

Food on the Table

Relevant legal issues

The proposal involved an art installation in a public laneway, funded and supported by the City which would involve the preparation and potential serving of food which had been retrieved from waste bins in the nearby area.

The scope of proposal was moveable in relation to issues such as whether people would be charged to attend, whether food from bins would actually be served rather than just displayed etc.

Potentially applicable laws include:

- Food Act 2003 – applicable if the attendees at the event were to be consuming food and charged a fee for the food (whether directly as a charge for the dinner or indirectly as a charge for entry to the event). In these circumstances the food safety requirements of the Food Act would apply. This Act creates offences for the handling and sale of unsafe and unsuitable (including perished) food which could potentially be committed by an event like this. The event would not be able to comply with the requirements of the Food Act. Further, the handling of the food would need to comply with the Food Safety Standards if this legislation applied which would extend to location of food preparation.
- Civil Liability Act 2002 – this provides protection against claims of liability where food is donated by an entity to a charity for the purposes of distribution by that charity. These laws are structured to protect organisations which donate food directly to charities such as OzHarvest. The party protected is the donor – not the charity. The preconditions for protection include that it was safe at the time it was donated, there is not intended to be any charge

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Relevant health issues

The legislation that controls the provision of food 'for sale' in terms of food hygiene is the Food Act 2003, this Act calls up the food standards codes (which are codes that specify many details of food handling including process, storage and construction used across Australia and New Zealand). The legislation relates to the safe handling, storage and service of food. For the Act to be applicable in these circumstances the food would have to be 'for sale'. There is a broad definition of what food for sale includes, such as giving food away as part of a prize, as part of a fee for service (eg: selling tickets to an event or in conjunction with entertainment), or by any means that is valuable consideration.

The City also has a duty of care to ensure that any event they are associated with does not put the public at risk.

The risk would be associated with the food causing illness. Particular food items can be safer than others including packaged foods that are shelf stable and usually dry. Bacteria occurs naturally in some foods so they don't have to be contaminated by people handling them to become a danger. Rice and chicken for example both have naturally occurring bacteria that will multiply prolifically given the right conditions. The other consideration when it comes to food poisoning is the person consuming the food. If they are young, elderly or infirmed then they are more at risk of consuming an effective dose of bacteria to cause illness.

We also operate under labelling requirements (food standards code). Used by dates require the business to use the food before that date as it may create a risk if consumed after this date. This is a legal requirements. Best before dates are a guide to consumers for when the product is still of a suitable quality. It is not an offence to 'sell' food outside its best before date.

Civil Liability Act 2002 No 22
current version for 28 June 2010 to date
(accessed 26 August 2010 at 9.08)

Part 5 section 43 43 Proceedings against public or other authorities based on breach of statutory duty

In this Act, *food business* means a business, enterprise or activity that involves:
(1) This section applies to proceedings for civil liability to which this Part applies to the extent that the liability is based on a breach of a statutory duty by a public or other authority in connection with the exercise of or failure to exercise a function of the authority.
(2) For the purposes of any such proceedings, an act or omission of the authority does not constitute a breach of statutory duty unless the act or omission was in the circumstances so unreasonable that no authority having the functions of the authority in question could properly consider the act or omission to be a reasonable exercise of its functions.
(3) In the case of a function of a public or other authority to prohibit or regulate an activity, this section applies in addition to section 44.

58A Interpretation

In this part:
donate food includes distribute, without payment or other reward, food donated by others.
food, *handling* and *unsafe food* have the same meanings as they have in the *Food Act 2003*.
personal injury includes:
(a) pre-natal injury, and
(b) impairment of a person's physical or mental condition, and
(c) disease.

58B Application of Part

(1) This Part applies to civil liability of any kind.
(2) This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B.

58C Protection of food donors

(1) A person who donates food (the *food donor*) does not incur any civil liability in respect of any death or personal injury that results from the consumption of the food if:
(a) the food donor donated the food:
(i) in good faith for a charitable or benevolent purpose, and
(ii) with the intention that the consumer of the food would not have to pay for the food, and
(b) the food was safe to consume at the time it left the possession or control of the food donor, and
(c) where the food was of a nature that required it to be handled in a particular way to ensure that it remained safe to consume after it left the possession or control of the food donor - that food donor informed the person to whom the food donor gave the food of those handling requirements, and
(d) where the food would only have remained safe to consume for a particular period of time after it left the possession or control of the food donor - the food donor informed the person to whom the food donor gave the food of that time limit.

(2) For the purposes of this section, food is safe to consume if it is not unsafe food.

Food Act 2003 No 43
current version for 20 November 2010 to date
(accessed 4 February 2011 at 11.12)

Part 1 Section 6

6 Meaning of "food business"
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6 Meaning of "food business" means a business, enterprise or activity that involves:
(a) the handling of food intended for sale, or
(b) the sale of food,
regardless of whether 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.

Part 1 Section 8

8 Meaning of "unsafe" food
(1) For the purpose of this Act, food is unsafe at a particular time if it would be likely to cause physical harm to a person who might later consume it, assuming:
(a) it was, after that particular time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use, and
(b) nothing happened to it after that particular time and before being consumed by the person that would prevent its being used for its reasonable intended use, and
(c) it was consumed by the person according to its reasonable intended use.
(2) However, food is not unsafe for the purposes of this Act 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.
(3) In subsection (1), processes include processes involving storage and preparation.

Part 1 Section 9

9 Meaning of "unsuitable" food

(1) For the purpose of this Act, food is unsuitable if it is food that:
(a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use, or
(b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use, or
(c) is the product of a diseased animal, or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption, or
(d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of food.
(2) However, food is not *unsuitable* for the purposes of this Act merely because:
(a) at any particular time before it is sold for human consumption it contains an agricultural or veterinary chemical, or
(b) when it is sold for human consumption it contains an agricultural or veterinary chemical, so long as it does not contain the chemical in an amount that contravenes the Food Standards Code, or
(c) it contains any matter or substance that is permitted by the Food Standards Code.
(3) In this section, *slaughter* of an animal includes killing of an animal in the process of capturing, taking or harvesting it for the purposes of preparing it for use as food.

Part 2 Division 2 Section 16

16 Handling and sale of unsafe food

(1) A person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsafe.
Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

Part 2 Division 2 section 17

17 Handling and sale of unsuitable food

(1) A person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsuitable.
(2) A person must not sell food that is unsuitable.
(3) For the purposes of this section, it is immaterial whether the food concerned is safe.
Maximum penalty: 400 penalty units in the case of an individual and 2,000 penalty units in the case of a corporation.

Food Standards Code
Issue 101 Standard 1.2.5
Date Marking of Food

Purpose

This Standard prescribes a date marking system for food and the form in which those foods must be date marked. The Standard requires food, with some exceptions, to be date marked, and prohibits the sale of food after the expiration of the use-by date, where such a date mark is required. In particular, clause 2 of this Standard sets out the circumstances in which a use-by date must be used instead of a best-before date.

Table of Provisions

Interpretation

- Food must be date marked
- Prohibition on sale of food after the use-by date
- Prescribed form of date mark
- Prescribed form of date
- Statement of storage conditions
- Exclusive date marking system to be used

Clauses

1 Interpretation

In this Standard –

baked-for date, in relation to bread, means a date not later than 12 hours after the time the bread was baked.

Editorial note: For example, bread that is baked after midday on one day may have a 'baked-for' date for the following day.

baked-on date, in relation to bread, means the date on which the bread was baked.

best-before date, in relation to a package of food, means the date which signifies the end of the period during which the intact package of food, if stored in accordance with any stated storage conditions, will remain fully marketable and will retain any specific qualities for which express or implied claims have been made.

use-by date, in relation to a package of food, means the date which signifies the end of the estimated period if stored in accordance with any stated storage conditions, after which the intact package of food should not be consumed because of health and safety reasons.

Food must be date marked

(1) Unless otherwise expressly prescribed in this Code, the label on a package of food must include –

- (a) its use-by date, where the food should be consumed before a certain date because of health or safety reasons; or
- (b) where paragraph 2(1)(a) does not apply, its best-before date;

unless –

- (c) the best-before date of the food is two years or more; or
- (d) the food is –
 - (i) an individual portion of ice cream or ice confection; or
 - (ii) in a small package, except where the food should be consumed before a certain date because of health or safety reasons.

(2) Reserved.

Editorial note: FSANZ's Guide to the Use of 'Use-by' and 'Best-Before' Dates for Food Manufacturers provides guidance on paragraphs 2(1)(a) and (b).

Standard 1.2.1 sets out the exemptions to the general labelling requirements in this Code, and provides a definition of 'small package'.

(3) The label on a package of bread with a shelf life less than 7 days, may include instead of a best-before date –

- (a) its baked-on date; or
- (b) its baked-for date.

FOOD ON THE TABLE
concept by simryn gill
laneway art 2010/2011

Food on the Table was a concept proposed for Abercrombie Lane by artist Simryn Gill as part of the City of Sydney's Laneway Art program *'Are You Looking At Me?'* curated by Barbara Flynn. Gill proposed a meal to be shared in a laneway, with all those who came to the table arriving there through their participation in the process and the conversations that made the meal possible. The nature of the meal proposed was unusual. The ingredients were to be gathered from refuse sites, bins and dumpsters by volunteers. The guests were to include, not only the gatherers and those who prepared the meal, but also, the Lord Mayor, property developers and others who influence or make big decisions in the City. Gill described her conception of this communal meal as "a potlatch shared between those who make the rules and those who live outside them".

Employed as project manager Victoria Johnstone worked with Barbara Flynn and the City of Sydney staff towards making the proposal into a realised event. Discussions were instigated among the many levels and departments of the Sydney City Council, and initial contacts made among some organised and individual food gleaners in the wider Sydney area. Johnstone's work on this idea opened numerous discussions about the possibilities and impossibilities of such a project: questions of legality, health, management and media were all raised and discussed at great length, as were questions of waste, redistribution, and the social and legal boundaries to independent actions around such issues.

The adjacent pages articulate the parameters of the health and legal system borne out by the project. Indicating the City's understanding of its responsibility towards the public and difficult position in realising the proposal they give Gill's artwork a tangible outcome.

Thanks go to:

Simryn Gill: artist
Barbara Flynn: curator
Victoria Johnstone: project manager
City of Sydney staff
Pamphlet concept and photograph: Simryn Gill
Produced by the City of Sydney
For more information visit the City Art website
www.cityartsydney.com/foodonthetable



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