

OFFICIAL

FINAL ASSESSMENT REPORT

PROPOSAL P290

**FOOD SAFETY PROGRAMS FOR CATERING
OPERATIONS TO THE GENERAL PUBLIC**

For Information on matters relating to this Assessment Report or the assessment process generally, please refer to <http://www.foodstandards.gov.au/standardsdevelopment/>

OFFICIAL

Executive Summary

P290 commenced in 2004 and was prepared following the Ministerial Council (now Food Ministers Meeting) request to FSANZ to amend the Code requiring specific ‘high risk’ businesses to implement Standard 3.2.1. The intent was to safeguard consumers from food-borne illness, without creating undue impost on industry and community groups. The proposal was to mandate food safety programs for food businesses that undertake catering activities that serve food to the general population. Following the draft assessment of P290, FSANZ prepared draft Standard 3.3.2. FSANZ invited submissions for the purpose of the final assessment of the draft Standard.

This work was paused in 2009 while ministerial policy guidelines were reviewed, eventually leading to a revised request to FSANZ to assess regulatory measures that could be applied in a more targeted and proportionate way to relevant food service businesses. P290 was paused during this review and has remained paused since then.

With updated guidelines issued in 2011, ministers requested FSANZ to address food safety in the catering and other food service sectors. Following consultation and establishment of a revised approach, FSANZ commenced P1053 – Food Safety Management Tools which reviewed food safety management in the food service and related sectors. This work was part of a broader review of chapters 3 and 4 of the Food Standards Code and superseded P290. Through Proposal P1053, FSANZ introduced Standard 3.2.2A in the Food Standards Code, which is a package of food safety management tools for food service and retail businesses, including the catering sector.

FSANZ has decided to reject draft Standard 3.3.2, for reasons explained in this paper.

Decision

FSANZ has rejected draft Standard 3.3.2 – Food Safety Programs for Catering Operations after Draft Assessment of P290.

Decision

- Taking into account comments received during P290 and P1053 consultation rounds and changes arising from P1053 to include Standard 3.2.2A in the Code, no variations to the Code are considered necessary as part of this Proposal.
- There are no expected additional costs to food businesses, consumers or regulatory agencies arising from rejecting the draft Standard prepared after Draft Assessment.

Consultation

- The Initial Assessment Report was released for comment from 26 May to 21 July 2004. The Draft Assessment Report was released for comment from 12 December 2007 to 5 March 2008. Thirty-seven submissions were received.
- Government and local council submissions generally supported the amendment but raised concerns about existing state regulations, implementation and enforcement and proposed drafting.
- Industry submissions raised concerns with the policy being based on (at that time) outdated ministerial policy guidelines, the evidence base and exemptions.
- Through Proposal P1053, FSANZ considered a targeted and measured package of food safety management tools for food service and retail businesses. This work included one round of public consultation in 2022.

CONTENTS

INTRODUCTION..... 4

1. BACKGROUND 4

2. THE PROBLEM 6

3. OBJECTIVES..... 6

4. RELEVANT ISSUES 7

5. REGULATORY OPTIONS 7

6. IMPACT ANALYSIS..... 7

 6.1 *Affected Parties* 7

 6.2 *Cost Benefit Analysis*..... 7

 6.3 *Comparison of Options* 8

COMMUNICATION 9

7. COMMUNICATION AND CONSULTATION STRATEGY 9

8. CONSULTATION 9

 8.1 *World Trade Organization (WTO)*..... 10

CONCLUSION..... 10

9. CONCLUSION AND DECISION 10

10. IMPLEMENTATION AND REVIEW 10

ATTACHMENT 1 - DRAFT VARIATION TO THE *AUSTRALIA NEW ZEALAND FOOD STANDARDS*
CODE..... 12

ATTACHMENT 2 - SUMMARY OF SUBMISSIONS ON THE DRAFT ASSESSMENT REPORT 15

Introduction

FSANZ prepared Proposal P290 to develop a standard for food safety programs for catering operations serving food to the general public in accordance with the Ministerial Policy Guidelines on Food Safety Management in Australia – as endorsed by the Ministerial Council (now Food Ministers Meeting) in 2003.

The Initial Assessment Report for P290 was released for public comment in May 2004. Following the draft assessment of P290, FSANZ prepared draft Standard 3.3.2 – Food Safety Programs for Catering Operations.

In 2009, P290 was paused while policy guidelines were reviewed, and a new Ministerial Policy Guideline was subsequently endorsed by the Legislative and Governance Forum on Food Regulation (as the Ministerial Council was then referred to). FSANZ then commenced Proposal P1053, which saw the introduction of new Standard 3.2.2A into the Code in 2023.

This report covers the history of Proposal P290, its scope and the objective of Proposal P1053, gazettal of standard 3.2.2A and now the proposed rejection of draft Standard 3.3.2.

1. Background

Addressing high risk sectors

In 2003 the Ministerial Council requested FSANZ amend the Code to require specific ‘high risk’ businesses to implement Standard 3.2.1 – Food Safety Programs. This was to safeguard consumers from food-borne illness without creating undue impost on industry and community groups and to address comments received from stakeholders.

A high-risk food business was identified as:

- food service in which potentially hazardous food¹ is served to vulnerable populations²
- harvesting, processing and distribution of raw oysters and other bivalves³
- catering operations serving food to the general public
- production of manufactured and fermented meat⁴.

FSANZ was already developing a primary production and processing (PPP) standard for seafood. Amendments to Standard 1.6.2 - Processing Requirements for Meat in 2003 and development of the PPP standard for meat in 2005 dealt with processing risks of uncooked comminuted fermented meats. This work addressed two of the four high-risk sectors.

Addressing the high risk catering sector: P290

¹ A potentially hazardous food is a food that has to be kept at certain temperatures to minimise the growth of any pathogenic microorganisms that may be present in the food or to prevent the formation of toxins in the food.

² Addressed via Standard 3.3.1 in 2006

³ Addressed via Standard 4.2.1 in 2005

⁴ Addressed via Standard 1.6.2 in 2003 and via Standard 4.2.3 in 2005

OFFICIAL

Under P290, FSANZ proposed mandating food safety programs for food businesses that undertake catering activities that serve food to the general population. The proposal identified two regulatory options:

Option 1 – to maintain the status quo and not adopt Standard 3.3.2 to mandate compliance with Standard 3.2.1 – Food Safety Programs, by food businesses undertaking catering operations serving food to the general public.

Option 2 – to adopt Standard 3.3.2 to mandate compliance with Standard 3.2.1 – Food Safety Programs, by food businesses undertaking catering operations serving food to the general public.

The Initial Assessment Report was published and the first call for submissions occurred from May to July 2004. The draft assessment report was published and the second call for submissions occurred from December 2007 – March 2008. Draft variations to the Code proposed at Draft Assessment are in Attachment 1.

In early 2009 FSANZ received jurisdictional feedback on concerns with P290 that the policy applying food safety management tools, specifically food safety programs, to certain food businesses was out of date and may no longer be appropriate. Jurisdictions sought a nationally led discussion on food safety risk management, with the potential they would seek the policy be revisited.

On 1 May 2009, the Ministerial Council agreed in-principle to review the Ministerial Policy Guidelines on Food Safety Management in Australia – Food Safety Programs, excluding existing requirements applying to food service to vulnerable populations. The Ministerial Council noted FSANZ paused work on P290 Food Safety Programs for Catering Operations pending ministerial consideration of the review's report.

On 9 December 2011, the Legislative and Governance Forum on Food Regulation (the Forum) endorsed the new Ministerial Policy Guideline on Food Safety Management for General Food Service and Closely Related Retail Sectors⁵.

The new guidelines focused on food safety programs and whether Standard 3.2.1 or other versions in jurisdictional legislation, were a means to implement Standards 3.2.2 and 3.2.3 and ensure the required food safety outcomes are met.

In June 2018, the then Australia and New Zealand Ministerial Forum on Food Regulation (the Forum, previously Ministerial Council) noted the number of foodborne illness outbreaks in Australia. They agreed there was a need to review food safety risk management in the food service and closely related retail sectors and requested FSANZ complete this review.

Through Proposal P1053, FSANZ considered a package of food safety management tools for food service and retail businesses. This work covered and superseded the goals of the proposed approach of P290.

On 14 September 2022, the FSANZ Board approved a new food standard, Standard 3.2.2A applying new regulatory measures to food service and retail businesses that handle potentially

⁵ [Policy guideline on food safety management for the retail and food service sectors | Food Regulation](#)

hazardous food. The new regulatory measures are: food handler training; food safety supervisor; and evidence to substantiate food safety management of key processes. The standard was gazetted on 8 December 2022 and is now part of the Australia New Zealand Food Standards Code and Australian food law.

2. The Problem

Matters initially identified for review through Proposal P290 were:

- that catering operations serving food to the general public were a ‘high risk’ sector based on the incidence and estimated cost of food-borne illness associated with catering and the benefits from implementing a food safety program requirement for this sector outweigh the costs.
- Previously the Ministerial Policy Guidelines stated that at a minimum, Standard 3.2.1 is to be implemented by businesses involved in catering operations serving food to the general public.
- Previously, there were no mandatory requirements in the Code for Standard 3.2.1 to be implemented by businesses that undertake catering operations for the general public.

P290 was paused pending the update to the Ministerial Policy Guidelines and remains on the FSANZ workplan.

The matters described above were considered as part of P1053, superseding the scope and objectives of P290.

3. Objectives

In developing or varying a food standard, FSANZ is required by its legislation to meet three primary objectives which are set out in Section 18 of the FSANZ Act. These are:

- the protection of public health and safety;
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

In developing and varying standards, FSANZ must also have regard to the following matters:

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;

OFFICIAL

- the desirability of an efficient and internationally competitive food industry;
- the promotion of fair trading in food; and
- any written policy guidelines formulated by the Forum on Food Regulation.

The objectives of this Proposal were to ensure that the review of Standard 3.2.1 included the consideration of issues in a manner consistent with Section 18 objectives of the FSANZ Act and with the principles of minimal effective regulation.

4. Relevant Issues

Public submissions to the Initial Assessment and Draft Assessment Reports raised issues, some of which are no longer relevant or have been addressed as part of P1053. These have been summarised in Attachment 2.

5. Regulatory Options

Possible regulatory options for Proposal P290 are

- Option 1 - to maintain the status quo and reject Standard 3.3.2
- Option 2 - to approve Standard 3.3.2

Given the revised ministerial policy guidance and that issues have largely been addressed through new standard 3.2.2A, the appropriate regulatory option in this situation is option 1.

6. Impact Analysis

6.1 Affected Parties

The parties affected by this proposal are:

- food businesses that undertake on and off site catering activities in Australia;
- consumers in Australia; and
- Australian State and Territory Governments involved in the enforcement of the Code.

6.2 Cost Benefit Analysis

Two bodies of work on cost-benefit were done on the above options that were consistent with the original ministerial policy settings – to mandate food safety programs; both analyses concluded that while mandating implementation of Standard 3.2.1 includes significant costs, benefits outweighed costs for all but ‘low risk’ businesses.

OFFICIAL

- The 2002 Allen Consulting Group Report Food Safety Management Systems, Costs, Benefits and Alternatives made an assessment of:
 - the costs and benefits of meeting previous State and Territory food safety regulations;
 - the incremental costs and benefits of meeting Standards 3.1.1, 3.2.2 and 3.2.3 given current practice (at that time);
 - the incremental costs and benefits of meeting Standard 3.2.1 given achievement of Standards 3.1.1, 3.2.2 and 3.2.3;
 - the advantages and disadvantages of alternatives to a requirement for food safety programs; and
 - ways in which compliance costs of meeting the Standards could be minimised.
- The National Risk Validation Project included a cost/benefit analysis of implementing food safety programs, specifically for high-risk food industries. The total cost of food-borne illness associated with catering operations serving food to the general population was estimated to be \$540 million per year or 49 cents per meal. A benefit cost ratio was calculated at 9.9 (for class 1 outbreaks⁶) and 10.4 (class 1 and 2 outbreaks)..

With the shift in Ministerial Policy Guidelines, these options and their analyses were no longer relevant in the updated policy context. Subsequent analyses under P1053 indicated a more risk-proportionate approach using the food safety management tools in Standard 3.2.2A provided a benefit⁷.

Regulatory Impact Statement

The Office of Regulation Review assessed the regulatory impact analysis for options under the original Ministerial Policy Guidelines on Food Safety Management in Australia: Food Safety Programs taking into account:

- whether the Regulatory Impact Statement guidelines had been followed;
- whether the type and level of analysis were adequate and commensurate with the potential economic and social impact of the Proposal; and
- whether alternatives to regulation have been adequately considered.

The Office of Best Practice Regulation considered these matters were adequately addressed⁸ under the original policy guidelines. With the revision of the guidelines and new proposal P1053, FSANZ prepared a Decision Regulation Impact Statement which was approved by the Office of Best Practice Regulation (Reference - OBPR21-01217).

6.3 Comparison of Options

⁶ Class 1 outbreaks are those where it is reasonable to assume that the cause of illness would have been detected and remedied by measures put in place under a food safety program. Class 2 outbreaks are those where the information on the source of the outbreak is insufficient to make a judgement on the likely effectiveness of a food safety program.

⁷ Proposal P1053 - Food Safety Management tools | Food Standards Australia New Zealand

⁸ OBPR reference number 3339

6.3.1 Option 1 – maintain the status quo

Option 1 means no amendment is made to the Code to apply a national requirement for food businesses undertaking catering operations serving food to the general population to comply with Standard 3.2.1. This option would be consistent with revised Ministerial Policy Guidelines that instead sought to apply targeted and proportionate food safety management tools in food service sectors, including caterers. Under P1053, FSANZ reviewed food safety measures for the food service sector and concluded the measures now included in Standard 3.2.2A would provide a net benefit if applied in a well targeted manner.

6.3.2 Option 2 – adopt Standard 3.3.2

Adoption of Standard 3.3.2 would mean that compliance with Standard 3.2.1 would be a national requirement for food businesses undertaking catering operations serving food to the general population. This option excludes businesses occasionally catering and on-site caterers where the event is for less than 50 persons. It also exempts community or charitable fundraising events, as per Standard 3.2.1, from needing to have a food safety program.

A requirement for a food safety program in businesses undertaking catering operations would not be consistent with revised ministerial guidelines that sought less burdensome and targeted regulatory measures across food service sectors. With the introduction of Standard 3.2.2A, the intent of P290 has been achieved and this option is superseded.

Communication

7. Communication and Consultation Strategy

Two rounds of public consultation were held resulting in this Final Assessment. FSANZ has ensured relevant stakeholders and other interested parties were made aware of the Proposal, including industry and jurisdictional food regulatory authorities.

8. Consultation

Consultation on the Initial Assessment Report occurred from 26 May 2004 to 21 July 2004. Fifteen submissions were received. The summary of these comments and FSANZ responses can be found in Attachments 2 and 3 to the Draft Assessment Report⁹.

Consultation on the Draft Assessment Report occurred from 12 December 2007 to 5 March 2008. Nine submissions were received. As P290 was paused, these submissions were considered in light of the reviewed ministerial policy guidelines, in an information paper reviewing the food safety management standards in 2019¹⁰ and through P1053.

⁹ [Proposal P290 - Food Safety Programs for Catering Operations to the General Public | Food Standards Australia New Zealand](#)

¹⁰ <https://www.foodstandards.gov.au/sites/default/files/2023-11/Review%20of%20food%20safety%20management%20standards%20-%20information%20paper.pdf>

8.1 World Trade Organization (WTO)

A WTO notification is not necessary as this proposal is being rejected. Further, no notification would have been necessary as this standard only applied within Australia.

Conclusion

9. Conclusion and Decision

- Through Proposal P1053, FSANZ considered a package of food safety management tools for food service and retail businesses. This work was part of a broader review of chapters 3 and 4 of the Code.
- On 14 September 2022, the FSANZ Board approved a new food standard, Standard 3.2.2A applying new regulatory measures to food service and retail businesses that handle potentially hazardous food. The standard was gazetted on 8 December 2022 and is now part of the Australia New Zealand Food Standards Code and Australian food law.
- The goals of P290 to address food safety in the catering sector have been achieved by the introduction of Standard 3.2.2A of the Code.

Decision

FSANZ has rejected the draft Standard 3.3.2 – Food Safety Programs for Catering Operations after Draft Assessment of P290.

Decision

- Taking into account submissions received in the first and second rounds of consultation for P290, and the existence of Standard 3.2.2A, FSANZ has decided further variations to the Code are not necessary.
- There are no expected additional costs to food manufacturers, consumers or regulatory agencies arising from the rejection of the draft variations prepared after Draft Assessment.

10. Implementation and Review

There are no amendments to the Code arising from this Proposal. FSANZ will continue to monitor the operation of Standard 3.2.2A and seek and receive information from industry, consumers and regulatory agencies about the operation of the standard. Where necessary and as part of other standards development processes, FSANZ will consider amendments to the Code to address issues.

ATTACHMENTS

1. Draft variations to the *Australia New Zealand Food Standards Code* at Draft Assessment.
2. Summary of Public Submissions on the Draft Assessment Report.

Attachment 1 - Draft variation to the *Australia New Zealand Food Standards Code*

Standards or variations to standards are considered to be legislative instruments for the purposes of the Legislative Instruments Act (2003) and are not subject to disallowance or sunseting.

To commence: 24 months from gazettal

The Australia New Zealand Food Standards Code is varied by inserting -

STANDARD 3.3.2

FOOD SAFETY PROGRAMS FOR CATERING OPERATIONS

(Australia only)

Purpose and commentary

This Standard sets out food safety program requirements for certain food businesses which process, transport or serve categories of food for catering events.

Table of Provisions

- 1 Interpretation
- 2 Application
- 3 Food safety programs

Clauses

1 Interpretation

- (1) Unless the contrary intention appears, the definitions in Parts 3.1 and 3.2 of this Code apply in this Standard.
- (2) In this Standard –

catering event means an event involving the provision of food under an agreement under which the food is –

- (a) of a predetermined type or quantity; and
- (b) for a predetermined group of persons; and
- (c) served at a predetermined time.

serve means to set out or present food for those about to eat.

OFFICIAL

2 Application

- (1) Subject to subclauses (2) and (3), this Standard applies to a food business that, during the previous 12 months of its operation, has engaged in any of the activities listed in the Table for 12 or more catering events.

Table to subclause 2(1)

Activity	Meaning of Activity
Activity 1 on site catering activity	Processing food at one location to a state where the food is ready-to-eat food and always includes potentially hazardous food, for service at a catering event – (i) held at the same location; and (ii) for 50 or more persons at the same sitting.
Activity 2A off site catering activity	Processing food at one location to a state where the food is – (i) ready-to-eat food; or (ii) partially cooked food; which always includes potentially hazardous food, where the food is for service at another location for a catering event.
Activity 2B off site catering activity	Transporting – (i) ready-to-eat food; or (ii) partially cooked food; which always includes potentially hazardous food, from one location to another location for service at a catering event.
Activity 2C off site catering activity	Serving ready-to-eat food which always includes potentially hazardous food at a catering event, where the food was processed at a different location.

- (2) This Standard does not apply to a food business that operates an eating establishment such as a restaurant, café or takeaway food outlet –
- (a) that sells ready-to-eat food to be taken away or consumed on the premises; and
 - (b) where the food business engages in Activity 2A(i) or Activity 2B(i), but no other activity listed in the Table, and where the food –
 - (i) does not require further portioning, garnishing, re-heating or similar finishing prior to service, (for example, potentially hazardous sandwiches); and
 - (ii) is for pick up or delivery for office lunches or similar events.
- (3) To avoid doubt, this Standard also does not apply to a business that only provides staff for a catering event.

Editorial note:

‘Process’ in relation to food is defined in Standard 3.2.2 as an activity conducted to prepare food for sale including chopping, cooking, drying, fermenting, heating, pasteurising, thawing and washing, or a combination of these activities.

‘Potentially hazardous food’ is defined in Standard 3.2.2 as 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.

‘Ready-to eat food’ is defined in Standard 3.2.2 as food that is ordinarily consumed in the same state as that in which it is sold and does not include nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer.

3 Food safety programs

- (1) A food business to which this Standard applies must, when engaging in any of the catering activities listed in the Table to subclause 2(1), comply with Standard 3.2.1 for all the food handling operations associated with the catering activity.
- (2) For subclause 3(1) of this Standard –
 - (a) clause 2 of Standard 3.2.1 (application of Standard 3.2.1) does not apply; and
 - (b) clause 6 of Standard 3.2.1 (exemption for fund raising events) applies.

Attachment 2 - Summary of submissions on the draft assessment report

Implications for (then) existing state regulations

- Some state regulations go beyond the proposed FSANZ Standard (ie – they do not exclude fundraising events or ‘occasional’ off-site catering events)
- One jurisdiction sought the auditing clause of Standard 3.2.1 not be included – businesses that chose to use their FSP Template are only subjected to an ‘assessment’ and ‘review/ compliance check’ – they are not ‘audited’
- One jurisdiction sought clause 2 of Standard 3.2.1 (the application of 3.2.1 based on the priority classification system) not be removed as it ‘gives them local level flexibility in the application of the standard without compromising national consistency’.

Implementation and enforcement issues

- It will be difficult to locate, contact and enforce the standard on certain caterers (eg – tourism/charter boat operators, ‘backyard’ and ‘cowboy’ caterers conducting off-site catering). (*raised by government*)
- It would be difficult to enforce:
 - the seating capacity for on-site events
 - when a business has surpassed the 12 events that defines an occasional caterer
 - that the food safety program only applies to the catering component of the business and not other components e.g. – al la cart operations
(*raised by government and industry*)
- The food regulatory system was not nationally coordinated and consistent implementation and interpretation of requirements of standards needed attention. Consideration should be given to consistent implementation and enforcement including through the approval of tools, templates, verification and audit processes. (*raised by government and industry*)
- There was strong support for the development of support materials to assist enforcement agencies (interpretive guide) and businesses (non-mandatory templates). (*raised by government and industry*)

The drafting of the proposed standard

- The exemption for cafes/take-aways etc that *only* provide platters of sandwiches etc for office lunches continues to be problematic as it could open the door to unintentionally exempt many catering events. (*raised by government and industry*)
- Take-aways that supply a large amount of food for a party may still be unintentionally captured (*raised by government*)

Allergen management

Some submissions queried whether allergen management would/could be addressed by the standard including cross-referencing to the existing obligations for restaurant and caterers under Standard 1.2.3 and requiring that allergens be addressed as a potential hazard within their food safety program.

OFFICIAL

Concerns with different existing exemptions

Exemption for fundraising events:

- Some submissions did not support exempting fundraising events from the requirements of the proposed standard, as they pose a similar risk and it would result in a competitive advantage to these businesses and distort the market.

Exemption for eating establishments:

- Some submissions considered FSANZ's interpretation of Ministerial Policy Guidelines that restaurants are only exempt when they only 'occasionally' cater was incorrect – it was the intent of the Guidelines to exempt eating establishments altogether.

Exemption for 'occasional' caterers:

- Some submissions considered all caterers should be included, regardless of their catering frequency, arguing these occasional caterers present a greater risk due to the low frequency they produce and serve food in bulk and are less likely to adopt a voluntary food safety program.
- Some submissions that did not agree with the exemption were disputing the number of events (12 times per year) that defined 'occasional'. Clubs Australia considered it would capture many small to medium clubs and an appropriate number was *50 times per year or one third of their revenue being derived from catering*.

Exemption for on-site catering events for <50 people

- Submitters disputed the minimum number of 50 people was an arbitrary figure and considered it too high; some advocating there be no minimum seating number.
- The decision to exempt on-site catering events for <50 people was 'based on flawed advice'.

Concerns with the original evidence base

Industry representatives raised concerns with the original evidence base (the National Risk Validation Project and the Allen Report) and the Ministerial Policy Guidelines, including:

- The definitions in the Ministerial Policy Guidelines are based on flawed advice
- Disagreement with the interpretation of terms used in the Guidelines
- There is no evidence that compliance with a food safety program will reduce the number of food poisoning incidents attributable to catering
- There are significant risks that food safety programs will fail to deliver improvements in food safety and a reduction in foodborne disease due to:
 - failure to properly implement food safety plans by businesses
 - a lack of suitably competent and certified auditors
 - inconsistency between auditors performing verification and compliance audits
 - the failure of some jurisdictions to adopt appropriate legislation and approval mechanisms
- That the cost/benefit analysis and economics will always compromise patron safety