

Food Production (Safety) Regulation 2014

Explanatory Notes for SL 2014 No. 197

made under the

Food Production (Safety) Act 2000
State Penalties Enforcement Act 1999

General Outline

Short title

Food Production (Safety) Regulation 2014

Authorising law

Sections 39 and 135 of the *Food Production (Safety) Act 2000* (the Act).
Section 165 of the *State Penalties Enforcement Act 1999*.

Policy objectives and the reasons for them

The purpose of the subordinate legislation is to remake the *Food Production (Safety) Regulation 2002* (the Regulation) prior to its expiry to continue to provide for the regulation of the primary production and processing activities associated with various food commodity groups. The subordinate legislation will provide a framework to ensure produce destined for human or animal consumption continues to be safe and free from contamination.

Section 3 of the Act provides the main objects are to: establish Safe Food Production QLD (Safe Food); ensure the production of primary produce is carried out in a way that makes it fit for human or animal consumption; and maintains food quality and to provide food safety measures for the production of primary produce consistent with other State laws relating to food safety.

Section 39 of the Act provides that the Governor in Council may make food safety schemes and prescribes the matters about which food safety scheme may be made.

Currently there are food safety schemes under the Regulation covering primary production and processing activities associated with dairy, eggs, meat and seafood.

A further purpose of the subordinate legislation is to minimise potential food safety risks and reduce the incidence of food borne illness from the consumption of seed sprouts. Seed sprouts contaminated by pathogenic microorganisms present an unacceptable health risk to consumers. In recent years, outbreaks of food borne illness have been associated with the consumption of seed sprouts both in Australia and overseas. The food safety measures under the Regulation do not currently extend to the production of seed sprouts.

The National *Primary Production and Processing Standard for Seed Sprouts (Standard 4.2.6)* (Seed Sprouts Standard) was approved by Food Standards Australia New Zealand and commenced on 12 July 2013. Queensland is required under the National Food Regulation Agreement (NFRA) to implement the Seed Sprouts Standard into law within 18 months of that date.

The subordinate legislation seeks to fulfil Queensland's obligation under the NFRA to harmonise the Egg Scheme with further food safety requirements for the production and processing of eggs and egg products for human consumption to reduce the incidence of food borne contamination and illness.

The subordinate legislation also seeks to formalise in legislation, and highlight the importance of, a mechanism to assist in identifying potential food safety hazards. This will ensure that these hazards are properly managed and will support Safe Food's ability to monitor the safety and suitability of primary produce entering the food supply chain. The intention is not to create an additional impost upon accreditation holders, but introduce into legislation a requirement for engagement with Safe Food to be commenced where hazards are identified to ensure that the situation is appropriately managed.

Currently under the Regulation, Safe Food imposes a condition on all accreditations which requires the holders to alert Safe Food of primary produce that fails to meet agreed or required specifications. The specifications are those that have been developed in accordance with the accreditation holder's approved food safety program or management statement, or specifications provided in a provision of the Act or Regulation or a relevant standard applying to the primary produce. Such notifications include situations where the accreditation holder knows or reasonably suspects that the produce is subject to pathogenic, chemical or physical contamination.

Achievement of policy objectives

The subordinate legislation achieves its objective of ensuring food destined for human or animal consumption is safe and free from contamination by preserving the current food safety framework, a key component of which are food safety schemes, which in turn give effect to the Act's main objects.

Fulfilling Queensland's obligations under the NFRA with regard to the Seed Sprout Standard and addressing the emergent health risks associated with the production of seed sprouts is achieved through the formal adoption of the Seed Sprouts Standard in the subordinate legislation (prescribed under Chapter 5 as the Horticulture Scheme).

Under the subordinate legislation, compliance with the Seed Sprouts Standard will become compulsory for those processors that produce alfalfa, mung bean, broccoli, radish, onion or any other type of sprout that includes the seed or part of the seed in the final product.

To further ensure that produce destined for the food supply chain is fit for consumption and potential and identified hazards are notified, the subordinate legislation imposes a general, stand-alone notification obligation on all accreditation holders. This requirement, like that imposed by condition on accreditations, obliges accreditation holders to notify Safe Food immediately it is known or suspected that produce fails to comply with any relevant food safety requirement and imposes a maximum penalty for a breach of the provision of 20 penalty units.

The subordinate legislation alleviates the need for Safe Food to impose a notification condition on individual accreditations and enables food safety requirement failures to be dealt with in a manner that avoids the need for onsite audits. Further, premises inspections can also be averted in cases where the accreditation holder provides evidence to Safe Food that the produce in question has been effectively managed and any necessary corrective actions have been undertaken.

Queensland also fulfils its obligations under the NFRA by referencing elements of the recent national Primary Production and Processing Standard for Eggs and Egg Products as a compulsory standard within the Egg Scheme.

Consistency with policy objectives of authorising law

The regulation is consistent with the objects of the Act to ensure that the production of primary produce is carried out in a way that makes primary produce fit for human or animal consumption, maintains food quality and provides for food safety measures for the production of primary produce consistent with other State laws relating to food safety.

Inconsistency with policy objectives of other legislation

The subordinate legislation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Alternative options to the proposed subordinate legislation are to allow the Regulation to lapse and do nothing to regulate the production and processing of food destined for human and animal consumption or industry self-regulation.

As was the case when the Regulation was first developed, these options were evaluated against specific criteria, principal among which was the need to reduce the incidence of food-borne illness, a key driver to continuing food regulation in Australia.

Both options remain inadequate to control the incidence of food-borne illness and remain inconsistent with domestic and international best practice for public health and food safety. Neither option allows the Queensland Government to continue to fulfil its obligations under the NFRA which were initially agreed at the Council of Australian Governments in November 2000.

Benefits and costs of implementation

The costs involved in implementing the regulation, maintaining food safety schemes and conducting food safety audits and investigations are met by Safe Food from within its

existing budget. When compared to community costs resulting from incidents of food-borne illness (loss of production, trade, lifestyle and healthcare costs) the costs are considered relatively minor.

The principal benefits of maintaining a regulatory regime governing food production and processing are:

- Prevention of sickness in humans from contaminated and unwholesome food products.
- Prevention of economic loss from wasted and spoiled food products due to contamination.
- Prevention of economic loss by maintaining a favourable public perception of the safety of food products which undergo production processes.

Although the other options present savings through reduced intervention, the fact remains there is a large public benefit by way of potential public and private savings if there are less instances of food-borne illness.

Consistency with fundamental legislative principles

The subordinate legislation is consistent with fundamental legislative principles.

Consultation

The Office of Best Practice Regulation (OBPR) within the Queensland Competition Authority was consulted with regard to regulatory impact statement (RIS) requirements. The OBPR advised that the remake of the Regulation, including the new *Production and Processing Standard for Seed Sprouts*, is excluded from the RIS system under category (a) of the RIS guidelines as it is regulation which has already undergone an impact assessment process that takes into account the impacts on Queensland and regulatory best practice principles.