

2 May 2012
[9-12]

Call for submissions – Proposal P1018

Companion Dogs in Outdoor Dining Areas

Food Standards Australia New Zealand (FSANZ) has assessed a proposal prepared to remove restrictions on the presence of companion dogs in outdoor dining areas and has prepared a draft food regulatory measure. Pursuant to section 61 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist FSANZ's consideration of the draft food regulatory measure.

For information about making a submission, visit the FSANZ website at [information for submitters](#).

Under the Information Publication Scheme all submissions on applications and proposals, will be published on our website, except information provided in-confidence. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

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](#).

Submissions should be made in writing; be marked clearly with the word 'Submission' and quote the correct project number and name. While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website via the link on [documents for public comment](#). You can also email your submission directly to submissions@foodstandards.gov.au.

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) 13 June 2012

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 submissions or the application process can be sent to standards.management@foodstandards.gov.au.

Hard copy submissions may be sent to one of the following addresses:

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Canberra BC ACT 2610
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Supporting documents

The following documents which informed the assessment of this Proposal are available on the FSANZ website at
<http://www.foodstandards.gov.au/foodstandards/proposals/proposalp1018compani5440.cfm>

SD1 Food safety risk arising from the presence of companion dogs in outdoor dining areas

1. Executive summary

FSANZ has prepared a proposal to amend clause 24 of Standard 3.2.2 – Food Safety Practices and General Requirements to remove a restriction on the presence of companion dogs in outdoor dining areas operated by food businesses. The decision to allow companion dogs in outdoor dining areas would be up to the individual food businesses.

This Proposal was developed at the request of the Food Regulation Standing Committee. The West Australian Department of Health had expressed a concern that the current prescription under subclause 24.1(a) does not appear to have adopted a risk-based approach to food hygiene. This concern and inconsistencies in enforcing the standard across different Australian jurisdictions are determining factors of this proposal.

As part of this proposal, FSANZ prepared a risk assessment evaluating the food safety risk arising from the presence of companion dogs in outdoor dining and drinking areas. The risk assessment concluded that the overall level of food safety risk arising from the presence of companion dogs in such settings is expected to be very low to negligible.

2. Introduction

2.1 The Proposal

This Proposal is proposing to amend the *Australia New Zealand Food Standards Code* (the Code) removing restrictions on the presence of companion dogs in outdoor dining areas operated by food businesses.

Outdoor dining areas include outdoor drinking areas operated by food businesses.

2.2 The current Standard

Clause 24 of Standard 3.2.2 – Food Safety Practices and General Requirements, restricts the presence of live animals, including companion dogs, in areas where food is handled (with the exception of seafood, or other fish or shellfish, and assistance animals).

2.3 Reasons for preparing the Proposal

The prescription under subclause 24 (1)(a) of Standard 3.2.2 is considered to be unnecessarily restrictive in relation to the presence of companion dogs in outdoor dining areas. There are concerns that this Standard has not adopted a risk-based approach to food hygiene and this has led to inconsistencies in enforcement of this Standard amongst jurisdictions.

2.4 Procedure for assessment

The Proposal is being assessed under the General Procedure.

3. Summary of the assessment

3.1 Risk assessment

The risk of foodborne transmission of zoonotic agents to humans from companion dogs in outdoor dining settings is considered to be very low to negligible.

This consideration is supported by the following factors:

- The likelihood of direct contact of food or food preparation areas with infected companion dogs or dog faeces is negligible as dogs would not ordinarily be allowed into food preparation areas.
- Acquiring diseases through indirect foodborne transmission routes requires the involvement of an intermediate vector. As illustrated in Figure 1, such vectors may include food preparation personnel, food service personnel or rodents/insects. A successful foodborne disease transmission through an intermediate vector is dependent on (1) a successful transmission of pathogens carried by companion dogs to an intermediate vector, and (2) a successful transmission of such pathogens to humans through food contaminated by the intermediate vector. Therefore the likelihood of acquiring diseases carried by companion dogs in outdoor dining areas involving an intermediate vector is predicted to be very low, because the probability of the occurrence of one event that is dependent on the occurrence of two consecutive events is very low when the probabilities of the occurrence of the two consecutive events are themselves both low.

- Potential contamination of food directly from companion dogs, or indirectly through contaminated intermediate vectors, in outdoor dining settings is managed through compliance with general food safety standards and food safety management or control programs for restaurant food hygiene.
- Studies on human-dog interactions indicate that, in general, contact between people and dogs that are not their own pet/s is limited. This minimises the potential for contact and consequently the transmission of pathogens from dogs in outdoor dining settings to humans.

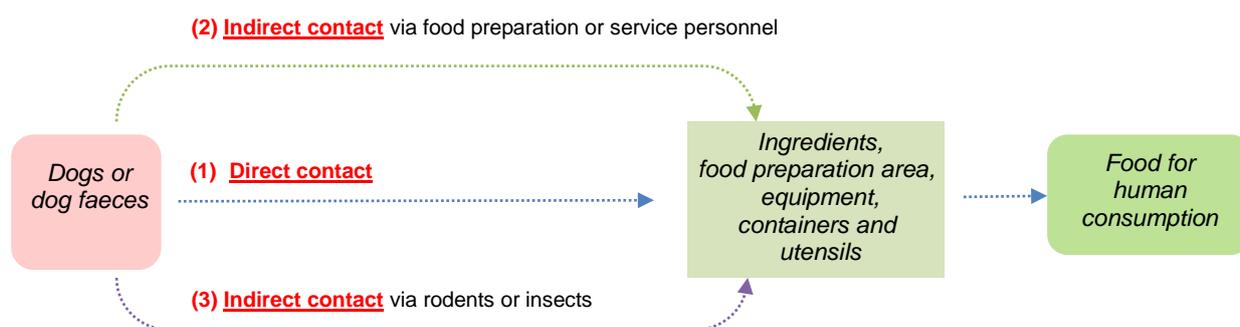


Figure 1: Possible mode of transmission of pathogens from infected dogs to food

The FSANZ assessment of food safety risk arising from the presence of companion dogs in outdoor dining areas is available as Supporting Document (SD) 1.

3.2 Risk management

Under subclause 24.1(a) of Standard 3.2.2, companion dogs (other than assistance animals) are not permitted in areas where food is handled. Implementation of this requirement differs between Australian jurisdictions. For example, the presence of companion dogs in outdoor dining areas operated by food businesses such as restaurants, cafés and takeaway food outlets is currently permitted in New South Wales, South Australia and Victoria subject to determination by the owner of the food business.

In October 2010, the West Australian Department of Health issued guidelines for the enforcement of subclause 24(1)(a) of Standard 3.2.2. These specified that unless there is a food hygiene risk, the presence of companion dogs in outdoor dining areas operated by food businesses is not restricted in Western Australia, subject to determination by the owner of the food business.

These various measures have resulted in national inconsistencies to the implementation of subclause 24.1(a) of Standard 3.2.2.

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

- whether costs that would arise from a food regulatory measure developed or varied as a result of the proposal outweigh the direct and indirect benefits to the community, Government or industry that would arise from the development or variation of the food regulatory measure
- there are no other measures that would be more cost-effective than a variation to the Standard that could achieve the same end
- any relevant New Zealand standards
- any other relevant matters.

3.2.1 Cost benefit analysis

The Office of Best Practice Regulation (OBPR), in a letter to FSANZ dated 27 February 2012 (reference number 13575), confirmed that a Regulation Impact Statement was not required for this Proposal as it did not appear to have more than a minor impact on businesses or the non-profit sector. FSANZ has, however, performed an impact analysis.

3.2.1.1 Consumers

Consumers with dogs would likely benefit from this change. However, some consumers may object to having dogs present while dining outdoors.

3.2.1.2 Government

It is unlikely that government agencies will be affected since this is effectively a deregulation.

3.2.1.3 Industry

The hospitality and dining industry will benefit due to decreased regulation no longer restricting companion dogs in outdoor dining areas if they wished to allow them. The removal of this restriction may allow for businesses to investigate new niche marketing opportunities and service provisions.

3.2.2 New Zealand standards

This is not relevant as Standard 3.2.2 applies in Australia only.

3.2.3 Other measures

There are no other measures that would be more cost-effective to achieve the same aim than a variation to Standard 3.2.2.

3.2.4 Addressing FSANZ's objectives for standards setting

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

3.2.4.1 Protection of public health and safety

The protection of public health and safety will be maintained even with the restriction removed as the risk assessment has concluded the risks to public health and safety to be very low to negligible.

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

There are no relevant issues identified.

3.3.4.3 The prevention of misleading or deceptive conduct

There are no relevant issues identified.

3.2.4.4 Subsection 18(2) considerations

FSANZ has also had regard to the matters listed in subsection 18(2) as addressed below:

- the need for standards to be based on risk analysis using the best available scientific evidence

FSANZ's risk analysis performed as part of the assessment of Proposal P1018 was based on the best available scientific evidence. FSANZ evaluated the available information on food safety risk associated with companion dogs in outdoor dining areas in the risk assessment.

- the promotion of consistency between domestic and international food standards

There are no relevant international food standards.

- the desirability of an efficient and internationally competitive food industry

There are no relevant issues identified.

- the promotion of fair trading in food

There are no relevant issues identified.

- any written policy guidelines formulated by the Ministerial Council¹.

No Policy Guideline is applicable.

3.3 Risk communication

FSANZ developed and applied a basic communication strategy to this Proposal.

All calls for submissions are notified via the FSANZ Notification Circular, media release and through FSANZ's social media tools and the *Food Standards News*.

The process by which FSANZ considers standard matters is open, accountable, consultative and transparent. Public submissions are called to obtain the views of interested parties on issues raised by the application and the impacts of regulatory options.

The draft variation will be considered for approval by the FSANZ Board taking into account public comments received from this call for submissions. Individuals and organisations that make submissions on this Proposal will be notified at each stage of the assessment.

If the draft variation to the Code is approved by the FSANZ Board, that decision will be notified to the COAG Legislative and Governance Forum on Food Regulation Forum. If the decision is not subject to a request for a review, stakeholders, including the public, will be notified of the gazettal of the variation to the Code in the national press and on the FSANZ website.

3.3.1 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO member nations 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.

¹ Now known as the COAG Legislative and Governance Forum on Food Regulation.

There are not any relevant international standards and amending the Code to remove restrictions on the presence of companion dogs in outdoor dining areas will not have an effect on international trade. Therefore, a notification to the WTO under Australia's obligations under the WTO Technical Barriers to Trade or Sanitary and Phytosanitary Measures Agreement was not considered necessary.

4. Draft variation

The draft variation to Standard 3.2.2 is at Attachment A.

The draft Explanatory Statement is at Attachment B.

4.1.1 Implementation

The variation takes effect on gazettal.

Attachments

- A. Draft variation to the *Australia New Zealand Food Standards Code*
- B. Draft Explanatory Statement

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



Food Standards (Proposal 1018 – Companion Dogs in Outdoor Dining Areas) 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 Standard commences on the date specified in clause 3 of this variation.

Dated TO BE COMPLETED

Standards Management Officer
Delegate of the Board of Food Standards Australia New Zealand

1 Name

This instrument is the *Food Standards (Proposal P1018 – Companion Dogs in Outdoor Dining Areas) Variation*.

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

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

3 Commencement

The variation commences on **the date of gazettal**.

SCHEDULE

[1] **Standard 3.3.2** is varied by omitting clause 24, substituting –

24 Animals and pests

(1) A food business must –

- (a) subject to subclauses (2) and (3), not permit live animals in areas in which food is handled, other than seafood or other fish or shellfish; and
- (b) take all practicable measures to prevent pests entering the food premises; and
- (c) take all practicable measures to eradicate and prevent the harbourage of pests on the food premises and those parts of vehicles that are used to transport food.

(2) A food business must permit an assistance animal in areas used by customers.

(3) A food business may permit a dog that is not an assistance animal to be present in an outdoor dining area.

(4) In this clause –

assistance animal means an animal referred to in section 9 of the *Disability Discrimination Act 1992* of the Commonwealth.

enclosed area means an area that, except for doorways and passageways, is substantially or completely closed, whether permanently or temporarily, by –

- (a) a ceiling or roof; and
- (b) walls or windows or both walls and windows.

outdoor dining area means an area that –

- (a) is used for dining, drinking or both drinking and dining; and
- (b) is not used for the preparation of food; and
- (b) is not an enclosed area; and
- (c) can be entered by the public without passing through an enclosed area.

Editorial note:

Section 9 of the *Disability Discrimination Act 1992* refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a disability.

Attachment B – Draft Explanatory Statement

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.

FSANZ prepared Proposal P1018 to remove restrictions on the presence of companion dogs in outdoor dining areas of food premises. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft Standard.

2. Purpose and operation

The Authority has approved amending Standard 3.2.2 to remove the restriction on the presence of companion dogs in outdoor dining areas. This move will allow for greater consistency across jurisdictions and would be a deregulation.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1018 will include one round of public consultation following an assessment and the preparation of a draft Standard and associated report.

A call for Submissions (which includes the draft variation) will be released for a four-week consultation period.

A Regulation Impact Statement (RIS) was not required because the proposed variations to Standard 3.2.2 are likely to have a minor impact on business and individuals and is deemed to be a de-regulation.

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 97 of the FSANZ Act.

6. Variations

Item 1 omits clause 24 in Standard 3.2.2 and substitutes a new clause to provide food businesses with the discretion to permit dogs other than assistance animals to be present in outdoor dining areas.

The new clause does not expressly limit the discretion to dogs that are companion animals. This avoids the need for the new clause to define a companion animal and to incorporate legal tests of ownership of or effective control over dogs that food businesses must apply in determining when to allow a dog to be present . In practice, the dogs present will be customers' companion animals and food businesses retain the right to exclude for any reason any dog that is not an assistance animal. Food businesses also remain subject to the Code's other food safety requirements.

The new clause prohibits a dog other than an assistance animal from being in an area used for the preparation of food. Assistance animals are restricted to areas used by customers.