



Victoria Government Gazette

No. S 383 Tuesday 2 August 2022
By Authority of Victorian Government Printer

Food Act 1984

DECLARATION OF CLASSES OF FOOD PREMISES AND REQUIREMENTS UNDER SECTION 19C OF THE **FOOD ACT 1984**

Explanatory Memorandum

A notification of the intention to make a declaration under section 19C of the **Food Act 1984** (the Act) was published on 1 March 2022 in the Victoria Government Gazette and in two newspapers circulating generally in Victoria (*The Age* and the *Herald Sun*), in accordance with the requirement under section 19CA of the Act.

Following submissions received in response to the publication of the notice of intention, subsequent consultation occurred with stakeholders.

As a result, the Secretary to the Department of Health (Secretary) has determined to make a new declaration of classes of food premises and requirements to be published in the Victoria Government Gazette on 2 August 2022.

Section 19C(1) of the Act authorises the Secretary to declare classes of food premises having regard to the food handling activities undertaken at the premises, the degree of risk associated with those activities, the nature of the food business operating from the premises and any other relevant consideration.

Section 19C(2) of the Act authorises the Secretary to specify, for each declared class of food premises, whether food premises of each declared class:

- are required to keep the minimum records under Division 2 of Part IIIB of the Act;
- are required to have a food safety program;
- are required to have a food safety supervisor;
- are exempt from the requirement under section 39 of the Act to be inspected annually.

In addition, section 19C(3) of the Act provides that for any declared class of food premises required to have a food safety program, the Secretary must specify:

- the type or types of food safety program that may be used for the premises; and
- the requirements for the audit or assessment of the premises as provided in section 19H of the Act.

NOTICE UNDER **FOOD ACT 1984**

Classes of Food Premises and Requirements

Declaration and Exemptions

I, Professor Euan M. Wallace, Secretary to the Department of Health, acting under sections 19C, 19H, 19V and 38 of the **Food Act 1984** (the Act) –

1. revoke all previous notices made under section 19C of the Act, including but not limited to, the following:
 - the section 19C notice published on page 1 of the Government Gazette No. S 232 on 22 June 2010;
 - the variation to the section 19C notice published at page 2353 of the Government Gazette No. G 46 on 18 November 2021; and

Classes of food premises

2. declare the following classes of food premises for the purposes of section 19C(1) of the Act, having regard to the matters specified in that provision:
 - (a) the food premises specified in schedule 1 to this instrument are class 1 food premises;

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- (b) the food premises specified in schedule 2 to this instrument are class 2 food premises;
- (c) the food premises specified in schedule 3 to this instrument are classes 3 and 3A food premises;
- (d) the food premises specified in schedule 4 to this instrument are class 4 food premises; and

Regulatory requirements

- 3. under section 19C(2) of the Act, specify the following –
 - (a) class 1 food premises and class 2 food premises are required to have a food safety program unless exempted under Clause 10 of this instrument, and a food safety supervisor, unless exempted under Clause 8;
 - (b) class 3A food premises are required to have a food safety supervisor;
 - (c) class 3 food premises are required to keep the minimum records required under Division 2 of Part IIIB of the Act, unless exempted under Clause 11;
 - (d) class 1 food premises and class 2 food premises required to have a food safety program are exempt from the requirement under section 39 of the Act to be inspected annually, (before the registration is renewed); and

Types of food safety programs

- 4. under section 19C(3)(a) of the Act, specify a standard food safety program and a non-standard food safety program as the types of food safety programs that may be used by class 1 food premises and class 2 food premises; and

Audit and assessment requirements for premises with food safety programs

- 5. under section 19C(3) and section 19H(1), (2) and (4)(a) of the Act, specify in schedule 5 to this instrument:
 - (a) the food safety audit and food safety assessment requirements for each type of food safety program permitted to be used by class 1 food premises and class 2 food premises; and
 - (b) the default requirements relating to the frequency and timing of audits and assessments; alternative requirements about frequency of audits or assessments for premises with food safety programs taking into account food safety performance; and
- 6. under section 19C(3) and section 19H(1), (2) and (4)(b) of the Act, specify in schedule 6 to this instrument the range of frequencies and intervals for food safety audits and food safety assessments that may otherwise be applied by the registration authority, taking into account food safety performance, for any particular class 1 food premises or class 2 food premises (instead of the default requirements); and

Assessments of class 1 food premises with a standard food safety program

- 7. under section 19C(3) and section 19H(1) and (3) of the Act, specify the circumstances in which a food safety assessment may be conducted by a food safety auditor are where:
 - (a) the food premises is a class 1 food premises; and
 - (b) a standard food safety program is being used at the food premises; and
 - (c) the auditor is an approved food safety auditor whose certificate under section 19P of the Act states that they are competent to conduct an audit of the class or category to which the food premises belongs; and
 - (d) the food safety assessment is only one of the two or more food safety assessments that are required annually for a class 1 food premises under section 19H of the Act and this instrument; and

Exemption from the need for a food safety supervisor for certain community groups

- 8. under section 19V of the Act, exempt the proprietors of the class of food premises described in Clause 9 of this instrument from the need to have a food safety supervisor for the period of 5 years; and

9. state that the class of food premises for the purposes of Clause 8 is those food premises that have all of the following characteristics:
- (a) the premises is a class 2 or class 3A food premises;
 - (b) the proprietor is a community group;
 - (c) the majority of persons involved in the handling of the food sold at the premises are volunteers;
 - (d) the food handling activity takes place at the premises for a maximum of two consecutive days at any one time;

Exemption from the need for a food safety program

10. under section 19V of the Act, exempt the proprietors of class 2 food services and retail food premises from the requirement to have a food safety program for the period of 5 years except if one or more of the following food handling activities is undertaken at the food premises:
- (a) sous vide cooking, (cooking at less than 75 degrees Celsius) where the food is cooked under controlled temperature and time conditions inside vacuum sealed packages in water baths or steam ovens;
 - (b) any potentially hazardous food that does not involve temperature control to minimise the growth of pathogenic or toxigenic organisms as described in Australia and New Zealand Food Standards Code, Standard 3.2.2;
 - (c) preparation of acidified/fermented foods or drinks that are ready to eat and have a high level of acidity required to keep food safe, acid may be naturally present or added or produced by the food (due to microbial activity);
 - (d) preparation of ready to eat foods containing raw unshelled eggs (unpasteurised);
 - (e) preparation of ready to eat raw or rare minced/finely chopped red meats;
 - (f) preparation of ready to eat raw and rare poultry and game meats;
 - (g) off-site catering where ready to eat potentially hazardous food is prepared or partially prepared in one location, transported to another location, where the food is served at a catering event;
 - (h) any other complex food process activity such as:
 - (i) pasteurisation/thermal processing, where food is heated to a certain temperature for a specified time, to eliminate pathogenic organisms;
 - (ii) packaging food where the oxygen has been removed and/or replaced with other gases for food safety or to increase shelf life of the food;
 - (iii) any food processing activity which does not involve the use of temperature control, to minimise the growth of pathogenic or toxigenic organisms in food, as described in Australia and New Zealand Food Standards Code, Standard 3.2.2.

Exemption for the need to keep minimum records

11. under section 19V of the Act, exempt the proprietors of class 3 food premises from the need to keep minimum records other than Warehouse/Distributor food premises types that are required to keep the suppliers' record; and

Exemption of class 4 food premises from registration

12. under section 38(1) of the Act, exempt class 4 food premises from the requirement to be registered under Part VI of the Act.

Definitions

Words and phrases used in this declaration and instrument of exemption have the meaning specified in schedule 7 to this instrument.

This instrument of declaration and exemption takes effect on 2 August 2022.

Dated 27 July 2022

PROFESSOR EUAN M. WALLACE AM
Secretary to the Department of Health

SCHEDULE 1

Class 1 Food Premises

- (a) A facility listed in the table in this schedule at which potentially hazardous food is prepared for, or served to patients, residents, or other persons receiving services at the facility (other than that part of the premises that is a canteen or other place at which food is available to be served to members of the public or staff of the facility); or
- (b) a food premises at which the principal activity is preparing ready-to-eat, potentially hazardous food for either or a combination of the following purposes:
- (i) to be served to patients, residents, or other persons receiving services at any of the facilities listed in the table in this schedule; or
 - (ii) to be delivered to aged persons in their homes or other persons who, due to illness, frailty or impairment are unable to prepare their own food; or
- (c) a supported residential service at which potentially hazardous food is prepared for, or served to, residents, and the majority of those residents are aged persons.

Table	
1.	A hospital, including: <ul style="list-style-type: none"> a. public hospital; b. public health service; c. denominational hospital; d. private hospital; e. day procedure centre; or f. multipurpose service – within the meaning of section 3 of the Health Services Act 1988 .
2.	An aged care service that provides care in a residential facility. example A nursing home or hostel for the aged.
3.	Any other aged care service: <ul style="list-style-type: none"> a. at which accommodation is provided to aged persons on a permanent or temporary basis in conjunction with regular personal care or nursing services; or b. at which rehabilitation or therapeutic services are provided to aged persons; or c. where on-call assistance, including meals, is provided on request to aged residents.
4.	A children's service premises within the meaning of the Children's Services Act 1996 , or the Education and Care Services National Law Act 2010 not including: <ul style="list-style-type: none"> • a service providing care only to children over preschool age; • family day care service; or • premises in Class 4

SCHEDULE 2

Class 2 Food Premises

A food premises:

- (a) at which any unpackaged potentially hazardous food is handled or manufactured; or
- (b) at which low risk food is manufactured, for which any allergen-free claim is made other than –
 - (i) a class 1 food premises; or
 - (ii) a food premises at which the only handling of unpackaged potentially hazardous food is of a kind which renders the premises a class 3 or a class 3A food premises or a class 4 food premises; or
 - (iii) a home-based or retail/service business that produces low-risk packaged or unpackaged foods for which an allergen-free claim is made.

SCHEDULE 3**Class 3A Food Premises**

A food premises at which one or more of the following food handling activities occurs:

- (a) preparation and/or cooking of potentially hazardous foods which are served to guests for immediate consumption at an accommodation getaway premises; or
- (b) food made using a hot-fill process resulting in a product such as chutney, relish, salsa, tomato sauce or any other similar food, that:
 - (i) is made at a home-based or temporary food premises (e.g. a hired kitchen); and
 - (ii) has been heat treated to a temperature of not less than 85 degrees Celsius and then filled and sealed hot into its packaging; and
 - (iii) is acidic (pH of less than 4.6); and
 - (iv) has salt or sugar or any other preservative added.

Class 3 Food Premises

A food premises at which one or more of the following food handling activities occurs:

- (a) the handling of unpackaged low risk food;
- (b) the warehousing or distribution of pre-packaged foods;
- (c) the sale of pre-packaged potentially hazardous food;
- (d) the sale of shell eggs;
- (e) offering members of the public a free sample of a potentially hazardous food for immediate consumption if that food is, or will be, available for sale at the premises in a packaged form;
- (f) the sale of ready-to-eat, potentially hazardous food by a community group if –
 - (i) all of the food is cooked on site with the intention of being served immediately; and
 - (ii) the majority of persons involved in the handling of the food are volunteers; and
 - (iii) this activity takes place at the premises for a maximum of two consecutive days at any one time;
- (g) making of sweet or savoury foods which do not require temperature control for food safety, for a minimum period of 24 hours that are:
 - (i) uncooked and that may or may not contain dry nuts (whole or crushed), seeds, dry fruits, protein powder (or similar supplement), and other low risk ingredients; or
 - (ii) after baking, are a low-risk food (includes but not limited to cakes (including fruit cakes), cupcakes (with or without icing), bread, biscuits, crackers, muffins, croissants, and other pastry where all the ingredients are cooked); and
 - (iii) have no potentially hazardous foods added to the product after baking (e.g. fresh cream, custard);

but does not include a food premises at which the only handling of food is of a kind which renders the premises a class 4 food premises.

SCHEDULE 4

Class 4 Food Premises

A food premises at which the only food handling activities are one or more of the following:

- (a) the sale to members of the public of:
 - (i) pre-packaged low risk food; or
 - (ii) sausages that are cooked and served immediately, with or without onions cooked at the same time, and bread and sauce – when cooked and sold at a temporary food premises or by a non-profit body; or
 - (iii) packaged or covered cakes (other than cakes with a cream filling) at a temporary premises by a community group; or
 - (iv) biscuits, tea or coffee (with or without milk, soy, almond or any other liquid) at a temporary premises by a community group;
- (b) a wine tasting for members of the public, which may include the serving of cheese or low risk food that has been prepared and is ready to eat;
- (c) the sale to members of the public or the wholesale of whole (uncut) fruit or vegetables;
- (d) the handling of low-risk food or cut fruit or vegetables and the serving of that food to children at an education and care service premises within the meaning of the **Education and Care Services National Law Act 2010**, and children's services within the meaning of the **Children's Services Act 1996**;
- (e) offering members of the public a free sample of a low-risk food for immediate consumption if that food is, or will be, available for sale at the premises in a packaged form;
- (f) serving of coffee, tea (with or without milk, soy, almond or any other liquid), alcohol (including the addition of sliced fruit, pasteurised dairy products), water, soft drink (except fermented soft drinks containing a live culture) intended for immediate consumption, but does not include unpasteurised processed fruit or vegetables (e.g. fresh juice) or any drink which has any other potentially hazardous food added, such as unpasteurised egg;
- (g) the handling and serving of food at a family day care service premises, residence and approved family day care venue within the meaning of the **Education and Care Services National Law Act 2010**.

SCHEDULE 5**Audit or Assessment Requirements for Class 1 Food Premises and Class 2 Food Premises**

- (a) A class 1 food premises that uses a standard food safety program must have two food safety assessments conducted annually, which must be conducted within the registration period for the premises;
- (b) a class 1 food premises that uses a non-standard food safety program must have –
 - (i) one food safety audit conducted annually, and one food safety assessment conducted annually; and
 - (ii) the audit and assessment must be conducted within the registration period for the premises;
- (c) a class 2 food premises that uses a standard food safety program must have a food safety assessment conducted once annually, which must be conducted within the registration period for the premises;
- (d) a class 2 food premises that uses a non-standard food safety program must have a food safety audit conducted once annually, which must be conducted within the registration period for the premises; and
- (e) for the purposes of paragraphs (b) and (d), the required annual food safety audit does not include an audit conducted in the circumstances referred to in section 38E(1) of the Act whilst a food premises has a conditional registration to enable the registration authority to be satisfied under section 38 of the Act that it may register the premises.

SCHEDULE 6

The Range of Frequencies and Intervals that may be Applied
(Instead of the Default Requirements) by a Registration Authority for Audit or
Assessment of a Particular Class 1 Food Premises or Class 2 Food Premises

- (a) Subject to paragraph (c), in the case of class 1 food premises or a class 2 food premises, where a non-standard food safety program is in use at the premises –
 - (i) a total of up to four food safety audits or food safety assessments can be conducted within the registration period; and
 - (ii) these audits or assessments must be at intervals of at least three months – provided that within the registration period; and
 - (iii) in the case of class 1 food premises – at least one food safety assessment is conducted and at least one food safety audit is conducted; and
 - (iv) in the case of class 2 food premises – at least one food safety audit is conducted;
- (b) in the case of a class 1 food premises or a class 2 food premises where a standard food safety program is in use at the premises –
 - (i) a total of up to four food safety assessments can be conducted within the registration period; and
 - (ii) these assessments must be at intervals of at least three months – provided that within the registration period; and
 - (iii) in the case of a class 1 food premises – at least two food safety assessments are conducted; and
 - (iv) in the case of a class 2 food premises – at least one food safety assessment is conducted; and
- (c) for the purposes of paragraph (a), the reference to number of audits does not include an audit conducted in the circumstances referred to in section 38E(1) of the Act whilst a food premises has a conditional registration to enable the registration authority to be satisfied under section 38 of the Act that it may register the premises.

SCHEDULE 7

Definitions

accommodation getaway premises means a premises that provides hosted, short-term accommodation where food is prepared and served to guests on request. Examples include bed and breakfast, farm-stays, guesthouses, nature retreats, and motels;

aged care service has the same meaning as in section 1–3 and Schedule 1 of the **Aged Care Act 1977** of the Commonwealth;

allergen-free claim is a statement indicating that a food item is free from containing an allergen which is declared under Clause 1.2.3–4 of the Australia New Zealand Food Standards Code (for example ‘gluten free’, ‘nut free’, or ‘dairy free’);

children’s service means

- a children’s service within the meaning of section 3 of the **Children’s Services Act 1996** where care is provided to 4 or more children under the age of 13 years in the absence of the parents or custodians of the children on a non-regular, casual and ad hoc basis; and
- a children’s service and an education and care service within the meaning of the **Education and Care Services National Law Act 2010**

catering event means food prepared and/or partially or fully cooked at one location and serviced at another location by the caterer. This does not include catering activity

- where the food has been prepared and delivered to an office for lunches or similar events where the food does not require any further preparation such as reheating, portioning or garnishing; or
- where businesses that do not supply food for the event but provide waiting staff to serve the food at the event.

class 1 food premises means food premises declared to be class 1 food premises in this instrument;

class 2 food premises means food premises declared to be class 2 food premises in this instrument;

class 3A food premises means food premises declared to be class 3A food premises in this instrument;

class 3 food premises means food premises declared to be class 3 food premises in this instrument;

class 4 food premises means food premises declared to be class 4 food premises in this instrument;

community group means:

- a not-for-profit body; or
- a person or unincorporated group of persons undertaking a food handling activity solely for the purposes of raising funds for charitable purposes or for a not-for-profit body;

family day care service premises includes an approved family day care venue which provides an approved family day care service and includes a family day care residence, within the meaning of the **Education and Care Services National Law Act 2010**;

food services sector includes institutions and businesses responsible for any meal for immediate consumption on or in the vicinity of the premises. This includes restaurants, takeaway outlets, caterers, mobile vehicles;

home-based food premises means food handling or manufacture of food that is conducted at a premises used principally as a private dwelling;

hot-fill process means food that has been heat treated to a temperature of not less than 85 degrees Celsius and is then filled and sealed hot into its packaging (for example, jars or bottles of jam, chutney, relish or any other similar food);

low risk food means food that is unlikely to contain pathogenic micro-organisms and will not normally support their growth due to food characteristics (for example, grains, cereals, carbonated beverages, jams, dried fruits, packaged pasteurised milk, ice-cream manufactured from pasteurised or heat-treated milk, pasteurised or heat-treated soy milk, and cut fruit or vegetables (which are not subject to any further processing));

not-for-profit body means an incorporated or unincorporated body or association that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the constitution of the body or association, prohibited from making any distribution, whether in money, property or otherwise, to its members;

pathogenic micro-organisms means any bacteria, viruses, yeasts and moulds that are capable of causing disease;

potentially hazardous food –

- means food that has to be kept at certain temperatures to minimise the growth of any pathogenic micro-organisms that may be present in the food, or to prevent the formation of toxins in the food; and
- includes all food other than low risk food;

retail food premises means food businesses that sell direct to the public or as wholesale to other immediate food premises within the local area. They may also process food products from raw ingredients.

Food Act 1984**MINIMUM RECORD KEEPING – CLASS 3 AND CLASS 3A FOOD PREMISES****Declaration****Explanatory Memorandum**

In accordance with section 19CB of the **Food Act 1984** (the Act), the Secretary to the Department of Health (Secretary) declares the minimum record keeping requirements for proprietors of class 3 food premises and class 3A food premises, as defined in the declaration made under section 19C of the Act commencing on 2 August 2022 published in the Victoria Government Gazette.

DECLARATION UNDER SECTION 19CB OF THE FOOD ACT 1984**Minimum Record Keeping – Class 3 Food Premises and Class 3A Food Premises**

Under section 19CB of the **Food Act 1984** I, Professor Euan M. Wallace, Secretary to the Department of Health –

- revoke the previous notices made under section 19CB of the Act, including the notice published on page 1 of the Government Gazette No. S 241 on 25 June 2010.
- note that class 3 food premises and class 3A food premises are defined in the declaration made under section 19C of the Act commencing on 2 August 2022 and published by notice in the Victoria Government Gazette.
- declare the minimum record keeping requirements for proprietors of class 3 food premises and class 3A food premises as follows:

Supply records

1. The records that must be kept by Warehouse/Distributors of class 3 food premises include the records specified in Schedule 1 to this declaration.

Period for keeping records

2. A record referred to in Clause 1, must be kept for the following period:
 - (a) in the case of a record created at the food premises, one year from the date on which it was created; and
 - (b) in any other case, one year from the date on which it was received at the food premises.

Definitions

Words and phrases used in this declaration have the meaning specified in Schedule 2 to this declaration.

Commencement

This declaration takes effect on 2 August 2022.

Dated 27 July 2022

PROFESSOR EUAN M. WALLACE AM
Secretary to the Department of Health

SCHEDULE 1

Supply Records

1. Subject to Clause 2 of this schedule, the following records about the supply of food to a food premises must be kept:
 - (a) the type of food (for example, condiments, canned food, pre-packaged potentially hazardous food);
 - (b) the trading name of the supplier;
 - (c) the address and telephone number of the supplier; and
 - (d) dockets or invoices received from the supplier.
2. Paragraphs (a), (b) and (c) of Clause 1 of this schedule do not apply in the case of the supply of food to a community group where –
 - (a) the majority of persons involved in the handling of the food are volunteers; and
 - (b) the food handling activity takes place at the food premises for a maximum of two consecutive days at any one time.

SCHEDULE 2

Definitions

class 3 food premises means food premises declared to be class 3 food premises under section 19C of the Act by declaration commencing on 2 August 2022 and published in the Victoria Government Gazette;

class 3A food premises means food premises declared to be class 3A food premises under section 19C of the Act by declaration commencing on 2 August 2022 and published in the Victoria Government Gazette;

low risk food means food that is unlikely to contain pathogenic micro-organisms and will not normally support their growth due to food characteristics (for example, grains, cereals, carbonated beverages, jams, dried fruits, packaged pasteurised milk, ice-cream manufactured from pasteurised or heat treated milk, packaged pasteurised or heat treated soy milk, and cut fruit or vegetables (which are not subject to any further processing));

potentially hazardous food means

- (a) food that has to be kept at certain temperatures to minimise the growth of any pathogenic micro-organisms that may be present in the food, or to prevent the formation of toxins in the food; and
- (b) includes all food other than low risk food;
for example:
 - raw and cooked meat (including poultry and game) or foods containing raw or cooked meat such as casseroles, curries and lasagne;
 - smallgoods such as Strasbourg, ham and chicken loaf;
 - dairy products such as custard, or dairy-based desserts such as cheesecakes and custard tarts, but not packaged pasteurised milk or ice-cream manufactured from pasteurised or heat treated milk;
 - seafood (excluding live seafood), including seafood salad, patties, fish balls, stews containing seafood and fish stock;
 - processed fruits and vegetables such as fruit salads, fruit juices;
 - cooked rice and pasta;
 - foods containing eggs, beans, or other protein-rich foods such as quiche, fresh pasta and soy bean products; and
 - foods such as sandwiches, rolls and cooked and uncooked pizza that contain the foods listed above.

pre-packaged food is food that has been sealed within a package prior to entering the food premises, and remains in that package until sale;

supply means the supply of food to a food premises from another food premises or another person but does not include the transport to another food premises that is a temporary or mobile food premises where both food premises are operated by the same proprietor;

warehouse/distributors are the proprietors of food premises that pre-retail distribution activities (particularly importation, wholesaling, wholesale storage and multipurpose wholesalers who distribute to retailers and food services premises).

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