

Proposal P1053 - Food Safety Management Tools

**LGA Submission to Food
Standards Australia New
Zealand (FSANZ)**

April 2022

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Introduction

Local Government Association of South Australia

The Local Government Association of South Australia (LGASA) is the voice of local government in South Australia, representing all 68 councils across the state and the Anangu Pitjantjatjara Yankunytjatjara.

The *South Australian Local Government Act 1999* recognises the LGASA as a public authority for the purpose of promoting and advancing the interests of local government. The LGASA is also recognised in and has prescribed functions in 29 other South Australian Acts of Parliament.

The LGASA is a strong advocate for policies that achieve better outcomes for South Australian councils and the communities they represent. As a partner in government, councils play a key role in ensuring that food sold in our communities is safe and suitable.

As such, the LGASA welcomes the opportunity to provide feedback and comments to *Food Safety Australia New Zealand (FSANZ) on Proposal P1053 – Food Safety Management Tools*.

This submission has been informed by seeking feedback from member councils, previous LGASA consultations and evidence-based research.

Local government's role in food safety

Food regulation authorities in Australia and New Zealand work together to ensure food regulations are implemented and enforced consistently.

Under the Food Regulation Agreement between the Commonwealth and the Australian states and territories, South Australia (SA) has an obligation to implement national food safety standards issued by Food Standards Australia New Zealand (FSANZ). This occurs via the *Food Act 2001 (SA)* (the Act).

The *Food Regulations 2017* (Regulations), under the Act legally adopt the provisions of the Australia New Zealand Food Standards Code (FSC) to ensure that the composition and labelling laws applied to food sold in SA are nationally consistent. The Regulations also set out other specific requirements for SA including notification of food businesses and kilojoule labelling in fast food restaurants.

In SA food safety regulation is a partnership between state and local governments. Section 96(2) of the Act contemplates an agreement between the Minister and the LGASA with respect to the exercise of functions under the Act by councils.

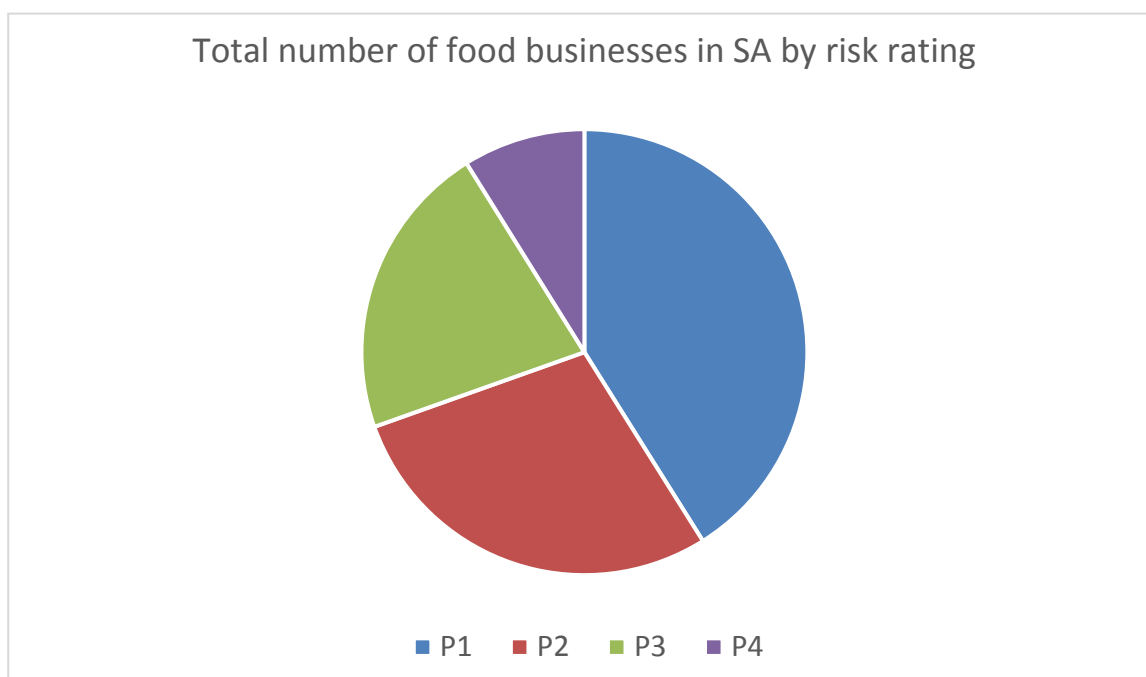
A Memorandum of Understanding (MoU) between the Minister for Health and Wellbeing and the LGASA set out the functions of the Act and provides a solid foundation for clarifying agency responsibilities for food regulation, enforcement, and the development of policies and guidelines.

Councils in SA are empowered under Parts 4 and 5 of the Act to ensure that all hygienic standards are maintained in relation to the manufacture, transportation, storage and handling of food for sale under the FSC. They are also responsible for taking measures to prevent the sale of unfit food and to investigate complaints related to the sale of unfit food.

Local government Authorised Officers (AO) also known as Environmental Health Officers (EHOs) are authorised under the Act to issue orders and notices and take enforcement actions for breaches.

South Australia has adopted the nationally agreed risk profiling framework, that categorises businesses according to their risk, and range from Priority 1 – highest risk to Priority 4 – lowest risk.

In 2020-21 there were a total of 16,909 food businesses that notified their relevant council. This number is comprised of 6,922 P1 businesses, 4,800 P2 businesses, 3,633 P3 businesses, and 1,496 P4 businesses.



Inspections were undertaken at 70.3% and 57.6% of P1 and P2 businesses respectively and 34.4% and approximately 5% of P3 and P4 businesses respectively.

Under the Regulations, section 13 makes provision for enforcement agencies to impose an inspection fee. In the 2020-21 reporting period, 39 councils had policies regarding charging fees, 25 did not charge fees, and four were unknown.

In addition, during the 2020-21 reporting year, councils received 990 complaints relating to food safety including, but not limited to, foreign matter in food, personal hygiene or food handling, unclean premises, and alleged food poisoning. Of those, 373 were verified.

These numbers were reduced from the 2019-20 reporting period, in which 1,049 complaints were received, with 393 verified.

LGASA policy

3.1 Public health

Local government acknowledges that protecting the health and wellbeing of its communities is a shared responsibility of all tiers of government and recognises the significant contributions that councils make in this area. Councils should contribute equitably to providing preventative and on-going health services, notwithstanding the significant responsibilities of federal and state government.

Memorandum of Understanding

The MoU notes that the LGASA has responsibility for supporting councils in their agreed commitment to monitoring and enforcing the *Food Act 2001* and relevant standards related to food safety within their areas (except where otherwise agreed with the Department of Health and Wellbeing) including the undertaking of regular inspections.

It also requires the LGASA to *provide advice and assistance* on a range of issues and in various areas related to model policies and procedures, clarifying roles and responsibilities, encouraging consistency and good practice, information technology issues and inspections and inspections fees, to name a few.

LGASA response to Proposal P1053

Background

Food safety management is strategically guided by the Australia and New Zealand Ministerial Forum on Food Regulation and its associated subcommittees: the Food Regulation Standing Committee (FRSC) and the Implementation Subcommittee for Food Regulation (ISFR).

FSANZ acknowledge in their [consultation paper](#)¹ that whilst many businesses do an excellent job in providing Australia with safe food, there are a large proportion of reported foodborne illness cases associated with the food service and retail sectors. They report that the estimated cost to the Australian economy is \$1.5 billion per year. Therefore, reducing cases of foodborne illness and ensuring greater consistency across the sector remains a key focus for stakeholders in the food regulatory system.

Food service and related retail businesses are the focus of this proposal as they have many inherent food safety risks. As many of these businesses' food handling activities involves potentially hazardous food (PHF).

The LGASA welcomes FSANZ's proposal and acknowledges the considerable amount of evidence-based research, cost-benefit analysis, and stakeholder views incorporated into the supporting materials.

As part of the proposal, FSANZ considered the regulatory and non-regulatory tools that could be used and the categories of food businesses that would then be captured and required to implement the tools.

¹ <https://www.foodstandards.gov.au/code/proposals/Documents/P1053%20CFS%20report.pdf>

The LGASA understand that food safety within food businesses is an ongoing problem. National consistency is needed, and any proposed measures must be implemented with legislation that is easy to understand and proportional to the risk.

1. Proposed food business categories

As part of this proposal, and utilising several tools, FSANZ thoroughly risk profiled Australian food services and retail businesses. FSANZ's risk profiling confirmed that the food service and related retail sectors in Australia still present significant public health risks.

As part of their assessment, they categorised three food handling activities based on risk and used these to apply the proposed regulatory tools, in a risk proportionate manner.

It is noted that FSANZ has incorporated the nationally agreed risk classification framework, used in South Australia, within each of their proposed categories. This is supported as it will make it simpler for SA regulators to implement the proposed changes.

LGASA Comment

The LGASA support the process and determination of these categories. The business types and activities enable targeted interventions that can be applied in a risk proportionate manner.

It is pleasing to see that the proposed measures are targeted at the highest risk food business sectors and that the requirements are staged to avoid unnecessary burden on lower risk food businesses.

2. Proposed food safety measures

FSANZ's risk management principles were used as a framework for this proposal: namely, protection of public health and safety, cost-effective and risk proportionate measures, and consistency.

According to FSANZ, the Food ministers identified five food safety measures to be considered – three regulatory tools and two non-regulatory tools.

The three regulatory tools considered and assessed in this proposal included:

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

The two non-regulatory tools included:

- food safety culture; and
- education.

These two tools are intended to support the regulatory tools. Further information on each of these tools is described below.

2.1. Regulatory tools considered

2.1.1. Certified food safety supervisor (FSS)

According to FSANZ, this tool would require a food business to have a certified FSS who is reasonably able to supervise food handlers and manage the safe handling of potentially hazardous foods (PHF).

By undertaking an accredited training program, an FSS would be qualified in recognising and preventing the risks associated with food handling in a food service and retail food business.

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

LGASA Comment

The LGASA strongly supports this proposal.

This measure will improve food safety within an organisation and provide an opportunity for the FSS to share this knowledge with other staff.

The LGASA supports the requirement for FSS training to be renewed every five years to ensure it remains relevant and useful.

The LGASA strongly suggests that training is available in different languages and that there are options for both online and face-to-face learning. We would have concerns with larger businesses relying on in-house training methods where there is not a structured approach. This could lead to poor outcomes in terms of the training being delivered and the inability for AOs to verify that training has occurred. Whilst some businesses may be able to achieve this, we would support external learning being made a requirement.

Our members note that there is often a high turnover of staff in food service businesses so it should be reinforced that the training is required before commencing food handling activities.

The LGASA also suggests that there are mechanisms in place to ensure that the quality of the training provided by the registered training authorities can be verified and audited.

Furthermore, LGASA member councils have suggested that there be clear definition or explanation/guidance on some of the terms used. For example, what does 'reasonably available' or 'oversee' mean? Does it mean that the FSS needs to be physically present or just available by phone? Or do they need to be onsite for a percentage of time? Without clear guidance there is a potential for inconsistent interpretation and could become a matter of dispute.

The LGASA would prefer that a nominated FSS does not oversee multiple sites but can be available during food handling activities. The LGASA strongly agrees that the nominated FSS should spend some hours working onsite and undertake food handling activities themselves. It is not recommended that this role be undertaken by an employee in a "Head Office". Consideration needs to be given to nation-wide food chains and franchises.

2.1.2. Food handler training (FHT)

According to FSANZ, this tool would require a relevant business to ensure that a person handling PHF has undergone food handler training. It is suggested that free training would be available online, including through jurisdictional food regulators websites, and would supplement information from supervisors or peers.

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

LGASA Comment

The LGASA strongly supports this proposal.

In common with the FSS requirement, the proposed training needs to be available in different languages and should be required prior to commencing food handling activities.

It is acknowledged that currently assessing the skills and knowledge of all food handlers is difficult. Requiring a minimum level of food handler training will improve the overall skills and knowledge of food handlers working within the in-scope businesses.

The LGASA advocates for the proposal to be amended, so that FHT requirements are not implemented by businesses once without renewal.

Food businesses may change their food handling practices and new risks may be identified. During the early stages of the COVID-19 pandemic there were many examples of food businesses “pivoting” and changing business practices to provide “meals at home”, take away and home deliveries, increasing food safety concerns amongst regulators.

As such, basic food handler training refreshers and updates should be required at relevant intervals, preferably every two or three years and/or based on need, and at a minimum every five years. This will assist in breaking poor food handling habits that often occur.

2.1.3. Evidence to substantiate food safety management (E)

According to FSANZ, this tool would require businesses to have evidence to substantiate that key processes including temperature control, food processing, cleaning, and sanitising are managed.

FSANZ note that these processes are often reported anecdotally by food regulators as common areas of non-compliance during audits of in scope businesses.

FSANZ acknowledges that these template tools are already recommended as a best practice in the Guidelines to Standard 3.2.2 - *Safe Food Australia*. It notes that mandating this tool would help to ensure that a business can safely manage these processes, as well as contribute to the food safety culture within the business.

LGASA Comment

The LGASA strongly supports this proposal and its intent.

Using evidence to validate that key food processes are being managed will improve the ability of the food business to monitor risks and detect issues early. Record keeping also allows for easier assessment of food safety management practices during routine inspections and when investigating food safety and foodborne illness complaints.

However, the LGASA does have some practical concerns that are likely to follow once the tool is operational. These are outlined below.

Additional time

It has been strongly noted by our members that the additional time taken to review evidence (E) could initially be significant and is underrepresented in the consultation paper.

Our members also suggest that it needs to be clear that E is required to be available at all times and onsite for the inspection of the AO. It is suggested that there could otherwise be situations where a casual employee tells an AO that the records are on a manager's computer that can't be accessed. This would create additional burdens for the AOs. Inspections should be able to be completed on the spot and AOs should not have to wait for additional documentation outside of the inspection.

Training support

Will there be a requirement for training whether as part of the FSS or FHT for the business on the record keeping requirements being introduced? The LGASA advocates for the introduction of some form of basic training on how to complete different aspects of E be incorporated as part of the proposed training packages developed for the sector.

Templates

The template forms are not regulated. Consequently, the LGASA is concerned as to whether there will be guidance provided on the types of forms that would be acceptable and in what format? The LGASA strongly supports having simple templates available that businesses can pick up and use.

Whilst the current examples in *Safe Food Australia* can be used, it is unlikely that all businesses will use them. Perhaps an option for a 'daily checklist' or 'weekly checklist' that captures what is needed each day or week could be developed.

It is noted that Victoria currently has resources² that support their Food Safety Programs.³ These include guidance documents and explanations as to why a particular record is required. There is also an acknowledgement that some businesses may need supplementary templates for complex processes, such as sous vide. The LGASA advocates for similar resources to be put in place prior to implementation of Standard 3.2.2A (see below).

The LGASA would be pleased to see supplementary templates developed for other complex food processing (e.g., yiros meat, raw egg products, acidification, Chinese BBQ duck/pork and cook-chill) which provide further prompts and checks for food businesses.

In addition, the LGASA advocates for the implementation of evidence keeping/procedures for cooking and dishwasher temperatures.

Lastly, it is unclear how requirements for evidence or procedures for allergen management would be captured. The LGASA supports a provision for allergen management to be included as part of the changes to Standard 3.2.2A.

2.2. Non-regulatory tools considered

According to FSANZ, in addition to the regulatory tools, food businesses would benefit from two non-regulatory tools that focus on *food safety culture and education*.

2.2.1. Food safety culture

Many SA councils were part of the ISFR 'Develop a shared understanding of food safety culture with a focus on raw egg products' project under the action plan for Australia's *Foodborne Illness Reduction Strategy 2018-2021*.

The project demonstrated the benefit of targeted conversations and education, delivered through a package of tools and resources that occurred outside of the usual inspection regime. To continue this level of engagement would require an extension of the increased resources allocated.

² <https://www.health.vic.gov.au/food-safety/food-safety-program-templates-class-2>

³ <https://www.health.vic.gov.au/food-safety/food-safety-programs>

2.2.2. Education

The LGASA understand from our members that many businesses operate on a very small scale and will likely struggle to implement the proposed changes. The reasons for this include a frequent turnover of staff, staff that do not speak English as their first language, and an unlikely awareness of the proposed regulatory measures.

It is suggested that explanatory guides and reference tools be made available for council regulators to distribute to affected businesses. It is imperative that the new standards and supporting tools and resources are written in a clear, concise manner and avoid jargon and complex words. Furthermore, many businesses will be unable to develop standard operating procedures and will require significant assistance and guidance.

It is suggested that businesses would greatly benefit from examples, put together with references for businesses to use and adapt.

Additionally, AOs will need guidance to ensure consistency in application of the new standards.

LGASA Comment

The LGASA support the use of both these non-regulatory tools, with the caveat that significant education, training and resources need to be developed that both AOs and businesses can use to ensure a smooth transition to regulatory compliance.

3. Risk management options considered

In the consultation paper FSANZ considered three risk management options in which to implement the food safety measures for each of the three categories of food businesses identified, namely:

- 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.

It is noted that FSANZ's preferred approach for each category is to amend the FSC to require:

- **Category 1 – Option 3.2** - FSS, FHT and E to substantiate food safety management, along with both education and food safety culture tools for these food businesses. FSANZ consider these tools to be practical, readily implemented in the sector and able to be maintained over time and there are existing resources available to support the implementation.
- **Category 2 - Option 3.1** - FSS and FHT, along with both education and food safety culture tools were considered appropriate for these food businesses. Templates would be available to assist these businesses maintain correct temperature control but would not be mandated.
- **Category 3 – Option 1** - No regulatory measures for these businesses, instead a targeted education campaign focussed on storage and temperature display of PHF in those settings. Templates would be encouraged but not mandated.

LGASA Comment

The LGASA agrees and supports FSANZ's preferred approach, noted above.

There is currently no national consistency in relation to the licensing of food businesses, or the requirement for formal training and record keeping. It is an uneven playing field in regulation across Australia, which supports the need for changes to occur.

Allowing food businesses to self-regulate would likely increase the inconsistency across the food sector. It is understood that many businesses may perceive regulation as best practice rather than the minimum standard. Self-regulation cannot be relied upon given the likelihood and consequence of harm to unsuspecting consumers.

4. General comments in relation to Standard 3.2.2A

The following general comments are made in relation to the proposed Standard 3.2.2A.

Resource Impact Statement

For SA, this is a significant change to the food safety regulation landscape and although welcomed the LGASA call on FSANZ and/or each state and territory government to prepare a *Resource Impact Statement on the introduction of Standard 3.2.2A on the local government sector*. Assistance, guidance materials and resources for AOs in implementing the requirements is crucial and knowing the impact will aid in justifying increasing resource levels where applicable.

Significant implementation effort will be required to upskill the AO workforce, inform businesses, provide resources and training etc. Food safety is just one of many tasks undertaken by environmental health teams across local government and workloads are already at capacity.

It is envisaged that inspection times will increase both in the short-term and long-term. In the first 12 -24 months of implementation extra time will be required to explain new requirements, provide information and support and, in the longer term, to assess training competencies, records, Standard Operating Procedures (SOPs), skills and knowledge. Our members also note the need for follow-up inspections will likely increase as well.

Challenges for culturally and linguistically diverse (CALD) business owners

This change is likely to present significant challenges for CALD business owners – translated materials will be crucial not only for explaining the changes, but for providing ongoing guidance on records required, FHT programs used, and development of SOPs.

Inconsistent application

Consultation with our members also raised the potential for inconsistencies in assessing how a business demonstrates compliance if records are not used.

Interaction with other Standards

Consultation with our members also raised the need for clarity about how this Standard interacts with 3.3.1 and 3.2.1, in particular with FSS requirements in aged care, delivered meals and childcare centres.

South Australian differences

Consultation with our members noted that food legislation in SA does not support councils in the administration of these new standards.

For example, SA has a notification system for food businesses (with no charge) as opposed to an annual licensing or registration system. Food businesses only need to notify upon change in details and not updated annually.

The level of notification varies between council areas and due to poor notification compliance, prompting businesses to notify is common and time consuming. This means that council officers will not have up-to-date details of the businesses before starting an inspection. Furthermore, councils' software systems will need to be upgraded to record the new data regarding FSS, FHT and the new categories of food businesses.

The LGASA has since 2014 called on the State Government to implement a registration or licensing system in South Australia. But this advocacy has proven unsuccessful to date.

A nationally consistent food business registration system is encouraged to support consistent application of the Standards, with the onus on the businesses to accurately maintain this information on an ongoing basis. This would likely be of benefit for both bricks-and-mortar businesses and mobile food businesses/vans.

The LGASA believes that a national approach will improve consistency, food safety awareness, and result in improved food safety culture nationally.

Implementation timeframe

It is noted that a 12-month commencement period is proposed for the new standard after gazettal, to support local government and businesses, and ensure that resources and tools are available.

The LGASA stresses the need for the resources and tools to be available by this date and calls on FSANZ to advocate to state and territory ministers to ensure that each jurisdiction is provided with the relevant resources to successfully implement these changes.

Summary

In conclusion, the LGASA supports *Proposal P1053 Food Safety Management Tools*. As a partner in government, SA councils have sought changes to the regulatory landscape for many years and look forward to a nationally consistent risk-based regulation system.

The LGASA considers the proposed regulatory and non-regulatory measures to be appropriate when balancing the public health risks and the burden this would place on industry and supports the tools proposed.

However, the success of this proposal relies heavily on the systems, resources and guidance materials being available in time for implementation, as well as additional resources being in place to assist councils to communicate these proposals to their local food businesses and communities.