

Food Safety Act and Regulations

Purpose

An Act to:

- 1) promote public health and safety with regard to food
- 2) regulate the preparation, sale and use of food
- 3) assist consumers make informed choices on food
- 4) promote fair trading practices in relation to food and
- 5) for related matters.

Food Safety Act and Regulations

Definitions (1/2)

‘Food’ means ... and includes ... = very broad.

Additionally, section 2(2), FSA states that the “Board may ... declare to be food any substance (a) intended for consumption or (b) represented for consumption that does not come within the definition of food.”

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Definitions (2/2)

‘Owner’ and ‘importer’ “... includes ... a person in possession or control of any food” and “... includes a person who as owner, consignor, agent or broker is entitled to the possession, custody or control of imported food, whether or not it has been purchased by them.”

Question: do these definitions include a company?
See section 2(1), Interpretation Act for definition of ‘person’.

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Unsafe, Unhygienic or Unfit for Consumption (1/6)

Section 3, FSA: A person who prepares, packs, keeps, conveys, sells or gives free of charge any food which is unsafe, unhygienic or unfit for consumption commits an offence.

Exemptions under section 70(1)(m) and (n), FSA.

Exemptions affecting Fijians will only be valid if and when the Fijian Affairs Board provides a written certificate under section 11 of the Fijian Affairs Act.

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Unsafe, Unhygienic or Unfit for Consumption (2/6)

Section 3(2), FSA provides some guidance on what is 'unfit for consumption' – it deems food to be 'unfit for consumption' under certain circumstances as detailed in sub-sections (a) to (i).

Can food be deemed 'unfit for consumption' under circumstances outside those detailed in section 3(2)?

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Unsafe, Unhygienic or Unfit for Consumption (3/6)

Section (3), FSA: The Board may declare any food to be unfit for consumption if the food does not comply with internationally adopted food standards under Codex Alimentarius, or if scientific evidence shows the food to be unfit for consumption.

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Unsafe, Unhygienic or Unfit for Consumption (4/6)

Question: Unlike with 'unfit for consumption', there is no guidance in the FSA, FSR or Interpretation Act on the words 'unsafe' or 'unhygienic'.

Any guidance in the CL?

Do we use the ordinary, every meaning?

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Unsafe, Unhygienic or Unfit for Consumption (5/6)

Scenario: Food establishment sells food which comprises several elements, including peanuts (for example). I am allergic to peanuts. I buy and consume this food. I suffer a very bad allergic reaction to the peanuts and almost die.

Is the food establishment in contravention of the FSA?

See section 3(1), section 3(2), section 5, section 13 including sections 13(2) and (5), FSA.

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Unsafe, Unhygienic or Unfit for Consumption (6/6)

Note that the Australia New Zealand Food Standards Code has the following explanation of the meaning of 'safe and suitable food':

“... food is not unsafe merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons.”

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Adulterated Food

Section 4, FSA makes it an offence to sell or prepare, pack, keep or convey for the purpose of sale, any food which is adulterated.

Section 4(2) details circumstances under which food is deemed to be adulterated and section 4(3) lists the exceptions to this deeming provision.

Can food be deemed to be unadulterated under circumstances outside those listed in section 4(2)?

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Sale of Mixture

Section 5, FSA requires the selling of food as a mixture to be represented as such and to be sold with all and accurate information about the mixture.

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Protection for Purchasers

Section 7, FSA – purchasers of food which is subject to a prescribed standard are deemed to have demanded that the food complies with that standard.

If there no prescribed standards, the purchaser is entitled to receive the food of a standard which is reasonable to expect under fair trading practices.

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False, Misleading or Deceptive Representation

Section 8 – offence to sell or prepare, pack, keep, convey label or advertise any food for sale which is false, misleading or deceptive and induces a consumer to buy.

What if the consumer is not induced to buy?

Section 8(2) details circumstances which are deemed to be false, misleading and deceptive.

Can circumstances outside those listed in section 8(2) be considered false, misleading or deceptive?

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Labelling

Section 13(1), FSA lists the information which the label on every package of food intended to be sold must contain.

Section 13(2) lists the additional information which the label on every pre-packaged food must contain.

Note section 13(5).

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Analysts and approved laboratories

Section 32 covers the appointment of authorised food analysts and the approval of laboratories for the purposes of the FSA.

Use them!

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Authorised Officers

Section 32, FSA covers the appointment of persons who are authorised to administer and enforce the Act – they must have prescribed qualifications.

See Regulation 48 for the prescribe qualifications.

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Powers of Inspection (2/2)

Section 34(1), FSA lists the “reasonable grounds” on which an authorised officer may enter and inspect premises, vehicles etc.

Section 34(2) permits an authorised officer to remain on the premises, vehicles etc for “as long as it is necessary.”

Questions: What does “reasonable grounds” mean?
What does “as long as is necessary” mean?

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Powers of Inspection (1/2)

Reasonable grounds:

- Objective test.
- Facts and / or circumstances which would satisfy an ordinary cautious and prudent person that there is reason to believe.
- Belief goes beyond mere suspicion.
- Conclusive proof not required.

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Power to Search etc

Section 35(1), FSA – authorised officer has the power to search if there are “reasonable grounds to believe” an offence has been / may be committed and it is necessary to obtain evidence.

Section 35(3) requires prior written notice before the search is conducted.

Questions: What form must the notice be in? What must the notice specify? Who must sign / authorise the notice? How much notice must be given before the search can be conducted?

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Power to Close Insanitary Premises (1/2)

Section 51(1), FSA gives a food authority the power to issue an abatement notice on a food establishment if it receives information which satisfies it that the establishment operates in insanitary or unhygienic conditions.

Section 51(2) lists what must be in the abatement notice.

Sections 51(3) and (4) cover an order of closure.

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Power to Close Insanitary Premises (2/2)

Sections 51(5) – (9) cover when the closure notice is no longer in force, a request for inspection once served with a closure notice, appeals of a refusal to give a certificate of inspection, re-application for inspection, and when the Board may exercise powers under section 51.

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Defences in Legal Proceedings

In legal proceedings under the Act:

- It is a defence if the defendant proves the offence was committed beyond his / her control.
- It is also a defence if the defendant proves he / she / it had no reason to believe the food did not conform to the written warranty.

Section 58.

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Presumption of Consumption (1/2)

In legal proceedings under the Act, the presumption is that food (including any substance used as an ingredient in the food):

- which is unfit for consumption and given away free is given for consumption unless the packaging clearly states it is unfit for consumption;
- is sold or kept, exposed or offered for sale for consumption.

See section 59, FSA.

Food Safety Act and Regulations

Presumption of Consumption (2/2)

The presumption helps the prosecutor because he / she does not have to prove to the court that the defendant gave the food away free for consumption (unless the packaging clearly states otherwise) or sold the food for consumption.

If the defendant did not give the food away free for consumption or sold the food for consumption, he / she has to prove this to the court.

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Presumptions as to Liability (1/3)

Section 60, FSA establishes certain presumptions as to liability.

- The owner or person in possession of the premises on which an article used in committing an offence under the Act is found is presumed to be liable – section 60(1)(a)(i).
- The same applies to the owner, person in possession, hirer or lessee of the vehicle in which the article is found – sections 60(1)(a)(ii) and (iii).

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Presumptions as to Liability (1/3)

- If the article used in committing an offence is pre-packaged food in an unopened package, any person who appears from the package to be the importer, manufacturer, packer or person who prepared the pre-packed food is presumed to be liable – section 60(1)(a)(iv).

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Presumptions as to Liability (3/3)

The section 60 presumptions help the prosecutor.
Why?

Usually, there is a presumption of innocence which requires the prosecutor has to prove liability. Because of the section 60 presumption of liability, the defendant has to prove he / she is not liable.

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Codex Alimentarius deemed to be Regulations

Fiji is a member of the Codex Alimentarius Commission and therefore has obligations to adopt the standards developed by the Commission.

Section 69, FSA formally adopts the Codex standards into national law by deeming them to be Regulations made under the Act.

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Power to make Regulations

Section 70, FSA gives the Board the power to make regulations to give effect to the Act.

Section 70(1)(b) specifies the power of the Board to make regulations to prescribe standards.

The Board exercised its power under section 70, FSA to make the FSR.

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Food & Safety Regulations (1/8)

Purpose of the Regulations

“... to protect the health of the public and to protect the consumer against deception and from food of unacceptable and poor quality, by establishing minimum standards on food products.”

Food Safety Act and Regulations

Food & Safety Regulations (2/8)

Application of FSR

“... to food imported into, or produced and processed in Fiji for domestic consumption or export / re-export.”

Food Safety Act and Regulations

Food & Safety Regulations (3/8)

Schedules

FSR include 29 schedules including 17 schedules on standards:

- Schedule 4: Standard on general requirements on good hygienic practices for all food businesses
- Schedule 5: Standard on specific requirements for food businesses involved in producing, processing and distributing low-acid and acidified low-acid foods
- Schedule 6: Standard on specific good hygienic practices for fish and fisheries products

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Food & Safety Regulations (4/8)

Schedules (cont'd)

- Schedule 7: Standard on good hygienic practices for milk and milk products
- Schedule 8: Standard on good hygienic practices for meat and meat products
- Schedule 9: Standard on specific good hygienic practices for egg and egg products
- Schedule 13: Standards on milk and milk products
- Schedule 14: Standards on meat and meat products

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Food & Safety Regulations (5/8)

Schedules (cont'd)

- Schedule 15: Standards on poultry and poultry products, eggs and egg products
- Schedule 16: Standards on fish and fisheries products
- Schedule 17: Standards on edible fats and oils
- Schedule 18: Standards on fruits and vegetables and their products
- Schedule 19: Standards on cereal and cereal products

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Food & Safety Regulations (6/8)

Schedules (cont'd)

- Schedule 19: Standards on sugars and honey
- Schedule 21: Standards on salt and spices
- Schedule 22: Standards on beverages
- Schedule 23: Standards on food for infants and other vulnerable populations
- Schedule 24: Standards on miscellaneous foods

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Food & Safety Regulations (7/8)

Standards

Reg 4, FSR: If there is no standard for a product ('product' not defined) under the FSA or FSR, the Codex standard applies.

But if the Board establishes a standard for a product, that standard takes precedent over any Codex standard for the same product – regs 4(2) and (3).

Adoption of the Codex standards does not include sampling requirements under the standards – reg 6(1).

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Food Safety Regulations (8/8)

HACCP

Reg 7, FSR – Codex requirements for HCCP are not mandatory in Fiji until made mandatory by the Board or the FSR

BUT ... at the time FSR come into effect, all businesses involved in handling food for export to countries requiring HCCP for such food and such operations must have an operational HCCP system in place before handling the food for export to these countries or as soon as required by the competent authority in export countries.

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Food Safety Regulations (8/8)

Part IV FSR – Good Hygiene Practices

Reg 14, FSR – All ‘food business operators’ (not defined) must apply good hygiene practices as per Schedule 4 to all stages of production, processing, handling, etc of food under their control.

Part IV also require additional specific good hygiene practices for certain food business operators – these practices are detailed in the schedules.

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Food Safety Regulations (8/8)

Part VIII – Commodity Standards

Part VIII requires certain products (milk and milk products, meat and meat products, fish and fish products etc) sold in Fiji or imported / exported to comply with requirements prescribed in schedules.