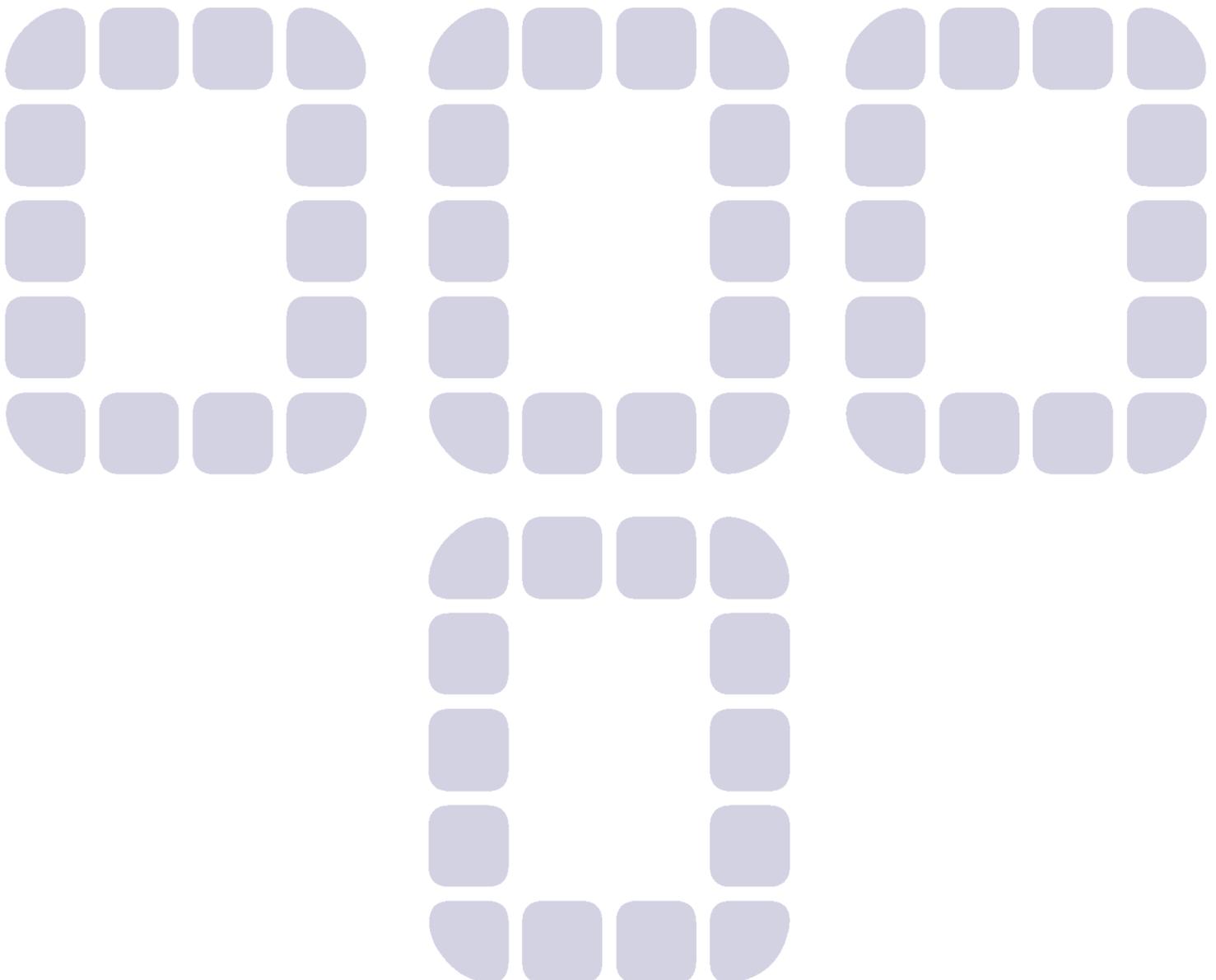




# WA Food Regulation: Temporary and Mobile Food Businesses

This document contains information on the application of the *Food Act 2008* (the Act) in relation to temporary and mobile food businesses. It is designed to assist enforcement agencies to apply a consistent and pragmatic approach in the administration of temporary and mobile businesses.

Version 1.0: March 2011



## CONTENTS

<b>1</b>	<b>Objectives</b>	<b>3</b>
<b>2</b>	<b>The Act Administrative Arrangements</b>	<b>3</b>
<b>3</b>	<b>Principles Under the Act</b>	<b>4</b>
<b>4</b>	<b>Other Considerations Not in the Scope of the Act</b>	<b>9</b>
<b>5</b>	<b>Review</b>	<b>9</b>
<b>6</b>	<b>Useful Resources and Websites</b>	<b>10</b>
<b>7</b>	<b>Further Information</b>	<b>10</b>
<b>Appendix 1:</b>	<b>Registration and Notification Decision Making Advisory Tool</b>	<b>11</b>
<b>Appendix 2:</b>	<b>Approved Form for ‘Certificate of Registration’</b>	<b>12</b>
<b>Appendix 3:</b>	<b>‘Verification of Notification’ Certificate</b>	<b>13</b>

## Glossary

<b>Act</b>	<i>Food Act 2008</i>
<b>Appropriate Enforcement Agency</b>	The CEO of the DOH or local government
<b>Assessment</b>	The process of reviewing a food business in order to confirm compliance or non-compliance with the Act, Regulations or Code
<b>Code</b>	<i>Australia New Zealand Food Standards Code</i>
<b>DOH</b>	Department of Health
<b>Event Organiser</b>	The organisation which organises, advertises, and manages an event such as an agricultural show. The event organiser is not a food business
<b>Food Business</b>	A business, enterprise or activity that involves the handling of food intends for sale or the sale of food.
<b>FSANZ</b>	Food Standards Australia New Zealand
<b>Mobile Food Business</b>	A food business that operates from premises that are non-permanent; for example food vehicles and caterers.
<b>Registration Enforcement Agency</b>	The enforcement agency that has registered the food business.
<b>Regulations</b>	<i>Food Regulations 2009</i>
<b>Temporary Food Business</b>	A food business set up as part of a one off event where temporary or permanent premises are used.

# Temporary and Mobile Food Businesses

## 1 Objectives

1. To clarify the application of the registration provisions of the Act in relation to temporary and mobile food businesses.
2. To present a pragmatic approach in terms of registration and notification of temporary and mobile food businesses by defining overarching principles.
3. To ensure consistency in the application of the Act to temporary and mobile food businesses by enforcement agencies.

## 2 The Act Administrative Arrangements

Temporary and mobile food businesses, by their very nature, will often operate at a number of locations in a number of enforcement agency jurisdictions. This can present some difficulties to enforcement agencies in relation to registration and notification of these businesses.

Under the Act, it is possible to have a streamlined system in place in order to ensure that temporary and mobile food businesses are administered effectively, pragmatically and consistently. Part 9 of the Act contains a number of requirements regarding the registration and notification of food businesses that can be translated into some key principles to guide the administration of temporary and mobile businesses in Western Australia.

The first overarching principle is that every food business must either:

- Notify the appropriate enforcement agency of their intention to operate; or
- Apply for registration with the appropriate enforcement agency.

The other overarching principles relate to:

- Provision of information by food businesses;
- Conditions of registration

- Notification of food premises locations;
- Notifications of changes to activity;
- Review of enforcement agency decisions; and
- Powers to assess and take compliance action.

These principles are explained in this document and a decision making advisory tool is included in Appendix One to assist in the application of this guideline.

### **3 Principles under the Act**

#### **Principle 1: Registration and notification**

**A food business operating at any premises must be registered with or notify the appropriate enforcement agency.**

The requirement that a food business must either register or notify is the overarching principle to consider when administering temporary and mobile food businesses. Section 110 of the Act states that the appropriate enforcement agency may register a food business in respect of any premises. This means that the food business itself is registered – not the food premises. A food business that wishes to sell food at a number of temporary locations should therefore only need one registration.

Some types of food businesses are exempt from registration and therefore only need to notify the appropriate enforcement agency of their intention to operate, including details of their proposed operations. This includes temporary food businesses that sell only pre-packaged low risk foods. All other food businesses will be subject to the registration requirements of the Act and should apply for registration with an enforcement agency.

Evidence of current registration (within Western Australia) in relation to that food business will be all that is needed to satisfy other enforcement agencies of compliance with Part 9 of the Act by that food business, so long as that registration covers the activities of the food business (see principle three for further details).

## **Principle 2: Provision of information by food businesses**

**The proprietor of a food business must provide certain information to the appropriate enforcement agency, when registering or notifying.**

If a food business is applying to register with or is notifying an enforcement agency, specified information regarding its operations must be provided. This includes:

- Contact details for the food business including the name of the food business and the name and business address of the proprietor of the food business;
- The nature of the business, including information on temporary and mobile activities;
- The location of all food premises of the food business that are within the jurisdiction of the enforcement agency; and
- Any other information that the appropriate enforcement agency requires to determine the risk classification of the food business.

Information on the nature of the food business should include all proposed activities of the food business. This would mean that a food business that prepares food at a fixed location but intends to sell the products at temporary locations must provide this information to the appropriate enforcement agency when applying for registration. The appropriate enforcement agency will then assess the registration application / notification based on the information provided.

If appropriate, food businesses need to disclose their intention to sell at temporary locations during the registration process. Enforcement agencies can only assess a registration application based on the information provided.

## **Principle 3: Conditions of Registration**

**Registration conditions will specify the approved activities for that food business, such as sale of food at temporary locations.**

One method of ensuring an efficient and consistent approach to the registration of temporary and mobile food businesses is for enforcement agencies to include a condition on the 'Certificate of Registration' that details the activities that can be undertaken by the food business. This will mean that if a food business wishes to be approved to sell at temporary locations, the enforcement agency can include this as a condition of registration.

If a food business decides to sell food at a temporary event in another enforcement agency's jurisdiction, the 'Certificate of Registration' can demonstrate to the other enforcement agency that the food business is registered for that purpose. If the food business is not able to provide evidence that it is approved to sell at temporary events, the other enforcement agency can request that the food business have its registration approval amended to reflect the nature of its operations.

To assist enforcement agencies in achieving a consistent approach, the CEO of WA Health has developed an approved 'Certificate of Registration' form for the purpose of Section 110 (6) of the Act. This form is available in Appendix 2.

In relation to exempt food businesses, enforcement agencies could issue the business a 'Verification of Notification' certificate following assessment of notification. This verification of notification (contained within appendix 3) contains information regarding compliance with the Act, including potential compliance and enforcement action should a temporary food business be found to not be complying with the Act.

Event organisers should only allow food businesses that have a Certificate of Registration or Verification of Notification to sell at their events. The appropriate enforcement agency should be raising this matter with event organisers during the planning stages.

#### **Principle 4: Food premises locations**

**Prior to operating at new locations, the food business needs to inform the appropriate enforcement agency or agencies of the location of all food premises. The registration address for mobile food businesses is where the vehicle is garaged.**

In terms of the location of the food premises, temporary food businesses would be treated differently from mobile food businesses. A food vehicle (other than a food transport vehicle) falls within the definition of 'premises' (section 6 of the Act). This means that a food business that operates from a vehicle must register the business in respect of that vehicle. The prescribed enforcement agency where the vehicle is garaged or where the food business has its registered address is the appropriate

enforcement agency for that food business. Once registered, a vehicle can not be registered again – even if trading in another district.

A food business may be registered in respect of a number of vehicles on one Certificate of Registration. Every operator of a vehicle registered in relation to that food business must be able to produce a copy of the Certificate of Registration when requested by the appropriate enforcement agency concerned. This should be a condition of registration of the food business (see Appendix 2) and all vehicle registration numbers should be on the Certificate of Registration.

Food businesses that sell at temporary locations, like food vehicles, can be issued with one 'Certificate of Registration'. These types of food businesses may operate at a number of premises in more than one enforcement agency's jurisdiction. Prior to trading in an enforcement agency's jurisdiction, the food business is required to advise the enforcement agency of the location of all food premises and should present a 'Certificate of Registration' that demonstrates the food business is approved to sell at temporary locations.

Once the appropriate enforcement agency is advised of the location of premises, the food premises can be assessed to determine that it is appropriate for the activities of the food business in accordance with Chapter 3 of the Code. This can be done for any food premises, whether it is a permanent premises (i.e. sporting club kitchen) or a temporary premises (i.e. marquee). If food premises are not appropriate for the activities, the enforcement agency should advise the food business that it is an offence to operate from premises that do not comply with the Code (Section 22 of the Act).

Some temporary food businesses may wish to prepare food off-site and this may include food production within residential premises. The locations of off-site food premises must be approved by the appropriate enforcement agency where that food premises is located.

#### **Principle 5: Notification of changes to activity**

**The proprietor of a registered food business that is not approved to sell at temporary locations, but wishes to do so, must give written notification of change of activities to the enforcement agency that registered the food business.**

On occasions, a registered food business that is not approved to sell food at temporary locations may wish to do so at some events. This could include a restaurant or a small manufacturer that wishes to sell some of its products at temporary events.

In these circumstances, the food business must notify the registration enforcement agency of changes to the activities of the food business. The enforcement agency can then assess the notification and is able to approve the food business to sell at temporary locations. If the food business wishes to sell food at a temporary location in another enforcement agency's jurisdiction, the business should notify the registration enforcement agency of changes to its activities prior to doing so.

There may be some instances where a registered food business may sell a type of food at a temporary location that is significantly different from the core nature of the food business' registration approval. In these circumstances, it is possible for the enforcement agency to require that the business obtain a separate registration. For example, this could include a food business whose core activity is to manufacture jams and preserves, but wishes to prepare and sell food at a seafood festival.

#### **Principle 6: Review of enforcement agency decisions**

**The proprietor of a food business can apply to the State Administrative Tribunal (SAT) for review of decisions relating to registration.**

Decisions relating to the registration of food businesses can be reviewed by the State Administrative Tribunal at the request of the food business. For this reason, it is important for enforcement agencies to adopt a consistent and pragmatic approach to the registration of temporary and mobile food businesses.

### **Principle 7: Powers to assess and take compliance action**

**An authorised officer under the Act has the power to assess and take compliance action against any food business trading within the officer's district.**

Any authorised officer with responsibility in the district where the food business is trading is able to undertake food safety assessments of the food business at any time, and if necessary, initiate any compliance and enforcement action. The details of any assessment, or compliance and enforcement action, should be forwarded to the enforcement agency that issued the Certificate of Registration.

## **4 Other Considerations Not in the Scope of the Act**

### **4.1 Fees**

A registration fee or any other fee for the provision of services under the Act is able to be raised and imposed by any enforcement agency. For example, a food safety assessment / surveillance fee could be imposed on a food business for the operation of a food business within an enforcement agency's jurisdiction. The Act however does not require that a fee be charged. This is simply an option available to enforcement agencies. The need to minimise regulatory burden should be kept in mind.

### **4.2 Local Government Processes**

Other approval processes for temporary and mobile food businesses may exist such as street trading, licensing systems or event approvals. These requirements may vary between local governments and should be considered by relevant stakeholders.

## **5 Review**

This guideline will be reviewed after six months after introduction and annually thereafter.

## 6 Useful Resources and Websites

- Department of Health WA <http://www.public.health.wa.gov.au>
- Food Standards Australia New Zealand <http://www.foodstandards.gov.au>
- NSW Food Authority <http://www.foodauthority.nsw.gov.au/>
- DHS Victoria <http://www.health.vic.gov.au/foodsafety/>
- DHS South Australia <http://www.health.sa.gov.au/pehs/food-index.htm>

## 7 Further Information

The following DOH documents may also be of assistance:

- *Fact Sheet 1: Food Prepared in Residential Kitchens* can provide further information on food businesses operating in private residences.
- *Fact Sheet 3: Exempted Food Businesses* can provide further information on Part 3 of the *Food Regulations 2009*
- *Food Unit Notice 10.02: Management of Community Related Food Activities* can provide further information on community and charity events.

### Contact the Food Unit via:

**Email** [foodunit@health.wa.gov.au](mailto:foodunit@health.wa.gov.au)

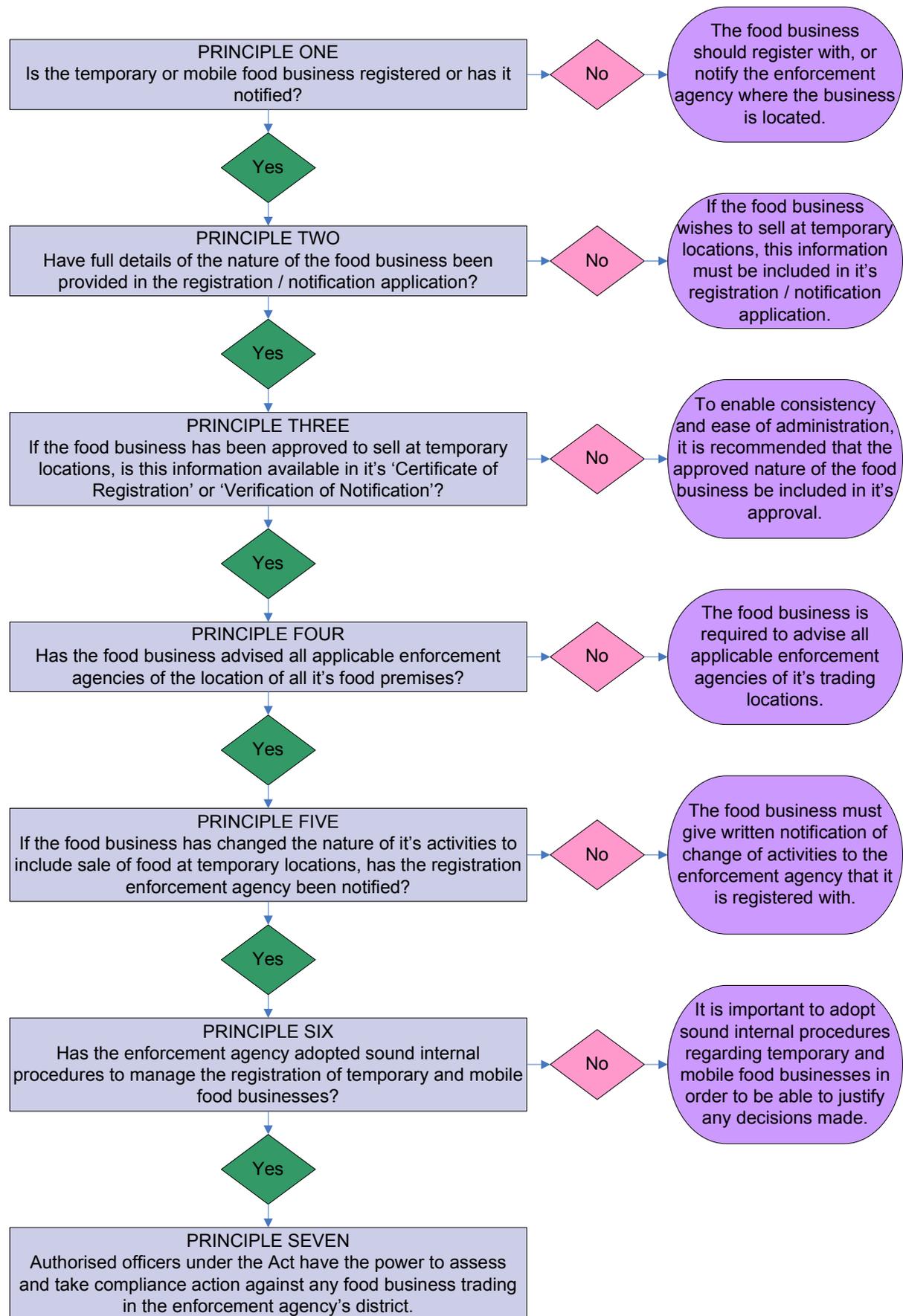
**Phone** +61 89388 4903

**Fax** +61 89382 8119

Any feedback or concerns please utilise the "Food Unit Query" form which can be downloaded from our website: [http://www.public.health.wa.gov.au/2/786/3/food\\_informatio.pm](http://www.public.health.wa.gov.au/2/786/3/food_informatio.pm)

*Note: The information contained in this document covers the food legislation requirements for Western Australia. It is current on the date of publication but may change without notice. The Department of Health is not liable for any costs arising from or associated with decisions based on information here and users should obtain expert advice to satisfy all requirements of the relevant food legislation applicable.*

## Appendix 1 – Registration and Notification Decision Making Advisory Tool



## Certificate of Registration

For the purposes of Section 110 (6) of Western Australia *Food Act 2008* (the Act) the approved form for the Certificate of Registration of a food business must include the information specified by the appropriate enforcement agency.

With respect to all food businesses, an enforcement agency should consider including the following conditions in the Certificate of Registration:

- That it is an offence to operate a food business in contravention of the *Food Act 2008*
- That it is an offence to make changes to the nature or activity of this food business without notifying the appropriate enforcement agency first
- That the food business has been approved to conduct only those activities that it has specified in the application to register
- That the food business has available to an Authorised Officer a copy of their Certificate of Registration.

With respect to temporary and mobile food businesses, an enforcement agency should include the following conditions where appropriate in the Certificate of Registration:

- That the food business is approved to sell food at temporary locations.
- Vehicle registration numbers to those food businesses approved to operate if applicable

**Approved by:**

Stan Goodchild  
**MANAGER**  
**FOOD UNIT**  
Public Health Division  
As delegate of the Chief Executive Officer

**Date approved:**

# Food Act 2008

Section 107

## VERIFICATION OF NOTIFICATION OF A FOOD BUSINESS

This is to certify that the following business

<NAME OF FOOD BUSINESS>

operated by <NAME OF PROPRIETOR>

has notified the <name of enforcement agency> of their intention to operate as  
a

<CLASSIFICATION OF FOOD BUSINESS>

in respect of the following premises:

<Address of the Premises>

for the following dates (if applicable)

### **Please note the following:**

- It is an offence to make changes to the nature or activity of this food business without notifying the <name of enforcement agency> first.
- It is an offence to operate a food business in contravention of the *Food Act 2008*.
- The <name of enforcement agency> will undertake enforcement action such as seize food or equipment, issue an infringement notice, improvement notice or prohibition order or initiate legal action through the courts should non-compliance be observed by an authorised officer.

Dated this <x> day of <month> <year>

# Delivering a Healthy WA

