



Delivering a **Healthy WA**



Government of **Western Australia**  
Department of **Health**  
Public Health

# Food Act 2008 Fact Sheet 1

## FOOD PREPARED IN RESIDENTIAL PREMISES

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### Purpose

There are a number of food businesses that operate from residential premises. These include bed and breakfast establishments, farm-stay accommodation, food prepared for fundraising events and food prepared for market stalls and fetes. There are special issues that need to be considered when assessing these types of food businesses but overall the operators of these businesses are responsible for ensuring all food prepared for sale is safe, suitable and complies with the requirements of the *Food Act 2008* (the Act).

### Background

The *Health (Food Hygiene) Regulations 1993* (the Regulations) prohibited the preparation, packaging, storage, handling, serving or supply of food for sale within residential premises. The intent of this was to ensure that food would be prepared only in premises that were suitable for the safe production of food.

However regulation 57 of the Regulations provided for enforcement agencies to approve, on application, food intended for sale that is to be prepared within residential premises in a limited number of circumstances. This included:

1. Cake decorating activities;
2. Food prepared for a single fund raising event arranged by a community or charitable organisation;
3. Food preparation in conjunction with farm stay or home stay accommodation; and
4. Food handling or food preparation activities approved by the Executive Director of Public Health (EDPH).



It was the responsibility of the enforcement agency to decide whether an application to undertake one of the above activities within residential premises would be approved. In making a decision, an enforcement agency would assess the suitability of the residential premises and the food handling activities proposed for the safe production of food for sale.

In relation to food activities approved by the EDPH, it was the responsibility of the applicant wishing to undertake food preparation activities within residential premises to apply to the Department of Health Western Australia (DOH) for direction on whether their proposed *activity* would be appropriate. The DOH's direction was provided on a case-by-case basis and was assessed in conjunction with the relative risk of the proposed *activity*. It was the position of the DOH that only **low risk** foods and processes would be supported.

## Requirements of the Food Act 2008

The Act does not specifically prohibit food preparation in residential premises; it simply requires all food businesses to ensure compliance with the Act.

A food business is defined as:

*'a business, enterprise or activity that involves the handling of food for sale or the sale of food, regardless of whether, subject to section 6, 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'*

Therefore people who prepare food for sale within residential premises are deemed to be food businesses for the purposes of the Act.

## Requirements of the Australia New Zealand Food Standards Code

The Act adopts the Australia New Zealand Food Standards Code (the Code) in full; which means that 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 enforcement agency (e.g. Standard 3.2.2 clause 17(2)).





The DOH 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'.

## Frequently Asked Questions

### Who will approve food preparation activities within residential premises?

The appropriate enforcement agency needs to be contacted to find out whether the proposed activity will be approved. There are a number of things that need to be taken into consideration, including:

1. Whether the local town planning scheme will allow the proposed activity within a residential area;
2. Whether the structure of the premises is appropriate for the proposed activities. This is to be determined by the appropriate enforcement agency;
3. The relative risk of the food preparation activities proposed; and
4. Whether the activity is for commercial gain or is for fundraising/charitable purposes.

### Will food prepared by volunteers for fundraising activities (*i.e. cake stalls, fetes, festivals and the like*) be required to be prepared in approved premises?

Section 6 of the Act allows for certain food preparation activities of a charitable or community nature to be exempt from all or any provisions of the Act. In accordance with this section, the new food regulations prescribe an exemption from registration to food businesses conducted as fundraising events so long as:

- 1) the food business is conducted to raise money solely for purposes that are of a charitable or community nature; and
- 2) any food handled in the course of conducting the food business –
  - (i) is not potentially hazardous food; or
  - (ii) after being appropriately cooked, is provided by the food business for immediate consumption.





This means that premises used for the preparation of non-potentially-hazardous food by volunteers will not need to be registered. However, these types of food businesses will still be required to notify the appropriate enforcement agency of their food preparation activities. It is an offence for a food business to not notify the appropriate enforcement agency of their intention to operate, regardless of whether they need to register the business.

### **What about food businesses currently approved by way of regulation 57 of the Regulations?**

Advice needs to be sought from the enforcement agency that provided the approval; the DoH through a regulation 57 application only provided direction on whether or not a proposed activity would be suitable within residential premises. The enforcement agency was responsible for assessing the premises to deem compliance with minimum food safety structural and operational requirements and ultimately issuing approval to operate as a food business.

Any existing food business will be required to ensure they comply with the Act and importantly, operate their business in accordance with the Code. One important change is the need for food businesses that operate within residential premises to apply to the relevant local authority for registration of a food business. It is an offence to conduct an unregistered food business.

### **What fees will be applicable to food businesses undertaken within residential premises?**

Fees for food businesses where the relevant enforcement agency is local government are to be set under Part 6 of the *Local Government Act 1995*. It will be to the discretion of the relevant local government to decide whether food businesses operating from residential premises will be subject to a fee and to set that fee in accordance with the *Local Government Act 1995*.

### **Will training or tools be provided to assist enforcement agencies approve applications for food businesses within residential premises?**

The DoH is developing a fact sheet intended to assist enforcement agencies determine what types of food are appropriate for preparation within residential premises.

In addition, the Food Unit can provide assistance to enforcement agencies in determining the appropriate risk classification for different types of foods/food businesses.

