

# Section 19W directions

## Food Act 1984

Food Safety and Regulation

February 2011

## Different powers:

- Section 19
- Section 19W - complement s.19 & address gaps in Act

## Notices to remedy deficiencies:

- 19IA - following food safety assessment

Emphasis on hygiene, handling practices and premises:

- premises unclean or in a state of disrepair
- food handled or sold that is unsafe or unsuitable
- food handled “in a manner that makes it likely the food is unsafe or unsuitable”

Current deficiencies that can cause harm

## Direct that:

- premises be put into clean or sanitary condition or altered - s.19(2)
- specified steps be taken to ensure food is safe and suitable – s.19(2)
- council or CEO may temporarily close premises or make a more targeted order prohibiting a specific process or usage- s. 19(3)
- may separately order publication of closure notice or affixing of that order to premises – s. 19(4)(a)

### Proportionate regulatory response

- degree and seriousness of risk
- is the order needed to ensure proprietor remedies problems?

Advise Manager, Compliance in DH Food Safety & Regulation  
Unit about closure orders – s. 19(4)(b)

Regulatory requirements to embed safe handling practices & avoid harm in future

Systems to aid compliance with –

- general obligations in Act to sell safe food
- ch 3 of the Food Standards Code

Generally failure to comply may be taken into account in registration decisions

## Current requirements

	<b>Class 1</b>	<b>Class 2</b>	<b>Class 3</b>
Non-standard FSP	*	*	
Standard FSP (template)		*	
Food Safety Supervisor	*	*	
Minimum records			*

(no registered templates registered for class 1 FSP currently)

## What if a business does not comply?

- Check classification correct
- Has council advised proprietor of obligations & how to comply?
- May not have grounds for section 19 order
- Section 19W?

Secretary or registration authority may direct proprietor to comply with any requirement under Part IIIB:

- many flow from declaration under section 19C & linked to classification
- referred to in various provisions in Part IIIB
- items listed in s.19W(2) not exhaustive; do not limit s. 19W(1)

## 1. FSP complies with section 19D

- if a standard FSP: must be correct template & completed in accordance with instructions (currently class 2 only) - s. 19DC & 19E(2)
- if a non-standard FSP – audit certificate issued by auditor - s. 19E(3)

## 2. FSP is right type (non-standard for class 1& 2, or template for class 2)

## 3. Proprietor must comply with program

## 4. Copy to registration authority, if requested

## Class 1 and 2: food safety programs

5. Ongoing adequacy – s. 19E, 19 EA(2)

6. Copy of substantial revisions

- class 1 non-standard FSP
- within 14 days to council

s. 19EA(3)

## Class 1 and class 2

Must keep FSP at the premises to which it relates:

- offence
- infringement offence

## Class 1 & 2 : food safety supervisor

Class 1 and 2 must have a food safety supervisor - s. 19GA(1)

- knowledge about food handling hazards at premises
- competency standard relevant to premises
- ability and authority to supervise – s. 19G

but...

A food safety supervisor is not required if –

- community group class 2 activity & majority of volunteers handling & activity for up to 2 days - s. 19GA(1) and s. 19C
- premises has a QA FSP\* that includes competency based or accredited training for staff - s. 19GA(2)

\* QA FSP must be made under a QA system or code declared under the Act; none are declared at this stage

## Class 1 or 2 - QA food safety program

If this type of FSP has staff training requirements-

- can direct that they are complied with - s. 19W(2)

(No QA systems or codes declared as yet)

## Class 1 & 2 : audit

Must have premises audited in accordance with Act

### 1. Current “default” requirements for non-standard FSP:

- one annual audit (class 1 and 2) – 19K(1)(a)
- by an approved food safety auditor – 19K(1)(b)

### 2. Up to 3 extra audits/assessments at 3 monthly intervals, if required by council under s. 19H(4)&(5) for non-compliant business – 19K(1)(a)

## Section 19CB(4):

- Maintain the applicable records required in declaration
- Keep for the duration required in declaration (one year)
- If requested to do so by registration authority, provide a copy of the minimum records within the time specified

## Section 19CB(6):

- Keep records at the premises to which they relate -
  - offence
  - infringement offence

## When to use?

- Most breaches of Part IIIB are not an offence
- Generally use s. 19W direction when –  
satisfied there is a breach, and  
advice/warning has not solved the problem, and  
wish to escalate
- “mid level” response

## When to use?

Also useful formal process prior to considering issuing an infringement for -

- no FSP or minimum records on site
- failure to provide details of food safety supervisor

Minor record keeping breaches where infringement or prosecution not proportionate:

- where no safety/hygiene breaches or
- some gaps in records

# Hierarchy of enforcement tools

- Level 1
  - Advice
  - Warnings
  - Official warnings
- Level 2
  - Directions about food safety programs, minimum records or appointing a food safety supervisor (s19W)
  - Seizures
  - Notices to comply following a food safety assessment (s19IA) or food safety audit (s 19M)
  - direction about hygiene (s19) or
  - Infringement offences (s56A)
  - Registration conditions (s39A)
- Level 3
  - Temporary closure or restriction of operations (s19)
  - Prosecutions (s45AC)
  - Refusal to renew registration (s38D)
  - Revocation or suspension of registration (s40D)

## Direction about training - s 19W (3)

Secretary or registration authority may direct proprietor to -

- have staff at premises undertake training or instruction within specified time
- ensure requirements of Act are met

and may also:

- require details of any staff training incorporated into minimum records or FSP

## Direction about training - s 19W (3)

What are the requirements of Act?

- that food is safe and suitable
- that FSP complied with (class 1 and 2)
- Food Standards Code (most relevant to training direction)

The proprietor of food business must ensure that persons undertaking or supervising food handling operations have-

- (a) skills in food safety and food hygiene matters; and
- (b) knowledge of food safety and food hygiene matters-  
*commensurate with their work activities.*

(Exception for certain fundraisers)

clause 3(1), standard 3.2.2.

Outcome based- does not specify the “how”

Proprietor can comply by -

- in house training, instructions from food safety supervisor
- operating procedures about responsibilities
- attending courses by council or industry associations
- formal training courses (based on various competencies)

Explain options to proprietor

## Direction about training - s 19W (3)

- Must have grounds & evidence for extra obligation
- Directions must be proportionate to problems identified in staff practices
- Start with education, FSANZ guide, discussion with FSS or proprietor
- Recommend <http://dofoodsafely.health.vic.gov.au/>  
or council sessions
- Transitory nature of food staff often makes formal training impractical

## Direction about training - s 19W (3)

Start with enforcing compliance with standard Part IIIB requirements (e.g. FSS for class 1 and 2)

Use as last resort measure where –

- other options have failed
- training/instruction necessary
- concern is about staff knowledge

Is the problem best addressed by a s. 19 order instead? (e.g. serious threat to public health)

# Issuing a section 19W direction – the steps

## Tips

- Be satisfied you can justify making the direction
- Is a less burdensome option available?
- Be realistic
- Made by council or appropriate delegate
- Make obligations clear
- Ensure made to the proprietor
- Must be in writing

## Wording of section 19W direction

- specify date made, and date takes effect
- that the direction is made under s 19W(1) &(2) or (3)- select correct power
- specify the obligation under the Act not being met, including provision
- clearly specify action that proprietor must take in clear terms
- specify timeframe (suitable, based on nature of concern and what is feasible)- at least 28 days
- advice about potential consequences from failure to comply: may affect registration

## Failure to comply with direction

May be grounds for -

- refusal to register, renew registration or transfer registration of premises;
- revocation or suspension of registration

*if reasonable in the circumstances.*

Section 19W(5)

## Failure to comply with direction

Will depend upon seriousness of breach

- intended for major breaches

Consider especially at renewal, if pending at that time (section 38D) and is significant

No FSP on site, no minimum records on site, or failure to provide details of food safety supervisor- may be better addressed by infringement notice, if direction ignored