



## COUNCIL POLICY

**Title:** Food Act 2008 Compliance and Enforcement

Shire of  
**Kellerberrin**

**Responsible Officer:** Deputy Chief Executive Officer

**Version:** Proposed

### 1. PURPOSE

The purpose of this policy is to provide clear direction regarding the ongoing management of the Food Act 2008, Food Regulations 2009, and the Australia New Zealand Food Standards Code (in particular Chapter 3).

### 2. SCOPE

This policy is applied to the Shire of Kellerberrin Community.

### 3. DEFINITIONS

The definition of a Temporary Food Business according to the *Food Act 2008* is a food business set up as part of a one off event where temporary or permanent premises are used. Food Safety is still vitally important and most of the requirements of the *Food Safety Standards Code 3.2.2* still apply in relation to a Temporary Food Business (TFB).

The definition of a Mobile Food Business according to the Food Act 2008: A food business that operates from premises that are non-permanent; for example food vehicles and caterers.

### 4. STRATEGIC CONTEXT

This policy links to core drivers:

1. Relationships that bring us tangible benefits (to the Shire and our community)
2. Our lifestyle and strong sense of community
3. We are prepared for opportunities and we are innovative to ensure our relevancy and destiny

### 5. POLICY STATEMENT

#### Notification

In accordance with the notification requirements detailed in Clause 4, Standard 3.2.2 of the Code, all food businesses must, before the food business commences any food handling operations, notify the Local Government of:

- their contact details;
- nature of the food business; and
- location of all food premises associated with that food business (within the Shire).

This notification process is a once-off requirement. Notification is also required whenever there is a change to the nature of the business, and/or proprietor (transfer of food business registration fee applies when there is a change of proprietor).

Failure to notify the Local Government of a food business activity creates an offence under the Act.

### Registration

All food businesses must 'notify' the Local Government of their intention to operate, regardless of whether they are required to 'register' the business in accordance with the Act. In order to comply with Section 109, a food business must ensure that any premises used in conjunction with the sale of food is approved by the Local Government, as part of the food business' 'registration'.

### Certificate of Registration

A formal certificate of registration will be issued to all approved food businesses within the Local Government. Registration and invoicing of annual fees will occur annually, and be valid for the financial year.

### Temporary Food Businesses (TFB)

A Temporary Food Businesses will need to register with the Shire of Kellerberrin but will not require Council consent to establish. A temporary food business will go through the registration procedures that a normal food business would go through including having a kitchen/premises and food safe practices that comply with the Food Standards Code. A Temporary Food Business will be able to operate a maximum of 15 times in one financial year without the need to pay an annual food surveillance fee (ie. at the local monthly markets that run on one Sunday per month and 3 nominated events located within the bounds of the Shire of Kellerberrin eg. the Agricultural Society Show, Gala Night). A Temporary Food Business will have a classification no higher than low risk and will not be permitted to operate outside the bounds of the Shire of Kellerberrin. Should the nature of the approved temporary food business change in any way, the Shire of Kellerberrin must be notified of these changes. Re-notification or registration may be required.

### Mobile Food Businesses (MFB)

Mobile food businesses are not considered as temporary food businesses. The term is used to indicate a permanent food business that can be moved to new locations and might return to a base overnight. Their design, construction and fit out are usually restricted by space, weight and having to be self-sufficient in water supply, power supply and waste disposal. The *Food Act 2008* requires that Mobile Food Businesses are to be registered with the Shire of Kellerberrin prior to handling, preparing or selling food.

Temporary and Mobile Food Businesses typically include: food vehicles, market and barbecue stalls, and must undertake the notification and, if applicable, the registration process within the Local Government in which they are housed (i.e. food van), or where the food business is located (i.e. where the food is manufactured for sale in a low risk stall). Temporary Food Businesses will be approved and most likely inspected by the Local Government's Environmental Health Officers prior to the commencement of trade, and being permitted to operate. Mobile Food Businesses will be approved and inspected by the Local Government's Environmental Health Officers prior to the commencement of trade and being permitted to operate.

*Note: Food may not be prepared in a residential premise, unless it is registered with that local government. Only very low risk- low risk food preparation in a residential setting will be approved within the Shire of Kellerberrin.*

- apply for a stallholders or street traders permit within the Local Government in which they intend to operate. Where a permit is sought, the Local Government's Environmental Health Officers will assess the suitability of the TFB/MFB operating within the Local Government. A permit will be issued if the TFB/MFB meets the appropriate requirements.

### Fees and Charges

Fees are set under Part 6, Division 5, Subdivision 2 of the *Local Government Act 1995*, and are adopted by Council in the 'Schedule of Fees and Charges' for the relevant financial year.

- Registration – annual food surveillance fees will be charged for all food businesses in accordance with a risk based fee structure, i.e. High/Medium/Low/Very Low Risk. Further details are found in Clause No. 2 – Food Business Risk Profiling. (Temporary Food Businesses are exempt from food surveillance fees)
- Re-inspection fees – additional inspections be charged for inspections that result from an identified serious non-compliance. Serious non-compliances include the issue of an Infringement Notice, Improvement Notice and/or Prohibition Order.
- Temporary Food Businesses and Mobile Food Businesses will be charged a stall holders or street traders licence fee in accordance with the Shire of Kellerberrin Fees and Charges. Each temporary or mobile food business will be subject to a fee in the form of a one-off event (day by day), a weekly or annual permit for a particular event/location (i.e. Community Recreation Centre regular weekend football fixtures).
- Temporary Food Businesses and Mobile Food Businesses will not be charged a stallholders or street traders fee to operate at events supported by Local Government (e.g. Ag Show, Circus) where an application is received for hire of the facility. All applications are to be submitted within the specified time-frame prior to the event (i.e. 14 days prior).
- Late applications may not be accepted,
- Re-Inspection fees will be invoiced post-event to any food business demonstrating non-compliance with the Local Government's requirements on the day of the event.
- Charitable/Community Temporary Food Premises will not be charged fees, except in the case where a food business demonstrates non-compliance with the Local Government's requirements on the day of the event (invoicing will be undertaken post-event). Further details on requirements and exemptions specific to charity and community events are detailed below.

### Exempt Premises under *Food Regulations 2009* (the Regulations):

- Food businesses conducted as fundraising events (see Clause 1.7 –Charity and Community events for further details).
- 'Very Low Risk' food businesses, i.e. those solely selling packaged food that are not potentially hazardous (i.e. newsagency selling confectionary, potato crisps).
- Food businesses that provide complimentary drinks in conjunction with another kind of business, e.g. hairdresser providing complimentary beverages.
- Food businesses conducted in premises that are, or form part of a registered establishment - as per the definition given in the *Export Control Act 1982* (Commonwealth) section 3.

The following categories of food premises are also considered by the Local Government to be eligible for an exemption. These premises will be required to undertake the Notification process, and Register with the Local Government, but will not be charged any notification/annual registration fees, unless the premises is identified to have serious non-compliance issues or a history of non-compliance during routine inspections.

- Public school canteens, where funds directly benefit the school (i.e. not operated by an external contractor)
- Registered not-for-profit organisations, e.g. community child care groups.

### Charity and Community Events

Charity and Community Fundraising Events are exempt from some of the requirements under the Act and Regulations provided that:

- all the money raised is for a community or charitable cause; and
- foods produced are not potentially hazardous (i.e. low risk cakes and slices), or are cooked thoroughly for immediate consumption (i.e. sausage sizzles).
- Volunteers who donate food such as cakes, slices and preserves for fundraisers are only permitted to make these foods from home where the food is not 'potentially hazardous' and will still be required to notify the Local Government of their proposed food. Premises used for the preparation of non-potentially-hazardous food by volunteers will not need to be registered, however, these types of food business preparation activities, will need to notify as a Temporary Food Premises.

Preparation of potentially hazardous foods (medium risk and above) must be undertaken in an approved food premises (i.e. commercial kitchen, approved school canteen facility). In this instance, Notification and Registration requirements apply to Charitable and Commercial Events. Waiving of fees is at the discretion of the Local Government (refer to 1.6- Fees and Charges above).

*NOTE: 'Potentially hazardous' food products include examples such as: cream cakes, fried rice, curries, soups and casseroles*

### FSANZ – Food Safety: The Priority Classification System For Food Businesses

All food businesses in the Shire are currently assessed using the Food Standards Australia and New Zealand Priority Classification System for Risk Assessment. This risk-based scoring system is designed to classify businesses into priority ratings, based on the risk they present to public health and safety.

The following major risk factors are considered:

- the type of food;
- activity of the business;
- method of processing; and
- customer base (e.g. vulnerable groups).

This Risk Assessment tool has been formally adopted by the Local Government, and will be used to determine whether a premises is profiled as High, Medium, Low Risk or Very Low Risk.

### Examples of Typical Food Business Risk Profiling

- High Risk – child care centre, nursing home, smallgoods manufacturer, caterers.
- Medium Risk – restaurant/cafe, delicatessen, bakery, manufacturer, butcher, fast food chain, school canteen.
- Low Risk – liquor shop, fruit and vegetable shop.
- Very Low Risk – newsagency/pharmacy selling confectionary and potato crisps.
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*Note: profiling also depends on individual premises assessment and takes into account the factors detailed in Clause 2.3 – Inspection Frequency.*

### Inspection Frequency

All premises will be allocated an initial inspection frequency based on their risk profile, however the following factors must also be taken into consideration:

- performance history of the food business;
- changes to food production or fit-out that affect the inherent risk;
- substantiated complaints; and
- risk reduction programs that may be implemented by a food business (i.e. demonstrated good food safety practices and compliance with a food safety program).

Base inspection frequencies adopted by the Local Government are as follows:

- High Risk- 4-6 monthly
- Medium Risk –4-6 monthly.
- Low Risk – 12 to 18 monthly.
- Very Low Risk (exempt premises) – unlikely to require inspection, to be considered individually, based on health risk and complaints.

### Infringement Notice

Section 126 of the Act allows for the issue of an Infringement Notice for 'prescribed offences', within 28 days of the alleged offence being committed. Schedule 3 of the Regulations details recognised offences and associated modified penalties.

The Shire of Kellerberrin Authorised Officers are authorised to issue infringement notices for breaches of the *Food Act 2008* and the relevant Food Safety Standards.

### Improvement Notice

Section 62 of the Act allows for the service of an Improvement Notice on the proprietor of a food business if the Authorised Officer believes, on reasonable grounds that a food business is operating a food premises that is:

- unclean or insanitary, or unfit for purpose intended to be used;
- does not comply with a provision of the Food Safety Standards;
- not adequately implementing its food safety program; or
- contravening the Food Standards Code in relation to handling of food intended for sale.

The Shire of Kellerberrin Authorised Officers are authorised to issue improvement notices for breaches of the *Food Act 2008* and the relevant Food Safety Standards.

The Authorised Officer may, prior to the end of the period specified in the Notice, extend the compliance time frame. The Improvement Notice may also include ancillary or incidental directions. Compliance with a Notice must:

- be noted with the date of compliance on a copy of the Notice; and
- if requested, the Local Government must provide a copy to the person served.

*Note: associated re-inspection fees will be charged in accordance with Clause 1.6 – Fees and Charges.*

### Prohibition Order

A Prohibition Order will take a form that prohibits the handling of food on specified food premises, vehicle or equipment, or that food is not to be handled in a specified way or for

a specified purpose. It should be noted that Section 8 of the Act defines food handling very broadly, including activities such as collection, transporting, storing or displaying food. Breach of a Prohibition Order will normally result in prosecution.

A Prohibition Order may be issued if an Improvement Notice has not been complied with, within the specified time or if the initial non-conformance is severe enough to cause an immediate danger to public health.

In accordance with Section 72, the Order:

- must specify the provision of the Code to which it relates; and
- may specify particular action to be taken by a person to ensure compliance with the provision of the Code to which it relates.

The Shire of Kellerberrin CEO is authorised to issue Prohibition Orders for breaches of the *Food Act 2008* and the relevant Food Safety Standards.

#### Assessment of Plans for Construction and Fit-Out of Food Premises

The assessment of plans for food premises via the Development Application, Building Permit or Food Premises Fit-Out process will be undertaken by the Local Government's Environmental Health Officers in accordance with Standard 3.2.3 of the Code, and Australian Standard 4674:2004 - Design, Construction and Fit-Out of Food Premises.

New construction standards are outcome based and less prescriptive than those detailed in the repealed *Health (Food Hygiene) Regulations 1993*. However, to assist food businesses in achieving appropriate outcomes, the Local Government's Environmental Health Officers will utilise AS 4674:2004 as a recognised design guide and detail examples of compliance with legislative requirements in the Local Government's *A guide to the construction of Food Businesses for Owners, Operators, Architects and Builders*.

#### Residential Food Businesses (Home Occupation)

The Act does not prohibit food preparation in residential premises, but requires all food businesses to ensure compliance with the Act, which adopts the Code in full (i.e. all food businesses must comply with its requirements).

Chapter 3 of the Code contains the structural and hygiene outcomes that all food businesses must meet. Allowance is made within the Code for some exemptions relating to requirements for food premises that are used principally as a private dwelling if the proprietor has the approval in writing of the appropriate Local Government [e.g. Standard 3.2.2 clause 17(2)].

Prior to a food business receiving approval to operate from a residential food premises within the Local Government, the following must be met:

- Planning Approval for a Home Activity is required to be obtained, whether or not the proposal involves the installation of a commercial grade kitchen.
- Relevant notification/registration requirements in accordance with the Act;
- The structure/fit-out of the premises must be deemed appropriate for the proposed food handling activities, in accordance with Standard 3.2.3 of the Code (i.e. all facilities to be located within the one room); and
- The risk of the food preparation activities assessed (i.e. low risk operations only).

Consideration will also be given to whether the activity is for commercial gain, or for fundraising/charitable purposes.

The Department of Health policy on food businesses that operate from premises that are used principally as a private dwelling, is that the approval for the exemptions contained within the Code should only be granted for those food businesses that have been classified as 'low risk'. Examples include the manufacture of 'cottage industry' goods such as jams, biscuits and preserves. It is considered appropriate that the Local Government adopt the DOH policy in this regard, meaning that medium and high risk food businesses will not be approved to operate from a residential food premises.

#### Training – Skills and Knowledge

All food businesses must ensure that persons undertaking or supervising food handling operations have appropriate skills and knowledge in relation to food safety and food hygiene matters, in accordance with Standard 3.2.2 of the Code.

A majority of the food industry within the Local Government is involved in the hospitality industry, which traditionally has a relatively high staff turn-over, particularly casual staff. It is strongly recommended that at least one managerial staff member complete the nationally accredited 'Hygiene for Handlers' Certificate, obtained by completing the Online Food Handler Training Course. All other sectors of the food industry are strongly encouraged to seek appropriate training specific to their industry from a registered Training Organisation.

All food business proprietors and other trained staff members are strongly encouraged to impart food safety knowledge to other staff members who are not formally trained, e.g. providing information at team meetings, demonstrating skills, and displaying posters regarding correct practices.

## **6. RELATED LEGISLATION/ DOCUMENTATION**

## **7. REVIEW DETAILS**

Council Adoption	Date	February 2020	Resolution #	MIN009/20
Previous Adoption	Date	October 2016	Resolution #	MIN168/16