

Policy

Food Safety Enforcement

Responsible portfolio	Public Health and Environment	Document Register ID	250.2019.547.2
Policy owner	Public Health and Environment	Review date	
Date of Council Meeting	16 May 2019	Resolution Number	188/19
Legislation, Australian Standards, Code of Practice	Food Act 2003 Food Regulation 2015 Food Safety Standards Code AS4674 – Design, construction and fit-out of food premises Department of Primary Industries: Biosecurity and Food Safety Enforcement Policy (INT17/45446) Department of Primary Industries: Biosecurity and Food Safety Compliance Policy (INT17/45434)		
Aim	The aim of this policy is to: to provide transparency on how Council will make decisions of enforcement action; to guide decision making and action by Council staff in the use of enforcement options; to ensure that regulatory powers are carried out in a consistent manner without bias; to enhance consistency of enforcement actions between officers; and to use regulatory tools in such a way as to best achieve Council's strategic and operational objectives. promote transparency to stakeholders		

1 Purpose

This policy sets out the guiding principles Snowy Monaro Regional Council (SMRC) will apply when conducting regulatory and enforcement activities and includes an approach that is:

- a) graduated and proportionate
- b) authorised by law

- c) impartial and procedurally fair
- d) accountable and transparent
- e) consistent in terms of the enforcement response between regulators
- f) in the public interest
- g) allows for application of multiple enforcement tools under appropriate circumstances.

2 Scope

SMRC has entered into a Food Regulation Partnership (FRP) Agreement with the NSW Food Authority and the Authority has appointed Council to undertake those obligations set out in Category “B” in respect to its food regulation role as an enforcement agency under the NSW Food Act 2003, as amended.¹

Categories are not mentioned in the legislation and food enforcement activities are categorised by the NSW Food Authority merely to identify the various responsibility levels that Council is required to meet as part of our Food Regulation Partnership agreement.

Category B is the most common level of food regulation responsibility. It is the duty of a Category B enforcement agency to exercise the functions within “the area” conferred on, and delegated to, them through their instrument of appointment (s.111D of the Act).

As an enforcement agency SMRC shall ensure their authorised officers act where there is an imminent threat to public health and safety or the health of any individual in connection with food; and exercise functions with respect to retail food businesses. For example, routinely inspecting retail premises and examining food.

The conditions of a Category B appointment are that:

1) SMRC inspects retail food businesses for compliance with the national food safety standards and Part 1.2 (relating to labelling of food for retail sale) in the Australia New Zealand Food Standards Code, the NSW Food Act 2003 and the NSW Food Regulation 2015, and

2) SMRC shall comply with the following FRP protocols:

- a) Activity reporting,
- b) Food complaint referral,
- c) Reporting legal proceedings,
- d) Submitting food samples for testing, and
- e) Urgent food safety response, and

3) SMRC shall ensure that all authorised officers continually maintain current knowledge of the following FRP advisory guidelines by:

- a) Appointing authorised officers,
- c) Managing fees and charges,
- d) Managing food complaints,
- e) Completing Food Premises Assessment Reports (FPAR),
- f) Managing non-local and complex issues,
- g) Maintaining a Register of penalty notices,

- h) Regulation of mobile and temporary food businesses,
- i) Undertaking risk-based inspection frequencies, and
- j) Seeking assistance.

The objectives of the NSW Food Act 2003 as defined in Section 3 of the Act include the following:

- to ensure food for sale is both safe and suitable for human consumption,
- to prevent misleading conduct in connection with the sale of food,
- to provide for the application in the State of the Food Standards Code.

The Food Standards Code means the Australia New Zealand Food Standards Code as defined in the Food Standards Australia New Zealand Act, 1991 of the Commonwealth of Australia.

Enforcement of the Food Act is essential for the effective management of food safety risks and the prevention of misleading conduct in connection with the sale of food. Accordingly the NSW Food Authority and the Council, in partnership, is committed to ensuring there is a high level of compliance with the Food Act and Regulations.

This policy sets out the Council's policy on compliance and enforcement that will facilitate the effective achievement of the regulatory goals of the Food Act in a manner that is:

- authorised by law;
- procedurally fair;
- accountable and transparent;
- consistent; and
- proportionate; and is an addendum to SMRC's Enforcement Policy.

The policy recognises that most food businesses want to comply with the law and produce food that is safe, correctly described, labelled and advertised. The compliance and enforcement role of the Council is to protect consumers from the minority, who flout the law or act irresponsibly, endangering or defrauding consumers and imposing unfair competition on compliant food businesses.

It is anticipated that as a consequence of this policy food businesses will consider that compliance is an everyday part of business activity. Australian Standard AS 3806-1998 Compliance programs provides principles for the development, implementation and maintenance of effective compliance programs.

Breaches of the NSW Food Act, 2003 are classified as criminal offences and penalties up to \$550,000 and/or two years imprisonment apply. The range of offences under the Act and Regulations vary greatly in their seriousness and accordingly a variable range of penalties and enforcement options that are available under the Act and Regulations. This policy describes the options that are available and provides details of the matters that will be considered in their application toward achieving the objects of the Food Act, 2003.

3 Enforcement Activities

SMRC conducts the following enforcement activities to respond to non-compliance:

- the use of overt and covert surveillance tools
- investigation of suspected breaches of the laws
- identifying measures to compel compliance without resorting to formal court action, such as warning letters, directions (directed works), improvement notices, penalty notices and prohibition orders or a combination of these.
- prosecution with a view to conviction in a court of competent jurisdiction where court-imposed penalties may include fines, imprisonment, forfeiture of assets and goods, prohibition orders, good behaviour bonds, and community service orders.

4 Enforcement Principles

4.1 A graduated and proportionate response

SMRC will apply a graduated and proportionate approach to the application of enforcement tools upon stakeholders. This involves the application of mild enforcement tools to offenders in the first instance; to be followed by more severe tools should the non-compliant activity continue.

The compliance and enforcement options available to Authorised Officers include:

- verbal advice;
- warning letters;
- the issuing of a statutory Improvement Notice which requires cleaning, repair, replacement, revision of food safety program, implementation of a food safety program or implementation of the Food Safety Standards;
- the issuing of a Prohibition Order which controls certain activities where there is failure to comply with an Improvement Notice or to prevent or mitigate a serious danger to public health;
- the seizure of food, vehicles, equipment, and labelling or advertising materials which do not comply with a provision of the Act or Regulations;
- the issuing of a Penalty Infringement Notice;
- the institution of proceedings in the Local Court;
- the institution of proceedings in the District Court;
- request for court orders for corrective advertising by a person found guilty of an offence;
- publication of the names of offenders immediately after conviction.

SMRC may at times consider mediation and conciliation as preliminary steps in enforcement processes.

4.2 Decision making criteria

SMRC will select an enforcement response that is proportionate to the identified non-compliance and capable of providing sufficient incentive to the business or person to amend the non-compliant behaviour.

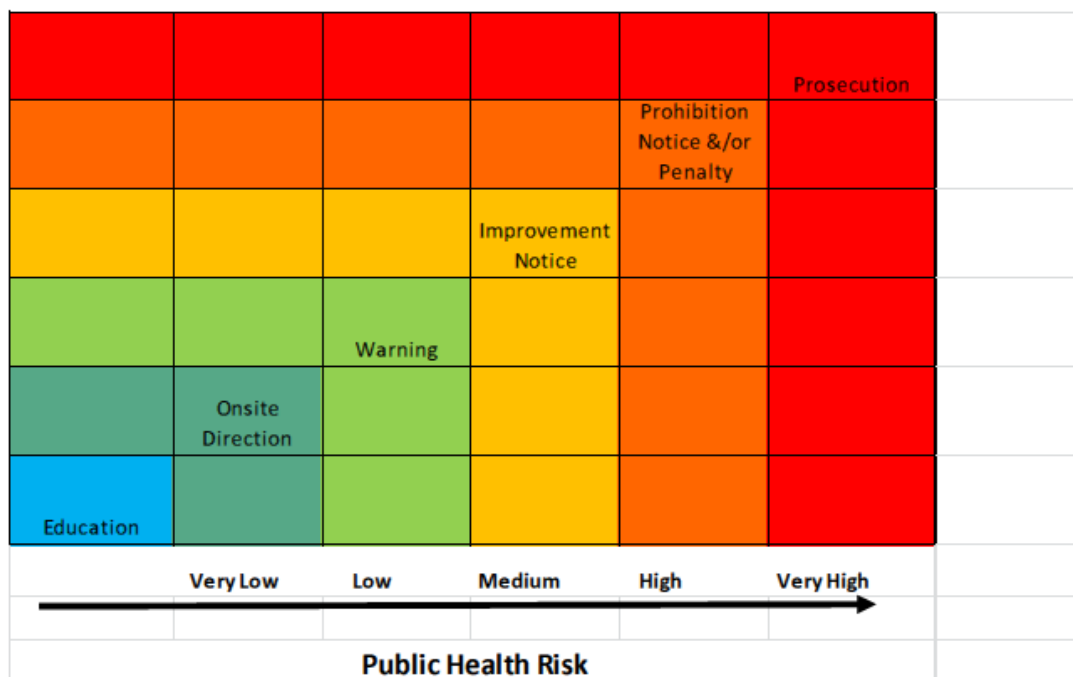
Should the circumstances surrounding an offence be considered sufficiently serious (e.g. an imminent risk to the Snowy Monaro Regions public health and safety), SMRC may elect to employ multiple enforcement tools at the same time.

This policy should not be interpreted as a means of preventing Snowy Monaro Regional Council exercising any such enforcement powers.

SMRC will consider the following factors when making decisions concerning the choice of enforcement tool:

- circumstances of the alleged offence and the individual circumstances of the offender associated with the business
- compliance history of the offender, in general and with respect to the specific incident
- cooperation demonstrated by the alleged offender
- remedial action implemented by the alleged offender to address the non-compliance
- timeframe over which the offence was committed
- the need to provide SMRC staff with a safe working environment within the requirements of occupational health and safety laws, particularly in relation to matters involving assaults and intimidation.

The following diagram illustrates the graduated nature of enforcement responses in unity with the seriousness of the non-compliance.



4.2.1 The Application of multiple enforcement tools

A graduated approach to the application of individual enforcement tools does not preclude the simultaneous application of multiple enforcement tools.

There may be circumstances where there are multiple non-compliances detected, each of varying significance. In such circumstances, the use of different enforcement tools may also be warranted.

4.3 Authorised by law

Authorised officers are required to act within their legal remit of statutory power when undertaking enforcement activity.

4.4 Impartiality and procedural fairness

SMRC will undertake enforcement activity against the businesses or person in a timely manner that is procedurally fair and impartial. This will assist in minimising opportunities for arbitrary or inexplicable differences between the handling of individual cases, or classes of cases, to occur.

Discrimination (e.g. with regard to ethnicity, religion, age or gender) by authorised officers when undertaking enforcement action is unacceptable.

Decision making about applying enforcement provisions should not be influenced by:

- political advantage or disadvantage to a government or any political party or group,
- the consequences of a decision on the personal or professional circumstances of staff, or
- the personal feelings of the decision makers towards the offenders.

Business proprietors and/or persons involved will receive written advice of available statutory rights of appeal when decisions are made by SMRC to apply enforcement provisions.

Reasons for a decision will be documented and included in a briefing note as part of any administrative review of the decision.

Many juveniles (10 to 18-year-olds) work in (or operate) businesses and may therefore be subject to enforcement action under some circumstances. Under these circumstances, legislation for dealing with children between the ages of 10 and 18 (young offenders' legislation) applies to compliance and enforcement activity.

4.5 Accountable and Transparent

To ensure SMRC is accountable and transparent in the application of enforcement tools the authorised officers will:

- ensure that legislation, enforcement policies, complaints procedures and

relevant information are readily accessible to businesses and the public

- use plain language to communicate with the public and the industry
- ensure that policies and procedures addressing issues associated with enforcement action are readily available
- advise of available complaint or appeal processes associated with enforcement action inclusive of timeframes applicable to these processes
- provide advice on fees and charges that may be applied in discharging enforcement obligations or providing services under the relevant legislation

In relation to issuing penalty notices, Snowy Monaro Regional Council seeks guidance from two documents, which can be found on the NSW Justice website at www.justice.nsw.gov.au:

1. [Caution Guidelines](#) and;

2. [Internal Review Guidelines](#)

The constraints of any privacy legislation and confidentiality provisions when initiating enforcement action against businesses (unless a statutory requirement exists to disclose the information) will be observed.

4.6 The Public Interest

The overriding consideration in taking enforcement action should always be the protection of community safety.

5 Conclusion

On a daily basis, SMRC investigates compliance issues and applies enforcement tools. This policy provides general guidance on how SMRC will undertake enforcement action under the Food Act.

It does not limit the discretion of SMRC to take enforcement action.

6 Definitions and Acronyms

- DPI: NSW Department of Primary Industries:
- BFS: Biosecurity and Food safety
- SMRC: Snowy Monaro Regional Council

7 Other Related Documents

- NSW Food Authority - Instrument of Appointment - [Enforcement Agency Roles and Responsibilities](#)
- NSW Food Authority - [Advisory Guideline - Appointing Authorised Officers](#)
- NSW Food Authority - [Advisory Guideline - Enforcement Agency Compliance](#)
- NSW Food Authority - [Advisory Guideline - Fees and Charges](#)

- NSW Food Authority - [Advisory Guideline - Food Complaint Management](#)
- NSW Food Authority - [Advisory Guideline - Food Premises Assessment Report](#)
- NSW Food Authority - [Advisory Guideline - Food Premises Assessment Report Guideline](#)
- NSW Food Authority - [Food Premises Assessment Report](#)
- NSW Food Authority - [Advisory Guideline - Managing Non-Local and Complex Issues](#)
- NSW Food Authority - [Advisory Guideline - Register of Penalty Notices](#)
- NSW Food Authority [Advisory Guideline - Regulation of Mobile and Temporary Food Premises](#)
- NSW Food Authority [Advisory Guideline - Risk Based Inspection Frequency](#)
- NSW Food Authority [Advisory Guideline - Seeking Assistance](#)
- NSW Food Authority - [Protocol - Activity Reports](#)
- NSW Food Authority - [Protocol - Food Complaint Referral](#)
- NSW Food Authority - [Protocol - Reporting Legal Proceedings](#)
- NSW Food Authority - [Protocol - Submitting Food Samples for Testing](#)
- NSW Food Authority - [Protocol - Urgent Food Safety Response](#)
- NSW Food Authority - [Food premises Design, construction and fit-out guide](#)

8 Related Documents

This procedure should be read in conjunction with the following documents:

Documentation

List the name and document reference number of any other document referred to in this document, including any related policies and procedures

250.2019.552.1 Snowy Monaro Regional Council: Compliance and Enforcement Policy

250.2019.546.1 Snowy Monaro Regional Council: Food Safety Compliance Policy

Variation

Council reserves the right to review, vary or revoke this policy and should be reviewed periodically to ensure it is relevant and appropriate.