsuitable' in relation to general requirements for food premises. Biological agents include micro-organisms such as bacteria, viruses and moulds. Chemical agents include metals, pesticides and other chemicals that could contaminate food. Foreign matter includes physical objects that may be in food, such as string, paperclips and glass. Other substances are included to ensure that all materials that may affect food safety or suitability are covered. For definitions of 'safety' and 'suitability' see 'Meaning of safe and suitable food' on page 16.

'Contaminant' is used in this standard and Standard 3.2.3.

**contamination** means the introduction or occurrence of a contaminant in food.

Contamination of food has occurred if any of the contaminants referred to above are present in the food.

Protecting food against contamination in storage, display, handling and transport is referred to in Standards 3.2.2 and 3.2.3.

**equipment** means a machine, instrument, apparatus, utensil or appliance, other than a single-use item, used or intended to be used in or in connection with food handling and includes any equipment used or intended to be used to clean food premises or equipment.

The intention is to ensure that all equipment that is used to produce food and in cleaning procedures in the food premises is covered by the requirements. There are specific requirements for single-use items.

'Equipment' is used in clauses 8, 19, 20 and 21 of Standard 3.2.2 and clauses 3, 12 and 13 of Standard 3.2.3.

**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.

The definition is crucial to applying the food safety standards and should be read in conjunction with the definition of 'primary food production'. The words 'commercial', 'charitable' and 'community' take their dictionary meanings. The intention is to cover all food businesses (other than primary food producers) whether or not the food is intended for sale for charity or for commercial purposes.

**food handler** means a person who directly engages in the handling of food, or who handles surfaces likely to come into contact with food, for a food business.

The definition covers people who prepare food and/or handle surfaces likely to come into contact with food, for example a person cleaning eating and drinking utensils. Food handlers must comply with the health and hygiene requirements in Standard 3.2.2.

**food handling operation** means any activity involving the handling of food.

Examples of food handling operations are: preparing meat and vegetables for cooking, preparing salads, serving meals and packaging food for sale.

The term is used frequently in Standard 3.2.3 to clarify that the requirement applies only in relation to these operations. For example, food handlers are obliged to comply with hygiene requirements in clause 15 in Standard 3.2.2 only when engaging in any food handling operations.

**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.

The definition covers all types of structures that are used by food businesses, including boats, ships and planes. In addition, land used by a food business is covered. Premises permanently used by the business and temporary premises such as market stalls, tents, etc. are also covered.

If a business sells food or offers food as part of a service, such as a hairdressing business serving coffee, it is a food business.

Outdoor dining areas on the street are part of the food premises serving the food. Note that 'Division 3 — Floors, walls and ceilings' does not apply to dining areas.

Food vending machines are classed as equipment. A business that sells food through food vending machines is a food business. A business that operates food transport vehicles is a food business. Premises that are principally private dwellings but would be classed as food premises include premises used for bed and breakfast, child care involving the supply of food, and domestic premises used to store or prepare food for sale.

**food safety standards** means the standards contained in Chapter 3 of the *Australia New Zealand Food Standards Code*.

Currently these are Standards 3.1.1, 3.2.1, 3.2.2 and 3.2.3. The term is used only in Standard 3.1.1, in the definitions of 'safe' and 'suitable', and in the application and compliance provisions.

**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.

This is inclusive and intended to cover all the activities that take place in relation to food before it is sold. It is not restricted to the activities listed.

**hazard** means a biological, chemical or physical agent in, or condition of, food that has the potential to cause an adverse health effect in humans.

As part of a food safety program, a business must identify potential hazards that are expected to occur in the business's food handling operations. These hazards may be biological, chemical or physical agents in the food. Pathogenic micro-organisms are an example of biological agents in food. Chemical agents include pesticides, toxic metals and veterinary chemical residues. Physical agents in food include foreign matter such as glass or metal fragments. A hazard may also be material intrinsic to the food but unacceptable in the final product: bones in fish products are an example.

The definition also covers biological, chemical and physical conditions of food. This means that the food is (or has the potential to be) in a state that needs to be controlled by the food safety program. An example is a food that is known to be poisonous, for example certain mushrooms, when the specific agent causing the illness may not be able to be identified.

The term is used in the definition of a food safety program in Standard 3.2.2.

**pests** include birds, rodents, insects and arachnids.

The intention is to ensure that the requirements cover all animals that could contaminate food either directly or indirectly. It is not restricted to the animals listed.

It is used in clause 24 of Standard 3.2.2 and clauses 3, 6, 10, 11 and 12 of Standard 3.2.3.

**primary food production** means the growing, cultivation, picking, harvesting, collection or catching of food, and includes the following:

- (a) the transportation or delivery of food on, from or between the premises on which it was grown, cultivated, picked, harvested, collected or caught,

- (b) the packing, treating (for example, washing) or storing of food on the premises on which it was grown, cultivated, picked, harvested, collected or caught, and
- (c) any other food production activity that is regulated by or under an Act prescribed by the regulations for the purposes of this definition.

However, primary food production does not include:

- (a) any process involving the substantial transformation of food (for example, manufacturing or canning), regardless of whether the process is carried out on the premises in which the food was grown, cultivated, picked, harvested, collected or caught, or
- (b) the sale or service of food directly to the public, or
- (c) any other food production activity prescribed by the regulations under the Act for the purposes of this definition.

This definition has been included to exclude primary production activities from Standards 3.2.2 and 3.2.3. It does this by excluding primary food production from the definition of food business and thereby excluding it from the application and compliance provisions of this standard.

Primary food production has been excluded from compliance with the standards because the requirements of the standards were not written to take account of the particular needs of this sector of the food industry. There are other legislative and food safety mechanisms to regulate food safety in this sector.

However, the definition is intended to ensure that if the food is subjected, by a primary food producer, to a process that substantially transforms the food, or if it is sold or served directly to the public, it is covered by these standards.

States and Territories have the mechanism under the definition to include and exclude specific types of food businesses from the application of the standards. Businesses that are in doubt as to whether the standards are applicable in any particular State or Territory should contact the State or Territory health department.

The term is used only in clause 1 of this standard.

**proprietor of a food business means:**

- (a) the person carrying on the **food business**, or
- (b) if that person cannot be identified – the person in charge of the food business.

The proprietor of a food business is obliged to comply with the standards except where it is stated that a food handler is directly responsible for compliance. There may be circumstances in which it is not possible to identify who is actually carrying on the food business, for example because there are communication difficulties or the business is unwilling to provide that information. In these circumstances the proprietor is then the person who, in the opinion of the enforcement agency, is in charge of the business.

'Proprietor' is used in the definitions and compliance provisions in this standard and in clauses 4, 17 and 18 of Standard 3.2.2.

**sell** means:

- (a) barter, offer or attempt to sell, or
- (b) receive for sale, or
- (c) have in possession for sale, or
- (d) display for sale, or
- (e) cause or permit to be sold or offered for sale, or
- (f) send, forward or deliver for sale, or
- (g) dispose of by any method for valuable consideration, or
- (h) dispose of to an agent for sale on consignment, or
- (i) provide under a contract of service, or
- (j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work, or
- (k) dispose of by way of raffle, lottery or other game of chance, or
- (l) offer as a prize or reward, or
- (m) give away for the purpose of advertisement or in furtherance of trade or business, or
- (n) supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment, or
- (o) supply food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions, where 'public institution' means 'public institution' as defined in the Act, if it is so defined; or
- (p) sell for the purpose of resale.

The definition is intended to cover all circumstances in which food is provided in exchange for money or other benefit, as a part of a service (for example meals provided as part of accommodation) or for some other gain to the business from providing the food. It also includes food that is provided as part of a demonstration to promote food products because the business expects to gain by selling the product. It does not include food that is given away and for which nothing is expected in return; for example food prepared in the family home for family and friends.

'Sell' is used within the definition of 'food business' in this standard.

**single-use item** means an instrument, apparatus, utensil or other thing intended by the manufacturer to only be used once in connection with food handling, and includes disposable gloves.

There is specific discussion about single-use items in clause 23 in Standard 3.2.2.

It is excluded from the definition of 'equipment' in this standard.

## 2 Meaning of safe and suitable food

The food safety standards regulate the safety and suitability of food. 'Safe' and 'suitable' are the words used by the Codex Alimentarius Commission in its basic texts on food hygiene to describe food that is fit for human consumption. The Codex Alimentarius Commission is responsible for developing international food standards, codes of practice and guidelines on behalf of the Food and Agriculture Organization and the World Health Organization, with the aim of protecting the health of consumers and ensuring fair practices in international food trade.

These words have been used in preference to terms in existing State and Territory food legislation (such as 'adulterated' or 'fit for human consumption') because these terms have different meanings associated with them in different States and Territories.

The definitions are intended to clarify the aspects of 'safety' and 'suitability' that are within the scope of the standards.

### Safe food

**2(1) For the purposes of the Food Safety Standards, food is not safe if it would be likely to cause physical harm to a person who might later consume it, assuming it was:**

- (a) after that time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use; and**
- (b) consumed by the person according to its reasonable intended use.**

The intention of the definition is that safe food is food that will not cause illness or other physical harm to a person eating it, provided that the food is used as it is intended to be used. For example, raw meat is likely to contain pathogenic micro-organisms. However, in terms of the definition, it is considered safe because it is intended by food businesses to be cooked before being eaten. Therefore the presence of pathogenic micro-organisms on food that is intended to be processed to destroy those micro-organisms does not mean that the food is unsafe.

If a person is harmed when eating a food, such as by choking on a piece of food, this does not mean in itself that the food is 'unsafe'. If the person chokes on foreign material in the food the presence of that foreign material in the food may make that food 'unsuitable'.

**2(2) However, food is not unsafe merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons.**

Some people suffer allergic reactions to foods, for example peanuts. The definition makes it clear that the presence of allergens that do not affect the general population does not make that food unsafe.

**2(3) In subsection (1), *processes* include processes involving storage and preparation.**

## Suitable food

**2(4) For the purposes of the Food Safety Standards, food is not suitable if it:**

- (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use, or**
- (b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use, or**
- (c) is the product of a diseased animal or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption, or**
- (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.**

Some substances are not considered to be acceptable for consumption even though consuming them may not cause illness or other harm. These have been listed as (a) to (d) in subclause (4); for example an insect that has been cooked in food is unlikely to cause illness but the food would be considered unacceptable. The definition includes food that is damaged, or has deteriorated or perished, or contains such material as an ingredient.

Animals that are diseased or have died other than by slaughter are not considered acceptable for human consumption and are specifically defined as unsuitable. 'Slaughter' means being killed for food and includes slaughter of game in the wild as well as slaughter of cattle etc. at abattoirs.

Food that contains foreign material, for example insects, nails, string and other material occasionally found in food, is not acceptable.

**2(5) However, food is not unsuitable for the purposes of the Food Safety Standards merely because:**

- (a) it contains an agricultural or veterinary chemical in an amount that does not contravene the Food Standards Code, or**
- (b) it contains a metal or non-metal contaminant (within the meaning of the Food Standards Code) in an amount that does not contravene the permitted level for the contaminant as specified in the Food Standards Code, or**
- (c) it contains any matter or substance that is permitted by the Food Standards Code.**

Subclause 5 states that food that does not contain more than the levels of agricultural and veterinary chemical residues and contaminants specified in the *Food Standards Code*, or that contains matter or substances permitted by the *Food Standards Code*, is not to be classed as unsuitable only because it contains those substances. For example, food that contains the permissible amount of mercury cannot be considered unsuitable.

### 3 General application of the Food Safety Standards

#### **3 The Food Safety Standards apply in accordance with this Standard to all food businesses in Australia but not in New Zealand.**

The standards do not apply to 'primary food production'. This term is defined and is intended to cover activities that occur on farms. Activities in relation to food production on farms and the transport of food from the farm are not within the scope of the standards.

### 4 Compliance

#### **4(1) The proprietor of a food business must ensure the food business complies with all the requirements of the Food Safety Standards except those in Subdivision 1 of Division 4 of Standard 3.2.2 (Food Safety Practices and General Requirements).**

#### **4(2) Food handlers must comply with all the requirements set out in Subdivision 1 of Division 4 of Standard 3.2.2.**

The proprietor of the food business is responsible for compliance with the requirements of Standards 3.2.2 and 3.2.3 except for the requirements of clauses 13, 14 and 15 in Standard 3.2.2 which place specific obligations on food handlers. These specific obligations relate to the health and hygiene practices of food handlers.