



STANDARD 3.1.1
INTERPRETATION AND APPLICATION

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1 Interpretation

Standard 3.1.1 defines terms that are used only in this standard or in both Standard 3.2.2 and 3.2.3. 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 in Standard 3.1.1 refer to the 'Act'. The phrase 'the Act' was defined in Standard 1.1.1 of the previous Code to mean the Act which gives the food regulatory authority to apply the Food Standards Code. Standard 1.1.1 of the revised Code does not include a definition of the phrase. Instead it refers to an 'application Act' which is defined to mean an Act or Ordinance of the Commonwealth, state or territory that applies the requirements of the Code. The references in Standard 3.1.1 to 'the Act' should be read as a reference to an 'application Act'. This issue will be corrected in the review of Chapter 3.

Terms that are not defined in this standard or by other standards in the Code or by the food laws that apply standards in the Code should be given their ordinary meaning. Section 1.1.1–4 of the Code also provides that the Code is to be interpreted in accordance with the *Acts Interpretation Act 1901* (Cth).

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.

This term is used in Standard 3.2.2 clause 4 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), clause 12 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 a state that can be assessed physically 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.

Biological agents include microorganisms 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.

'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.

Food contamination can occur, for example, from:

- pathogenic microorganisms in raw food, unclean surfaces and utensils, or unwashed hands
- chemicals migrating from packaging or other contact surfaces that are not food-grade quality, or being accidentally spilt or sprayed onto food
- foreign objects such as pests, droppings, glass, dirt, jewellery and hair falling or otherwise being mixed into food.

It is important to note that the look, smell or taste of a food may not change as a result of contamination. 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 'handling', 'sell' and 'primary food production'. The words 'commercial', 'charitable' and 'community' take their ordinary 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.

The definition applies regardless of the quantity of food involved, the frequency with which food is handled or sold or the type of premises. For example, it covers the sale of food through the internet, from home and through food vending machines. It covers any food handling operations including food storage and transport.

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 the standards 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 (whether buildings or mobile structures such as vans) and temporary premises such as market stalls, tents, barbeque stands, etc. are also covered.

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.

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 where the handling of food for sale occurs.

Note that food vending machines may be considered as food premises in state or territory legislation. For example, in Queensland vending machines are defined as mobile premises as they can be stand-alone premises moved between locations. For further information, refer to the relevant food authority.

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, 3.2.3 and 3.3.1. 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 microorganisms 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.

While allergens are not specifically covered as a hazard, food businesses should be aware of, and proactively manage, issues associated with allergens and allergen management. See subclause 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:

- (d) 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
- (e) the sale or service of food directly to the public, or
- (f) 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. Requirements for primary production activities are included in Chapter 4 of the Food Standards Code. Primary Production and Processing Standards have been developed for seafood, meat, poultry meat, eggs, dairy products and seed sprouts.

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. 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 (e.g. taste testing) 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. It is not intended to include the provision of complimentary non-alcoholic beverages or ready-to-eat foods that are not potentially hazardous (such as tea and packaged biscuits) provided by a business for customer comfort, for example at a hairdresser or car service premises.

'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.

vehicles used to transport food includes shopping trolleys.

Standard 3.1.1 was amended in 2005 to specifically include shopping trolleys as food transport vehicles.

2 Meaning of safe and suitable food

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 intent 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 poultry meat is likely to contain pathogenic microorganisms. However, in terms of the definition, it is considered safe at that time because it is intended to be cooked before being eaten. The presence of pathogenic microorganisms on food that is intended to be processed to destroy those microorganisms 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, eggs, dairy or seafood. The definition makes it clear that the presence of allergens that do not affect the general population does not make that food unsafe.

However, food businesses should be aware of potential issues associated with allergens and that it is mandatory to declare the presence of certain substances in food under Standard 1.2.3 — Mandatory Warning and Advisory Statements and Declarations. The Resources and References section includes links to further information on allergen management.

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 inadvertently cooked in food is unlikely to cause illness but the food would be considered unacceptable. The definition includes food that is damaged, deteriorated or perished, or contains such material as an ingredient. However, superficial damage, such as dents to cans that will not affect the intended use of the food, do not make the food unsuitable.

Animals that are diseased or have died other than by slaughter are not considered acceptable for human consumption. State and territory laws govern the slaughter and processing of animals for human consumption, including of animals in the wild.

Food that contains foreign material, for example pest 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.**

This subclause 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, seafood 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. Primary Production and Processing Standards have been developed for seafood, meat, poultry meat, eggs, dairy products and seed sprouts and are included in Chapter 4 of the Food Standards Code.

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.