



# **Memorandum of understanding (MOU)** **between *the Chief Executive Officer (CEO)*** ***of the Department of Health (DOH)*** **and *Participating Local Governments (LG)***

for the collaborative sharing of information between participating local governments in administering and enforcing provisions in the *Food Act 2008* (the Act), within a centralised register of temporary and mobile food businesses in Western Australia.



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## 1. Project (Mobile Food Vendor Centralised Register)

A centralised register (the Register) in relation to the storing of information of temporary and mobile food businesses operating within Western Australia (WA) is available on a website hosted by the DOH.

The website provides LGs with a searchable tool for consistently and efficiently managing such food businesses within WA.

## 2. Objectives of the MOU

Given the transient nature of temporary and mobile food businesses and the compliance and public health risks associated with them, the objects of the MOU are to:

- (a) facilitate the sharing of information (that is not considered a "manufacturing secret", "commercial secret" or "confidential process" as per s 142 of the Act) between the parties to enable the consistent, effective and efficient administration of the Act; and
- (b) to assist in ensuring that the Act is complied with by local governments and proprietors of temporary and mobile food businesses.

## 3. Project

### 3.1 Shared Principles

Information sharing will be limited to participating LGs and the DOH on a voluntary 'opt-in' basis. Every LG CEO within WA has been invited by the DOH to participate in the information sharing initiative.

Therefore, LGs not participating/signatory to this MOU will not have access to the information received from participating LGs.

The Parties acknowledge each other's statutory roles and responsibilities within the State of Western Australia, particularly under the Act.

The MOU sets out the commitment of each of the parties to achieving a cooperative approach to administer consistent, effective and efficient food regulation in WA under the Act for temporary and mobile food businesses. The MOU sets out how the parties will support each other to achieve this purpose.

The Parties must, subject to compliance with any relevant State and Commonwealth laws:

- (a) at all times duly perform and observe its obligations under this MOU and will promptly inform each Party as soon as possible of any occurrence which might adversely affect the MOU or give rise to a liability claim; and
- (b) undertake its responsibilities under this MOU with integrity, good faith and probity in accordance with good corporate governance practices.

### 3.2 Definitions

Except where expressly defined below, or where the context requires otherwise, terms used in this MOU have the same meaning as corresponding terms in the Act or the Regulations.

**Assessment** - The process of reviewing a food business in order to confirm compliance or non-compliance with the Act, Regulations or Code.

**Authorised Officers** – as set out in s 122 of the Act.

**Appropriate Enforcement Agency** – as set out in r 4 & 5 of the Regulations

**CEO** – as defined in s 8 of the Act.

**Code** - Australia New Zealand Food Standards Code

**DOH** – Department of Health WA (Environmental Health Directorate - **EHD**)

**Information** – as set out in s 5 of this MOU

**LG** – Local Government.

**Mobile food business** - A food business that operates from premises that are non-permanent; e.g. food vehicles and caterers.

**MOU** – Memorandum of Understanding.

**Participating LG** – a LG that is a signatory, party, to this MOU.

**Parties** – DOH and participating LG's jointly and severally, as the context requires.

**Regulations** - *Food Regulations 2009 (WA)*.

**Temporary food business** - A food business set up as part of a one-off event where temporary or permanent premises are used, e.g. a food business selling food at a fete, fair, festival, market or show, usually lasting a matter of hours or days.

**Website** – [www.wamobilefoodregister.com](http://www.wamobilefoodregister.com)

### 3.3 Drivers

The DOH acknowledges the important role LGs have in ensuring, insofar as is practicable, processes are implemented consistently across Western Australia to address administrative and compliance challenges relating to food safety at public events with temporary and mobile food businesses.

The current processes in place for managing administrative and food safety compliance challenges at public events are inconsistent and time consuming, which is a risk to:

- Public health and safety;
- Compliance with legislation;
- Efficiency/consistency;
- Over-regulation on industry; and
- Professional/system reputation.

Currently, under the Act, there is an obligation for the proprietor of a temporary or mobile food business to give written notification of the "specified information" in the approved form in respect of those premises to the relevant LG it intends to operate within (s 107). Further, the proprietor of the food business cannot operate (except if it is an exempted food business) unless it is registered with the relevant LG in which it is operating (s 109). Section 110 provides that the proprietor may apply to each LG for a registration, and the LG may register it. Section 115 then imposes an

obligation on each LG to keep a register of those food businesses that have either been notified or registered to it.

These requirements are particularly time-consuming, onerous and inefficient for temporary or mobile food businesses and LGs. In particular, the regulation of those businesses (i.e. registration status) by LGs.

Temporary and mobile food businesses by their very nature, will often operate at a number of locations in a number of LGs. This can present some difficulties to appropriate enforcement agencies in relation to registration and notification of these businesses, for example:

- Current registration status – does the food business have a current ‘active’ registration, or has it been ‘cancelled’?
- Conditions of registration – appropriate enforcement agencies can verify if a food business is conducting activities that it is registered to do so; and
- Determine the last assess date by a LG, whilst assessing compliance with the Australia New Zealand Food Standards Code.

Developing an accessible register for temporary and mobile food businesses will minimise food regulatory risks by ensuring that a consistent approach is being undertaken when LGs and industry address food safety compliance issues.

### **3.4 Target Group**

Authorised officers appointed under the Act based in LGs and DOH and associated administrative employees of participating LGs.

## **4. Case Management**

### **4.1. Roles and Responsibilities of Agencies**

#### **DOH**

- recognises that the website represents the DOH, acknowledging that the information originates from the participating LG;
- securely stores and hosts information received by participating LGs;
- administers participating LG user accounts and accessibility to the shared information; and
- upon receipt of updated information from participating LGs, updates the Register as soon as practicable.

#### **LG**

- agrees to share information relating to temporary and/or mobile food businesses registered/notified under Part 9 of the Act, within their jurisdiction as the ‘appropriate enforcement agency’ as per the Regulations;
- LG agrees to provide information to the DOH:
  - Quarterly - for those registered food businesses captured within its jurisdiction;
  - As soon as practicable - for assessment and registration status-related information in Excel format, and submitted via email to [AdminFoodVendor@health.wa.gov.au](mailto:AdminFoodVendor@health.wa.gov.au); and
- LG to ensure that the information it provides is accurate and timely to the best of their knowledge.
- LG to notify DOH of any changes LG becomes aware of, as soon as practicable.

## 4.2 Client Access to Records and Grievance Procedures

This MOU does not, and is not intended to, transfer ownership of any intellectual property rights from one party to another.

## 5. Information to be shared

The Register will capture essential information on temporary and mobile food businesses by a participating LG, as follows:

- proprietor;
- trading name;
- business description;
- approved foods to sell;
- food business contact details;
- last assessment date
- details of the last assessment; and
- trading details (including registration status and vehicle details).

The Register will have three types of users:

- Authorised Officers (including support staff);
- Administrators; and
- Officers within EHD as required.

The LGs and EHD officers will have the following capabilities:

- Read access to all the records based on what is searched;
- Provide information to the administrator to timely updates to their food business information.

The administrators will have the following capabilities:

- Read/write access to all records;
- Ability to create and withdraw LG/EHD users; and
- Ability to perform user account administration such as adding a new user.

The participating LG consents to allowing DOH to centrally store information that is received from the participating LG, which will then be accessible to other participating LG users on a secure Internet Application (the website).

The Parties acknowledge and agrees that this Agreement and information regarding it is subject to the *Freedom of Information Act 1992 (WA)*.

## 6. General provisions

### 6.1 Honour Clause

The MOU is an expression of the purpose and intention of the parties, which is binding in honour only.

This MOU is not to give effect to any legal relationship or obligations other than those already in existence under any written law. It is not intended to give rise to any consequences or be the

subject of litigation, nor is it intended to subjugate the rights, duties or responsibilities of the parties arising from the provision of information about their customers/clients.

The Parties do not accept responsibility for any act, error or omission by the other party to this MOU, its employees and agents under this MOU.

## **6.2 Privacy**

The Parties will use their best endeavours and all steps legally available to them to prevent personal information received under this MOU from being inappropriately disclosed, compromised or misused.

The Parties will use their best endeavours to prevent information received under this MOU from being inappropriately disclosed, compromised or misused.

Section 115 of the Act requires a register of food businesses to be maintained by each appropriate enforcement agency. Furthermore, r51 of the Regulations gives an appropriate enforcement agency the option to make such lists publicly available information that is publicly available is therefore not subject to the MOU. However, all information shared by participating LGs will be treated nevertheless as 'confidential'.

With the exception of the 'last assessment date', information to be shared by participating LGs will relate to that collected in connection with Part 9 (Registration of food businesses) of the Act.

## **6.3 Review**

The MOU comprises of this document and any other document specifically referred to only. The MOU may be amended at any time with the agreement of all parties.

## **6.4 Withdrawal**

Any participating LG may, by written notice to the DOH, withdraw from its obligations under this MOU at any time provided it gives reasons in writing to the DOH for doing so, and such notice will take effect 30 Business Days from the receipt of that notice unless the Parties determine an alternative date in writing.

Where any participating LG withdraws from the MOU, the Parties agree:

- to cooperate fully with any disengagement process that may be required to give full effect of the withdrawal; and
- to use reasonable efforts to minimise harm or disadvantage to the other Party and any affected third party.

Only Participating LG's have access to the Register. LG's that have withdrawn from the MOU will have their user accounts to the Register disabled, and any information uploaded for food businesses registered in their LG area will be removed.

## **6.5 Survival**

Any provision of the MOU which expressly or by implication from its nature is intended to survive the withdrawal from the MOU and any rights arising on withdrawal shall survive.

## **6.6 Costs**

The Parties are each responsible for their own costs and resources.

## 6.7 Conflict of Interest & Dispute Resolution

Resolution of conflicts between the Parties should be based on the following principles:

- (a) The Parties recognise the importance of forthrightly expressing issues of concern as a way of improving the co-operation between the parties.
- (b) Each Party will ensure that appropriate mechanisms are in place for raising disputes to the appropriate levels of management within their respective organisation, in the event that disputes are not resolved at lower levels.
- (c) On the occasion that a matter cannot be resolved by nominated representatives of each Party, the matter will be referred to the CEO of the participating LG or the Executive Director of the EHD.
- (d) In the unlikely event that the matters remain unresolved; the Parties have the option of withdrawing from this MOU.

## 7. Endorsement by Agencies

On behalf of the Chief Executive Officer of the Department of Health

**Name** Dr Michael Lindsay

**Position** Executive Director, Environmental Health Directorate (Delegate of the CEO)

.....  
Signature Date

On behalf of the (insert Local Government name)

Name

Position

.....  
Signature Date

X \_\_\_\_\_



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