

Powers of authorised officers

Under the *Food Act 2003*, the role of the NSW Food Authority is to ensure that food in NSW is safe and correctly labelled.

Legislation for the Authority's work

Authority officers enforce the *Food Act 2003* and the *Food Regulation 2004* relating to the sale and production of food.

The Act and Regulation:

- set out the legal obligations of owners and employees engaged in the food industry,
- set out the Authority's functions and responsibilities,
- describe the legislative objectives and outcomes and set out the maximum penalties for non-compliance, and
- assign various powers to the Authority and its authorised officers to administer and enforce the law.

What is the role of an authorised officer?

The NSW Food Authority's authorised officers are appointed by the Director-General to ensure that all persons working in the food industry meet their obligations under the *Food Act*. This includes the obligation to ensure that their products are properly labelled, safe and suitable for human consumption.

Officers may visit a food business to investigate a particular incident, eg foodborne illness, or as part of a specific program. They may investigate complaints about labelling and food production or conduct an audit or inspection without prior warning.

Officers may also:

- provide information, education and advice on the requirements of food safety law and food standards,
- explain the Authority's role and services,
- provide advice on how to develop and improve systems to comply with food production and labelling requirements,
- monitor compliance with or investigate breaches of legislation, including conducting interviews with management and staff,
- investigate cases of foodborne illness,

- investigate reports of unclean or unhealthy conditions, and
- initiate enforcement action, such as improvement notices, prohibition orders, penalty notices and prosecutions.

The officer may be accompanied by a NSW Police officer or anyone considered necessary. They will talk to a range of people in order to gather information, provide advice or take appropriate action to improve food safety.

All officers carry a Certificate of Authority with photographic identification to produce upon request.

What powers do officers have?

A NSW Food Authority authorised officer has the power to:

- enter and investigate any premises or food transport vehicle which they believe is being used in connection with the handling of any food intended for sale,
- request someone's name and residential address, conduct interviews and make inquiries,
- take photographs, films or audio or visual recordings,
- take measurements, and make sketches or drawings or any other type of record,
- gather information, examine and take or copy any records or documents and retain them for any reasonably necessary time,
- examine food intended for sale, labelling or advertising material, including opening packaging,
- open and examine any equipment,
- take samples of any food or thing,
- take samples of water, soil or anything that is part of the environment to determine whether that environment poses a food safety risk,
- open, or require to be opened, any container used for foods, or any package,
- stop and detain any vehicle used for storage and transport of food,
- undertake investigations and inquiries to ascertain whether an offence has been or is being committed under the Act or Regulation,

- seize food, vehicles, equipment, package or labelling or advertising material that is evidence of an offence under the Act, and
- issue notices:
 - requiring owners and operators to remedy non-compliance with the Act and Regulation,
 - prohibiting food production and sale continuing until the breach is fixed, and
 - for on-the-spot fines for breaches of the legislation.

In carrying out their duties, officers may call on scientific experts, NSW Police and anyone necessary.

Payment for samples

When obtaining a sample of food an officer must offer to pay for it. If the market value is over \$10, the amount payable for the sample is limited to \$10.

What happens when an authorised officer enters property or premises?

Officers have wide powers of entry. When officers attend a food business the operator of that business should ensure that all staff are:

- briefed about the rights of officers, and
- aware of their obligation to comply with a requirement of an authorised officer, including the obligation to provide access to any part of the food business.

If, during an investigation, an officer identifies a breach of the Act, that officer will collect evidence of the:

- nature and seriousness of the breach, and
- steps taken by the food business to ensure that they meet their obligations under the Act, including their obligation to ensure that the food they produce or sell is safe to consume, suitable and properly labelled.

Any enforcement action taken by the Authority will be taken in accordance with its Compliance and Enforcement Policy.

Offences against authorised officers

It is an offence for a person, without a reasonable excuse, to:

- fail to comply with a requirement of an authorised officer
- resist, obstruct, or attempt to obstruct, impersonate, threaten, intimidate or assault an authorised officer in the course of his or her duties
- without the permission of an authorised officer, detain, remove or tamper with any food, vehicle, equipment, package or labelling or advertising material or other thing that has been seized
- provide any information or produce any document that the person knows is false or misleading

Penalties for offences against officers

Offences against officers undertaking their duties under the Food Act can incur a maximum penalty of 500 penalty units (\$55,000).

Qualifications of Authority's authorised officers

Many Authority officers hold tertiary qualifications in health and food safety related disciplines. To qualify as an authorised officer they must undergo an intensive training program. Officers regularly attend specialist courses and briefings to make sure their skills and knowledge are at the forefront of food industry best practice.

Officers are based in one metropolitan and several regional offices throughout NSW.

Complaints about authorised officers

Complaints about an authorised officer can be made to:

Executive Director Compliance, Investigation & Enforcement
 NSW Food Authority
 PO Box 6682
 Silverwater NSW 1811
 1300 552 406

About the NSW Food Authority

The NSW Food Authority is the government organisation that helps ensure NSW food is safe and correctly labelled.

It works with consumers, industry and other government organisations to minimise food poisoning by providing information about regulating the safe production, storage, transport, promotion and preparation of food.

More information

- visit the NSW Food Authority's website at www.foodauthority.nsw.gov.au
- phone the helpline on 1300 552 406

Other resources

- The Food Standards Code, Food Act 2003 and Food Regulation 2004 can be found at www.foodauthority.nsw.gov.au/industry/food-standards-and-requirements/legislation/
- The NSW Food Authority Compliance and Enforcement Policy can be found at www.foodauthority.nsw.gov.au/_Documents/industry_pdf/compliance-enforcement-policy-oct-06.pdf