



Government of **Western Australia**
Department of **Health**

WA Food Regulation: Food Safety Auditing - Code of Conduct

Version 3

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Approved by Managing Scientist - Food

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1.0 Purpose and application of the Code of Conduct

1.1 Purpose

- This Code of Conduct (Code) applies to regulatory food safety auditors (RFSAs) approved by the Chief Executive Officer (CEO) of Department of Health to conduct audits of food businesses.
- All RFSAs are required to commit to abide by the Code as a condition of their approval.
- The Code sets out standards of conduct that all RFSAs are required to demonstrate in their practice as RFSAs.
- The Code restates the obligation [section 96 of the *Food Act 2008 (WA)* (Food Act)] of an RFSA to notify the CEO of any direct or indirect interest in any food business.
- This Code refers to the conduct expected of an RFSA and provides the CEO with a mechanism to review RFSA conduct. An approved RFSA failing to comply with this Code may have their approval immediately suspended or cancelled by the CEO.

1.2 Application

The Code applies to all RFSAs.

RFSAs should:

- Familiarise themselves with this Code.
- Familiarise themselves, and comply with all Western Australian (WA) food legislation, regarding regulatory food safety auditing, audit performance and the requirements of the Australia New Zealand Food Standards Code (Food Standards Code) to which they are auditing.

2.0 Definitions

Approval	A decision by the CEO or their delegate that they are satisfied an individual is competent to carry out the functions of an RFSA and that the individual may (with or without conditions) exercise powers as an RFSA.
Audit	A systematic, independent and documented process for obtaining evidence and evaluating it objectively to determine the extent to which the audit criteria are fulfilled.
Audit Report	The report required under section 102 of the Food Act by which RFSAs report audit outcomes to enforcement agencies. The section 102 form for audit reports (approved by the CEO) is contained in WA Food Regulation: Food Safety Auditing Guidelines for Regulatory Food Safety Auditors (on the Reporting Requirements) (PDF 526 KB)
CEO	The Chief Executive Officer of the department of the Public Service principally assisting in the administration of the Food Act (section 8). The CEO of the Department of Health is the “Director General”.

Code	This <i>Code of Conduct</i>
Commercially sensitive information	<p>Information provided to the RFSA who has been requested not to disclose such information – any non-disclosable information, whether commercially sensitive or not. This information could be provided to the RFSA by:</p> <ul style="list-style-type: none"> • a food business during an audit of the business where the business’s commercial interests may be impacted; <p>someone else other than the business concerning some aspect of the business’s audit, where the business’s commercial interests may be affected.</p> <p>Information pertaining to a food business that is provided to or brought to the attention of an RFSA where that information has been identified as commercially sensitive, i.e. its disclosure would or could adversely impact the food business’s commercial interests.</p>
Conflict of interest	<p>Where an RFSA’s direct or indirect interests (whether private or business related) in a client’s food business would or could compromise, or appear to compromise, the RFSA’s ability to conduct an audit in a fair and impartial manner.</p> <p>When the Department of Health would conclude that an RFSA’s ability to conduct an audit has been compromised by their private or business interests in the client’s business.</p>
Enforcement agencies	<p>Enforcement agency has the same meaning as in section 8 of the <i>Food Act 2008</i> (Food Act), i.e., (a) the CEO; or (b) a local government; or (c) a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of this definition.</p> <p>As prescribed in the Food Regulations 2009 (Food Regulations), depending on the circumstances, an enforcement agency will be either the CEO or a local government.</p>
Food Act	<p><u>Food Act 2008 (WA)</u> (external site)</p>
Food Business	<p>As defined in section 10 of the Food Act, a “food business” is “a business, enterprise or activity (other than a business, enterprise or activity that is primary food production) that involves —</p> <ul style="list-style-type: none"> (a) the handling of food intended for sale; or (b) the sale of food,

	<p>regardless of whether, subject to section 6, the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only”.</p> <p>Note that dairy primary producers are also a ‘food business’ in accordance with Regulation 6 of the Food Regulations which prescribes that any food production activity to which a standard in Chapter 4 of the Australia New Zealand Food Standards Code (Food Standards Code) applies is not primary food production for the purpose of section 10.</p>
Food Regulations	<p>Food Regulations 2009 (WA) (external site)</p>
Food Safety management system	<p>A general term referring to any risk-based food safety management system, including legislated Food Safety Programs and HACCP plans.</p>
Food Safety Program (FSP)	<p>As defined at section 103(1) Food Safety Program means, “for a food business, the food safety program required by the regulations to be prepared for the food business”.</p> <p>Standard 3.2.1 states a food safety program must -</p> <ol style="list-style-type: none"> a) systematically identify the potential hazards that may be reasonably expected to occur in all food handling operations of the food business; b) identify where, in a food handling operation, each hazard identified under paragraph (a) can be controlled and the means of control; c) provide for the systematic monitoring of those controls; d) provide for appropriate corrective action when that hazard, or each of those hazards, is found not to be under control; e) provide for the regular review of the program by the food business to ensure its adequacy; and f) provide for appropriate records to be made and kept by the food business demonstrating action taken in relation to, or in compliance with, the food safety program.
Food Standards Code	<p>Australia New Zealand Food Standards Code (external site)</p> <p>Under section 8 of the Food Act means the Australia New Zealand Food Standards Code as defined in the Commonwealth Food Standards Australia New Zealand Act 1991 and as adopted or incorporated by the regulations.</p>

	<p>The Food Standards Code has been adopted under Regulation 7 of the Food Regulations. The Code sets out in Chapters, the Standards that apply to food.</p>
<p>Gifts</p>	<p>A gift is anything of value offered or gifted. Gifts are generally tangible, examples include, but are not limited to, items such as consumer goods, items offered by a commercial organisation, discounts on goods and services and cash. Payment provided to an RFSA for auditing a food business does not constitute a conflict of interest (section 96(2) of the Food Act). Section 8 details the relevance of gifts.</p>
<p>Illegal drug</p>	<p>Is a “prohibited drug” as set out in the <i>Misuse of Drugs Act 1981</i> (WA).</p>
<p>Non-compliance</p>	<p>A non-compliance against the FSP, the Food Safety Standards (or if applicable Standard 4.2.4) or the Food Act that is not considered to pose an imminent and serious risk to food intended for sale or that will cause significant unsuitability of food intended for sale.</p>
<p>Official information</p>	<p>Information provided to an RFSA by the Department of Health where upon receipt of the information, the RFSA is requested to not disclose the information.</p>
<p>Relevant Officer</p>	<p>The person employed and authorised by the Department of Health to manage audit activities within WA. The relevant Officer is the Managing Scientist – Food as delegate of the CEO of the Department .</p>
<p>Regulatory food safety audit</p>	<p>An audit (by an RFSA) arranged by a food business proprietor to satisfy the requirements imposed by section 99(2) of the Food Act.</p> <p>Regulatory food safety audit means an evaluation, by an RFSA, of a food business’ verified food safety program or other aspect of a food business to determine compliance with relevant aspects of the Food Act, the Food Regulations and associated policies applicable in WA.</p>
<p>Regulatory Food Safety Auditor (RFSA)</p>	<p>A food safety auditor approved or authorised by the CEO in accordance with Part 8, Division 1 of the Food Act.</p> <p>RFSA means a person formally approved or authorised by the CEO to conduct audits of food businesses or other premises requiring food safety audits (e.g. any business required by the <i>Australia New Zealand Food Standards Code</i> to implement a Food Safety Program that complies with Standard 3.2.1 i.e. hospitals, child care centres etc.).</p>

3.0 Underlying conduct provisions

RFSA's shall:

- conduct regulatory food safety audits with diligence, professionalism and integrity and be accountable to the outcomes of audits they perform,
- ensure the audit report reflects accurately the review of the audited site and practices performed at the time and date of the report,
- report in writing to the appropriate enforcement agency the results of any audit or assessment carried out and provide a copy of the report to the food business proprietor (section 102(1) and section 102 (8) respectively of the Food Act),
- inform the appropriate enforcement agency as soon as possible but in any event within 24 hours after the contravention comes to the RFSA's attention an imminent and serious risk to the safety of food intended for sale; or that will cause significant unsuitability of food intended for sale (section 102(5) and 102(6) of the Food Act),
- always act fairly and equitably,
- maintain appropriate confidentiality about client dealings and comply with all relevant legislation and policies,
- avoid conflicts of interest. Under section 96(1) of the Food Act an RFSA must notify the CEO of any direct or indirect interest in any food business that the RFSA has as soon as possible after becoming aware of that interest. In the event of a conflict of interest arising during an audit, declare this conflict to the CEO (or nominated delegate) as soon as possible to enable the Department of Health to determine the appropriate course of action,
- always show respect to all people involved in the regulatory audit process,
- only conduct regulatory food safety audits once approved as an RFSA by the CEO,
- only conduct regulatory food safety audits in WA, unless approved by the relevant authority of another jurisdiction to conduct audits in that jurisdiction,
- not audit food businesses outside their scope of approval i.e. not audit a food business which requires an additional specialised audit knowledge competency,
- not behave in a manner that compromises the Department of Health,
- assist the appropriate enforcement agency with compliance and enforcement activity taken by that agency because of the RFSA's auditing activities including but not limited to, providing statements of evidence for matters concerning legal prosecutions. (RFSA's shall not be responsible for paying costs associated with the activity of the appropriate enforcement agency),
- not seek or accept a gift or benefit from any food business in return for the RFSA's failure to implement appropriate action in relation to a finding of non-compliance detected during a regulatory food safety audit of that food business.

4.0 Ethical and legal obligations

4.1 Respect for persons

RFSA's shall behave fairly and without favouritism, patronage or prejudice displayed toward any person associated with a food business.

4.2 Respect for the dignity, rights and views of others

An RFSA's personal beliefs should not influence the manner in which the audit is performed (or the outcomes). RFSA's shall not use abusive, obscene or threatening language or behaviour (i.e. physical and/or verbal violence) during the regulatory food safety audit process towards any person associated with the food business.

4.3 Discrimination

While conducting a regulatory food safety audit, RFSA's shall not unlawfully discriminate against any person associated with a food business, including employees and members of the public.

Under WA's *Equal Opportunity Act 1984*, it is unlawful for a person to discriminate against another person (treat them unfavourably) on various grounds, in relation to certain areas of public life. Grounds include gender, sexual orientation, marital and family status, pregnancy, race, religious or political convictions, impairment, age or spent convictions. Areas of public life include work, accommodation, education, the provision of goods and services.

4.4 Sexual harassment

When conducting audits, RFSA's shall not sexually harass any person associated with a food business, including employees and members of the general public. Sexual harassment means any behaviour that would be deemed by a reasonable person to be of a sexual nature. RFSA's should understand that sexual harassment is defined by the recipient of the behaviour. The Department of Health shall investigate all occasions where an auditor is reported to have behaved in a "sexual manner" while conducting a regulatory food safety audit.

4.5 Procedural fairness

RFSA's will follow the principles of procedural fairness (natural justice) when making decisions. Procedural fairness is about the fairness of the procedure adopted by a decision maker. As decision makers, RFSA's must follow principles of procedural fairness consistent with the provisions of the Food Act (and related regulations and policies). The principles of procedural fairness require an RFSA to:

- give a person whose interests may be adversely affected by the RFSA's report, decision or findings an opportunity to present his or her case before a decision is made,
- not have (or appear to have) an interest in any matter the subject of any audit,
- act in good faith while conducting audits,
- provide sound reasons to support decisions or findings made while conducting regulatory food safety audits (ensure that decisions in audit reports are well reasoned, based on available evidence, take relevant matters into consideration and free from bias).

4.6 Health, welfare and safety concerns

RFSA's shall conform with relevant aspects of the Work Health and Safety Act 2020. They will also adhere to health and safety policies made aware of by the food business they are auditing.

RFSA's shall further respect the health, safety and welfare of all persons associated with a food business while conducting audits at that business, as well as ensure their own health, safety and welfare is not unlawfully put at risk while conducting audits.

4.7 Workplace harassment

When carrying out audits, RFSAs shall not behave in an offensive, abusive, obscene, threatening or belittling manner towards any person associated with a food business, including employees and members of the general public.

RFSAs should note this requirement applies to both verbal and physical behaviour. Statements made in relation to the potential consequences of not implementing advice concerning non-compliances, is not considered to be threatening behaviour where those statements are objective, proportional to the situation presenting, and delivered with integrity.

4.8 Confidentiality

Section 142 of the Food Act provides that certain confidential information must not be disclosed. It states:

- (1) *A person who has, in connection with the administration or execution of this Act, obtained information relating to manufacturing secrets or commercial secrets or confidential processes must not disclose that information unless the disclosure is made —*
- (a) *with the consent of the person from whom the information was obtained; or*
 - (b) *in connection with the administration or execution of this Act; or*
 - (c) *for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or*
 - (d) *in accordance with a requirement imposed by or under this Act or any other law; or*
 - (e) *to a person administering or enforcing a law of another jurisdiction that corresponds to this Act or any other law prescribed by the regulations; or*
 - (f) *to Food Standards Australia New Zealand; or*
 - (g) *to a law enforcement authority; or*
 - (h) *with other lawful excuse.*

Penalty: a fine of \$50 000.

- (2) *A person does not commit an offence under this section if the information was publicly available at the time the disclosure concerned was made.*

RFSAs must be aware of the above provisions, and ensure they exercise appropriate caution and take appropriate measures in relation to a food business's manufacturing secrets, commercial secrets or confidential processes. RFSAs should only make disclosures as authorised above.

RFSAs are responsible for ensuring secure storage and handling of confidential information in the course of their work, including (but not limited to) data and photographs.

Strict confidentiality is also required from RFSAs when dealing with any allegation of discrimination, workplace harassment or sexual harassment, whether the allegation concerns themselves, another RFSA, or any other person associated with a food business where they may be required to conduct an audit.

4.9 Victimisation or reprisal

RFSAs shall not threaten or act to the detriment of any person.

5.0 Dress standards

RFSAs shall conform to a standard of dress suitable for the work to be undertaken and dress respectably in clean clothes and ensure the professionalism of all RFSAs is not compromised by the standard of their dress.

RFSAs shall comply with OSH requirements and industry-specific or client-specific dress requirements while conducting audits at a food business, including compliance with any required bio-security protocols.

On demand RFSAs shall produce identification verifying themselves to be an approved RFSA.

6.0 Alcohol and drugs

With regards to smoking, RFSAs should only smoke in areas where this would be permitted under the *Tobacco Products Control Act 2006* and *Regulations* and agreed by the food business proprietor.

While working as an RFSA, an RFSA must not be under the influence of any substance (including alcohol, medication whether prescribed or not, and illegal drugs) that will impair their judgement, behaviour and/or ability to competently and safely perform their role as an RFSA.

7.0 Conflicts of interest

RFSAs, must at all times, avoid conflicts of interest in their work. As soon as possible after an RFSA becomes aware that they have a direct or indirect interest in **any** food business, that RFSA must (under section 96(1) of the Food Act) notify the Relevant Officer of Department of Health. Following investigation, the Relevant Officer will inform the RFSA whether they may continue to audit the food business.

Examples of direct or indirect interests that are considered to constitute a conflict of interest include:

- The auditing of a business where the RFSA has provided specific direction to the business in **how** to manage food safety risks associated with its approved food safety program, which may or may not include having drafted the business's food safety management system.
- Arranging food safety training or participating as a food safety trainer in sessions where food businesses specific solutions to food safety risks associated with a food business approved food safety program are discussed or provided.
- The auditing of a food business by an RFSA who has an existing relationship or association with a person who owns or is employed by that food business.
- The auditing of a food business by an RFSA who has a direct or indirect financial interest in that food business.
- Preferential treatment of a person, organisation or interest (including, but not limited to, pecuniary, commercial, political or religious interests) during a regulatory food safety audit as a result of a RFSA's previous association with that person, organisation or interest.
- The auditing of a food business where the RFSA, or a close family member or associate of the RFSA, has a direct relationship with a direct competitor of the business being audited.

In this situation, the proprietor of the food business should be notified of the relationship and allowed to decide whether the RFSA may continue the audit of their business. Should the proprietor refuse the RFSA, the RFSA should inform the appropriate enforcement agency who will then decide on an appropriate course of action.

- Gifts or bribery or incentives in any form (see acceptance of benefits at section 8.0).

Examples of direct or indirect interests that are considered **not** to constitute a conflict of interest include:

- The provision of general food safety advice to a business, providing this advice does not include or provide specific direction to the food business on how to manage a food safety risk associated with its approved food safety management system, should not be considered a conflict of interest situation.
- Generic industry type based training would generally not be considered a conflict of interest, and RFSA's are advised to seek advice from the Department of Health if in doubt.
- Discussing non-compliances identified with the proprietor or nominated staff of the food business during a regulatory food safety audit do not constitute a conflict of interest. It should be further noted that a conflict of interest is not considered to occur where such information is limited to generic information freely available in the public domain, and company specific solutions are not provided or discussed.
- Payment provided to an RFSA for auditing a food business does not constitute a conflict of interest (section 96(2) of the Food Act).

A conflict of interest is not considered to automatically occur where a regulatory audit is performed by an RFSA who is also an authorised officer from the appropriate enforcement agency. The potential conflict is usually managed by the local government utilising more than one authorised officer, with one performing the role of the RFSA and another performing as the authorised officer in respect of each food business. However, the potential conflict from this situation needs to be carefully managed (e.g. reviewing audit and regulatory assessment reports made by the authorised officer etc.) and it must be made clear to the food business audited under such an arrangement which role is being performed prior to undertaking an audit or a regulatory assessment.

Failure to declare a conflict of interest may result in the suspension or cancellation of an auditor's approval by Department of Health.

8.0 Acceptance of benefits

Any RFSA found to accept gifts, where the intent in offering the gift may reasonably be perceived to be an attempt to influence an audit outcome, and/or a response to a non-compliance finding, will be subject to immediate investigation by the Department of Health.

An RFSA must notify the appropriate enforcement agency immediately should any attempt be made by a food business to offer a gift to the RFSA, where the intent of offering the gift may be perceived to be an attempt to influence an audit outcome, and/or a response to a non-compliance finding.

9.0 Commercially sensitive information, official information and public comment

Commercially sensitive information and official information provided to an RFSA shall not be used by an RFSA to gain advantage for themselves, another person or organisation.

An RFSA shall not make public statements or be interviewed by the media on matters concerning regulatory food safety audits, audited food businesses, the Department of Health or other government bodies associated with the Department of Health's activity, unless provided with express written permission by the Relevant Officer of the Department of Health. If provided with such permission, any statement made by an auditor will only discuss issues generally and shall at no time include the auditor's opinion on the Act, regulation or policies being implemented in WA.

10.0 Falsification of results

An RFSA shall not knowingly include false information in audit reports.

11.0 Security of documents

All information related to a food business' regulatory food safety audit must be securely stored, and reporting documentation sent by a secure format.

12.0 Declaration of understanding and compliance

I declare that I have read, understand and will comply with all aspects of the WA Department of Health's Food Safety Auditing - Code of Conduct when undertaking regulatory food safety audits as an approved RFSA in WA.

I agree that failure to comply with this Code may result in the refusal by the CEO of my application for approval as an RFSA, or the immediate suspension or cancellation of my existing approval to conduct regulatory food safety audits.

In addition, I note that section 96 of the Food Act states "a food safety auditor must notify the CEO of any direct or indirect interest in any food business that the food safety auditor has as soon as possible after becoming aware of that interest."

Name (Print).....

Signature.....

Date.....

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