



Queensland

Food Act 1981

Reprinted as in force on 1 December 2005

Reprint No. 4B

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

NOT FURTHER AMENDED
LAST REPRINT BEFORE REPEAL
See 2006 Act No. 3 s 279

Information about this reprint

This Act is reprinted as at 1 December 2005. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



Queensland

Food Act 1981

Contents

		Page
Part 1	Preliminary	
1	Short title	5
2	Objects of Act	5
3	This Act not affected by Food Production (Safety) Act 2000	5
5	Definitions	5
5A	Meaning of food	6
5B	Meaning of food standards code	6
5C	Meaning of sell	7
5D	Meaning of unsafe food	8
5E	Meaning of unsuitable food	8
6	Operation of local laws	9
7	Entry and inspection of Crown premises	10
8	Power of chief executive to make orders directed to local government	10
Part 2	Offences relating to food	
Division 1	Serious offences relating to food	
9	Handling of food in unsafe way	10
10	Sale of unsafe food	10
11	False description of food	11
Division 2	Other offences relating to food	
12	Handling and sale of unsafe food	11
13	Handling and sale of unsuitable food	11
14	Misleading conduct relating to sale of food	12
15	Sale of unfit equipment or packaging or labelling material	12
16	Compliance with food standards code	13
17	False descriptions of food	13
17A	Application of provisions outside jurisdiction	14

Division 3	Defences	
17B	Defence relating to publication of advertisements	15
17C	Defence relating to food for export	15
17D	Defence of due diligence	16
17E	Disapplication of Criminal Code, ss 23 and 24.	17
17F	Defence relating to handling food.	17
17G	Defence relating to sale of unfit equipment or packaging or labelling material	17
Part 3	Emergency powers	
18	Making of order	18
19	Nature of order	18
19A	Special provisions relating to recall orders.	19
19B	Way of making orders.	20
19C	Compensation	20
19D	Failure to comply with order	21
Part 4	Hygiene requirements and control of food stores and other places, food vehicles and equipment	
21	Powers with respect to unclean food store, food vehicle or equipment	22
Part 5	Administration and enforcement	
24	Authorised officers	25
26	Duty of local government	26
27	Certain vehicles taken to be within area of local government	27
28	Powers of authorised officers	27
29	Procedure on taking samples.	31
29A	When an article etc. must be analysed by an analyst	33
30	Offences with respect to authorised officers and articles.	33
31	Duties of officer upon seizure and detention of article	35
32	Keeping and storage of certain articles	35
33	Remedy in respect of articles seized	35
34	Destruction or other disposal of seized food	37
35	Liability for costs and expenses of storage or destruction or other disposal of seized article.	38
36	Authorisation and duties of analysts.	38
37	Supply of results of analysis.	39
38	Prohibition of use of result of analysis for certain purposes.	39
39	Delegation by Minister	40
39A	Delegation by chief executive.	40

40	Secrecy	40
Part 5A	Appeals	
40A	Who may appeal.	41
40B	Starting an appeal	41
40C	Hearing procedures	42
40D	Powers of court on appeal	42
40E	Appeal to District Court	42
Part 6	Miscellaneous provisions	
40F	Labelling requirement about ingredient in food	43
41	Defence for s 40F relating to food for export	43
42	Liability of defendant for certain costs and expenses.	43
43	Power of court to order forfeiture	44
44	Offences generally and penalty	45
45	Proceedings for offences	45
45A	Alternative verdicts for serious food offences.	46
46	Analyst's certificate to be evidence	47
47	Independent analysis	47
48	Protection of information and reports.	48
49	Probative effect of second contravention etc.	48
50	Liability for offence by employee	49
51	Liability for offence by body corporate	50
52	Right of defendant to have third person before court	51
53	Protection against liability.	52
54	Mode of service of documents	53
55	Evidentiary provisions	54
56	Approval of forms	56
57	Regulations	57
58	Savings—authorised officers	58
59	Savings—analysts	59
Schedule 1	Subject matter for regulations	60
Schedule 2	Changes to food standards code	67
Schedule 3	Dictionary	69
 Endnotes		
1	Index to endnotes.	74
2	Date to which amendments incorporated.	74
3	Key	75

4	Table of reprints	75
5	Tables in earlier reprints	76
6	List of legislation	76
7	List of annotations	77
8	List of forms notified or published in the gazette	84

Food Act 1981

[as amended by all amendments that commenced on or before 1 December 2005]

An Act to consolidate and amend the law relating to the handling and sale of food, to make provision for securing the safety and suitability of and fixing standards for food and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Food Act 1981*.

2 Objects of Act

The objects of this Act include the following—

- (a) ensuring food for sale is safe and suitable for human consumption;
- (b) preventing misleading conduct relating to the sale of food;
- (c) applying the food standards code.

3 **This Act not affected by Food Production (Safety) Act 2000**

The *Food Production (Safety) Act 2000* is additional to, and does not limit, this Act.

5 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

5A Meaning of *food*

- (1) In this Act, *food* includes—
- (a) a substance or thing of a kind used, or represented as being for use, for human consumption (whether it is raw, prepared or partly prepared); and
 - (b) a substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing mentioned in paragraph (a); and
 - (c) a substance used in preparing a substance or thing mentioned in paragraph (a) if it comes into direct contact with the substance or thing mentioned in that paragraph, including, for example, a processing aid; and
 - (d) chewing gum or an ingredient or additive in chewing gum, or a substance used in preparing chewing gum; and
 - (e) a substance or thing declared to be a food under a declaration in force under the *Australia New Zealand Food Authority Act 1991* (Cwlth), section 3B;
- whether or not the substance, thing or chewing gum is in a condition fit for human consumption.
- (2) However, *food* does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989* (Cwlth).

5B Meaning of *food standards code*

- (1) Subject to subsection (2), in this Act, *food standards code* means the Australia New Zealand Food Standards Code as defined in the *Australia New Zealand Food Authority Act 1991* (Cwlth).
- (2) In applying the food standards code for this Act—
- (a) the code applies with the changes stated in schedule 2; and

- (b) standard 3.2.1 and clause 4 of standard 3.2.2 of the code¹ do not apply; and
- (c) clause 3 of standard 3.2.2 of the code² does not apply until 1 July 2002.

5C Meaning of *sell*

- (1) In this Act, *sell* includes—
 - (a) barter, offer or attempt to sell; and
 - (b) receive for sale; and
 - (c) have in possession for sale; and
 - (d) display for sale; and
 - (e) cause or permit to be sold or offered for sale; and
 - (f) send, forward or deliver for sale; and
 - (g) dispose of in any way for valuable consideration; and
 - (h) dispose of to an agent for sale on consignment; and
 - (i) provide under a contract of service; and
 - (j) in relation to food, supply the food as a meal or part of a meal to an employee, under a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work; and
 - (k) dispose of by way of raffle, lottery or other game of chance; and
 - (l) offer as a prize or reward; and
 - (m) give away for the purpose of advertisement or in furtherance of trade or business; and
 - (n) in relation to food, supply the food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or

1 Food standards code, standard 3.2.1 (Food Safety Programs) and standard 3.2.2 (Food Safety Practices and General Requirements), clause 4 (Notification)

2 Food standards code, standard 3.2.2 (Food Safety Practices and General Requirements), clause 3 (Food handling-skills and knowledge)

entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment; and

- (o) in relation to food, give away, from a food business, the food to a person; and
 - (p) sell for the purpose of resale.
- (2) For this Act, food or equipment that is displayed for the purpose of being offered as a prize or reward or given away for the purpose of advertisement or in the furtherance of trade or business is taken to have been displayed for sale by the owner of the food or equipment.

5D Meaning of *unsafe* food

- (1) For 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 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.

5E Meaning of *unsuitable* food

- (1) For 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 a 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 other than by slaughter, and has not been declared under an 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 the food.
- (2) However, food is not unsuitable merely because—
- (a) it contains an agricultural or veterinary chemical in an amount that does not contravene the food standards code; or
 - (b) it contains a metal or non-metal contaminant (within the meaning of the food standards code) in an amount that does not contravene the permitted level for the contaminant as specified in the food standards code; or
 - (c) it contains a matter or substance that is permitted by the food standards code.

- (3) In this section—

slaughter, of an animal, includes the killing of an animal in the process of capturing, taking or harvesting it for the purposes of preparing it for use as food.

6 Operation of local laws

Where an enactment of this Act and any local law of a local government relate to the same subject matter, both the enactment and the local law shall be given full force and effect and shall be complied with but if, in respect of a particular subject matter, there is inconsistency between an enactment of this Act and any local law, the enactment shall prevail and, to the extent of the inconsistency, the local law shall have no force or effect.

7 Entry and inspection of Crown premises

A regulation may authorise or direct the local governments specified in the regulation to enter premises or classes of premises the property of the Crown and therein to carry out such inspections of those premises or classes of premises or any vehicle or equipment found therein and to discharge therein such functions or duties imposed by or under this Act on local governments in connection with premises or other places, vehicles or equipment as are specified in the regulation.

8 Power of chief executive to make orders directed to local government

The chief executive may make orders directed to a local government with respect to all acts, matters and things required by or under this Act to be performed or done by local governments and that local government shall comply with every order so made.

Part 2 Offences relating to food**Division 1 Serious offences relating to food****9 Handling of food in unsafe way**

A person must not handle food intended for sale in a way that the person knows, or reasonably ought to know, will make, or is likely to make, the food unsafe.

Maximum penalty—1350 penalty units or 2 years imprisonment.

10 Sale of unsafe food

A person must not sell food that the person knows, or reasonably ought to know, is unsafe.

Maximum penalty—1350 penalty units or 2 years imprisonment.

11 False description of food

- (1) A person must not cause food intended for sale to be falsely described if the person knows, or reasonably ought to know, that a consumer of the food who relies on the description will, or is likely to, suffer physical harm.

Maximum penalty—1350 penalty units or 2 years imprisonment.

- (2) A person must not sell food that the person knows, or reasonably ought to know, is falsely described and will, or is likely to, cause physical harm to a consumer of the food who relies on the description.

Maximum penalty—1350 penalty units or 2 years imprisonment.

Division 2 Other offences relating to food

12 Handling and sale of unsafe food

- (1) A person must not handle food intended for sale in a way that will make, or is likely to make, the food unsafe.

Maximum penalty—700 penalty units.

- (2) A person must not sell food that is unsafe.

Maximum penalty—700 penalty units.

13 Handling and sale of unsuitable food

- (1) A person must not handle food intended for sale in a way that will make, or is likely to make, the food unsuitable.

Maximum penalty—550 penalty units.

- (2) A person must not sell food that is unsuitable.

Maximum penalty—550 penalty units.

- (3) For the purposes of this section, it is immaterial whether the food concerned is safe.

14 Misleading conduct relating to sale of food

- (1) A person must not, in the course of carrying on a food business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to the advertising, packaging or labelling of food intended for sale or the sale of food.

Maximum penalty—700 penalty units.

- (2) A person must not, for the purpose of effecting or promoting the sale of food in the course of carrying on a food business, cause the food to be advertised, packaged or labelled in a way that falsely describes the food.

Maximum penalty—700 penalty units.

- (3) A person must not, in the course of carrying on a food business, sell food that is packaged or labelled in a way that falsely describes the food.

Maximum penalty—700 penalty units.

- (4) Neither subsection (2) nor (3) limits the generality of subsection (1).

15 Sale of unfit equipment or packaging or labelling material

- (1) A person must not sell equipment that, if used for the purposes for which it was designed or intended to be used—

- (a) would make or be likely to make food unsafe; or
(b) would put other equipment, or would be likely to put other equipment, in a condition that, if the other equipment were used for the purposes for which it was designed or intended to be used, it would make, or be likely to make, food unsafe.

Maximum penalty—700 penalty units.

- (2) A person must not sell packaging or labelling material that, if used for the purposes for which it was designed or intended to be used, would make or be likely to make food unsafe.

Maximum penalty—700 penalty units.

16 Compliance with food standards code

- (1) A person must comply with a requirement imposed on the person by a provision of the food standards code in relation to the conduct of a food business or to food intended for sale or food for sale.

Maximum penalty—700 penalty units.

- (2) A person must not sell food that does not comply with a requirement of the food standards code that relates to the food.

Maximum penalty—700 penalty units.

- (3) A person must not sell or advertise food that is packaged or labelled in a way that contravenes a provision of the food standards code.

Maximum penalty—700 penalty units.

- (4) A person must not sell or advertise for sale food in a way that contravenes a provision of the food standards code.

Maximum penalty—700 penalty units.

- (5) A person does not commit an offence against this section in relation to a contravention of the food standards code, standard A1, clause (1A)³ if the food concerned was packed, before or at the time of sale, in the presence of the purchaser.

17 False descriptions of food

- (1) For this part, food that is falsely described includes food to which any 1 or more of the following paragraphs applies—

- (a) the food is represented as being of a particular nature or substance for which there is a prescribed standard under

3 Food standards code, standard A1 (Labelling and Advertising)

- the food standards code and the food does not comply with that prescribed standard;
- (b) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance in a quantity or proportion that significantly diminishes its food value or nutritive properties as compared with food of the represented nature or substance;
 - (c) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, a substance of lower commercial value than food of the represented nature or substance;
 - (d) the food is represented as being of a particular nature or substance and a constituent of the food has been wholly or partly removed so that its properties are diminished as compared with food of the represented nature or substance;
 - (e) a word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression about the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person;
 - (f) the food is not of the nature or substance represented by the way in which it is packaged, labelled or offered for sale.
- (2) Without limiting the application of subsection (1) of this section to section 11(2), food is falsely described for the purposes of section 11(2) if it is supplied in response to a purchaser's request for a particular type of food or a food that does not contain a particular ingredient, and the food is not of that type or contains that ingredient.

17A Application of provisions outside jurisdiction

For this part, it does not matter that the food concerned was sold or intended for sale outside this jurisdiction.

Division 3 Defences

17B Defence relating to publication of advertisements

- (1) In proceedings for an offence under this part in relation to the publication of an advertisement, it is a defence for a person to prove that—
 - (a) the person carried on the business of publishing or arranging for the publication of advertisements; and
 - (b) the person published or arranged for the publication of the advertisement concerned in the ordinary course of that business.
- (2) Subsection (1) does not apply if the person—
 - (a) should reasonably have known that the publication of the advertisement was an offence; or
 - (b) is the proprietor of a food business or is otherwise engaged in the conduct of a food business for which the advertisement was published; or
 - (c) had previously been informed in writing by the chief executive that publication of an advertisement of that type would constitute an offence.

17C Defence relating to food for export

- (1) In proceedings for an offence under this part involving a contravention of a provision of the food standards code in relation to food, it is a defence for a person to prove that—
 - (a) the food concerned is to be exported to another country; and
 - (b) the food complies with the laws in force at the time of the alleged offence in the place to which the food is to be exported being laws that deal with the same subject-matter as the provision of the food standards code concerned.
- (2) This section does not apply to food that was originally intended for export but was sold in this jurisdiction.

17D Defence of due diligence

- (1) In proceedings for an offence under this part, it is a defence for a person to prove that the person exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.
- (2) Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved—
 - (a) that the commission of the offence was due to—
 - (i) an act or default of another person; or
 - (ii) reliance on information supplied by another person; and
 - (b) that—
 - (i) the person carried out all checks of the food concerned as were reasonable in all the circumstances; or
 - (ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person; and
 - (c) that the person did not import the food into this jurisdiction from another country; and
 - (d) if the offence involves the sale of food, that—
 - (i) the person sold the food in the same condition as when the person purchased it; or
 - (ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in a contravention of this Act.
- (3) Without limiting the ways in which a person may satisfy the requirements of subsection (1) or (2)(b)(i), a person may satisfy those requirements by proving that the person complied with a scheme (for example, a quality assurance program or an industry code of practice) that was—
 - (a) designed to manage food safety hazards and based on Australian national or international standards, codes or guidelines designed for that purpose; and

- (b) documented in some way.
- (4) In subsection (2)(a)—
 - another person* does not include a person who was—
 - (a) an employee or agent of the defendant; or
 - (b) in the case of a defendant that is a body corporate, a director, employee or agent of the defendant.

17E Disapplication of Criminal Code, ss 23 and 24

- (1) The Criminal Code, section 23, does not apply to an offence under this part.
- (2) The Criminal Code, section 24, does not apply to an offence under division 2.⁴

17F Defence relating to handling food

In proceedings for an offence under section 9, 12(1) or 13(1),⁵ it is a defence for a person to prove that the person caused the food to which the offence relates to be destroyed or otherwise disposed of immediately after the food was handled in the way that was likely to make it unsafe or unsuitable.

17G Defence relating to sale of unfit equipment or packaging or labelling material

In proceedings for an offence under section 15(1) or (2),⁶ it is a defence for a person to prove that the person reasonably believed that the equipment or material concerned was not intended for use in connection with the handling of food.

4 Criminal Code, sections 23 (Intention—motive) and 24 (Mistake of fact)

5 Section 9 (Handling of food in unsafe way), 12 (Handling and sale of unsafe food) or 13 (Handling and sale of unsuitable food)

6 Section 15 (Sale of unfit equipment or packaging or labelling material)

Part 3 Emergency powers

18 Making of order

The chief executive may make an order under this part if the chief executive has reasonable grounds to believe that the making of the order is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

19 Nature of order

- (1) An order under this part may do any 1 or more of the following—
 - (a) require the publication of warnings, in a form approved by the chief executive, that a particular food or type of food is unsafe;
 - (b) prohibit the cultivation, taking, harvesting or obtaining, from a specified area, of a particular food or type of food or other primary produce intended to be used for human consumption;
 - (c) prohibit a particular food or type of food from being advertised or sold;
 - (d) direct that a particular food or type of food consigned or distributed for sale or sold be recalled and specify the way in which, and the period within which, the recall must be conducted;
 - (e) direct that a particular food or type of food or other primary produce intended to be used for human consumption be impounded, isolated, destroyed or otherwise disposed of and specify the way in which the impounding, isolation, destruction or disposal must be conducted;
 - (f) prohibit absolutely the carrying on of an activity in relation to a particular food or type of food, or permit the carrying on of the activity only under conditions specified in the order;

- (g) without limiting paragraph (f), impose conditions relating to the taking and analysis of samples of the food or of water or soil or another thing that is part of the environment in which that activity is carried on in relation to the food;
 - (h) specify methods of analysis (not inconsistent with any methods prescribed by the food standards code) of any samples required to be taken under the order.
- (2) An order under this part may be varied or revoked by the chief executive in the same way as the order was made.

19A Special provisions relating to recall orders

- (1) A recall order may require the person, or the persons of a class, that is bound by the order to disclose to the public or to a class of persons specified in the order, in a way so specified, any one or more of the following—
- (a) the particular food or type of food to be recalled or disposed of;
 - (b) the reasons why the food is considered to be unsafe;
 - (c) the circumstances in which consumption of the food is unsafe;
 - (d) procedures for disposing of the food.
- (2) A person who is required by a recall order to conduct a recall of food must give written notice to the chief executive of the completion of the recall as soon as practicable after the completion.
- (3) A person who is bound by a recall order is liable for any cost incurred by or on behalf of the chief executive in connection with the recall order and that cost is taken to be a debt due to the chief executive from the person.
- (4) In proceedings for the recovery of the debt, a certificate signed by the chief executive stating the amount of any costs and the way in which they were incurred is evidence of the matters certified.

19B Way of making orders

- (1) An order under this part—
 - (a) must be made in writing addressed to the person or persons intended to be bound by it, and served on that person or each of those persons, as the case requires; or
 - (b) must be addressed to several persons, to a class of persons, or to all persons.
- (2) Notice of an order addressed as mentioned in subsection (1)(b) setting out the order and the persons to be bound by the order must, as soon as practicable after the order is made, be published in a newspaper that, in the opinion of the chief executive, will be most likely to bring the order to the attention of the persons to be bound by it.
- (3) An order under this part, when it takes effect, is binding on the person or persons to whom it is addressed.
- (4) An order that is served on a person takes effect when it is served.
- (5) An order, notice of which is published under subsection (2), takes effect at the beginning of the first day on which the notice was published.
- (6) An order ceases to have effect at the expiration of 90 days after the day on which it takes effect unless it is sooner revoked.
- (7) Subsection (6) does not prevent a further order being made in the same terms as an order that has ceased to have effect.

19C Compensation

- (1) A person bound by an order under this part who suffers loss because of the making of the order may apply to the chief executive for compensation if the person considers that there were insufficient grounds for the making of the order.
- (2) If there were insufficient grounds for the making of the order, the chief executive must pay the compensation to the applicant that is just and reasonable.

- (3) The chief executive must give written notice about his or her decision about the payment of compensation under this section to each applicant for the payment of the compensation.
- (4) If the chief executive has not decided an application for compensation under this section within 28 days of receiving the application, the chief executive is taken to have decided to refuse to pay any compensation.
- (5) If the chief executive refuses an application for compensation or decides an amount of compensation less than that sought by the applicant, the notice must also state the following—
 - (a) the reasons for the decision;
 - (b) that the applicant may appeal against the decision within 28 days;
 - (c) how the applicant may appeal against the decision.

19D Failure to comply with order

A person must not, without reasonable excuse—

- (a) carry on an activity in contravention of a prohibition imposed on the person by an order under this part; or
- (b) neglect or refuse to comply with a direction given by an order under this part; or
- (c) contravene a condition specified in an order under this part.

Maximum penalty—700 penalty units.

Part 4**Hygiene requirements and
control of food stores and other
places, food vehicles and
equipment****21 Powers with respect to unclean food store, food vehicle
or equipment**

- (1) Where the chief executive or a local government is satisfied from an inspection made or caused to be made by the chief executive or the local government or from the report of an authorised officer that any food store, food vehicle or equipment is in an unclean or insanitary condition, the chief executive or the local government may, by order in writing served on the proprietor of the food store, food vehicle or equipment, direct that the food store, food vehicle or equipment specified in the order be put into a clean and sanitary condition to the satisfaction of an authorised officer within such time as is specified in the order.
- (2) Where, after the expiration of the period specified in an order under subsection (1), the food store, food vehicle or equipment to which that order relates has not been put into a clean and sanitary condition to the satisfaction of an authorised officer, the chief executive or local government concerned may, by a further order in writing served on the proprietor of the food store, food vehicle or, as the case may be, equipment, direct that—
 - (a) the food store shall not be kept or used for the sale or handling for sale of food;
 - (b) the food vehicle shall not be kept or used for the sale or handling for sale of food;
 - (c) the equipment shall not be used in or for the sale or handling for sale of food or in the cleaning of any other equipment;

until an authorised officer has given to the proprietor of the food store, food vehicle or, as the case may be, equipment a certificate in writing that the food store, food vehicle or

equipment has been put into and is in a clean and sanitary condition.

- (3) A further order under subsection (2) may specify conditions with respect to the keeping or use of the food store, food vehicle or equipment in question for the sale or handling for sale of food and, where that order so specifies, that food store, food vehicle or equipment shall not be kept or used otherwise than in accordance with those conditions.
- (4) The proprietor of any food store, food vehicle or equipment on whom a further order under subsection (2) is served may at any time after the date of service of that order request in writing the chief executive or, as the case may be, local government concerned to cause the food store, food vehicle or equipment the subject of the further order to be inspected by an authorised officer.
- (5) In the case of any food vehicle or equipment the place for carrying out the inspection shall be one specified by the chief executive or the local government concerned.
- (6) Where an authorised officer upon the completion of an inspection by the officer of any food store, food vehicle or equipment following a request under subsection (4) refuses to give to the proprietor a certificate under subsection (2) in respect of the food store, food vehicle or equipment so inspected, the proprietor may, within 14 days after the date of the refusal, appeal to a Magistrates Court constituted under the *Justices Act 1886* against that refusal.
- (7) An appeal under subsection (6)—
 - (a) shall be instituted and conducted as prescribed;
 - (b) shall not operate as a stay of a further order made under subsection (2);
 - (c) shall not affect the liability of a person for an offence defined in subsection (11).
- (8) The court shall hear and determine the appeal and its decision thereon shall be final and without appeal.
- (9) Costs of and incidental to the appeal shall be in the discretion of the court.

Food Act 1981

- (10) Where any food store, food vehicle or equipment in respect of which a request has been made under subsection (4) has not been inspected within a period of 2 days after receipt of the request by the chief executive or, as the case may be, local government concerned, it shall be deemed for the purposes of subsection (11) that a certificate in respect of the food store, food vehicle or equipment has been given to the proprietor under subsection (2) at the expiration of that period unless a notice has been served on the proprietor within that period stating that the failure to inspect has been due to the act, default or neglect of the proprietor.
- (11) Where a further order under subsection (2) has been served on the proprietor of any food store, food vehicle or equipment and—
- (a) a certificate in respect of that food store, food vehicle or equipment has not been given subsequently under that subsection or deemed to have been given under subsection (10); or
 - (b) an appeal under subsection (6) against the refusal of an authorised officer to give a certificate has not been allowed;
- a person who—
- (c) contrary to the further order—
 - (i) keeps or uses the food store for the sale or handling for sale of food;
 - (ii) keeps or uses the food vehicle for the sale or handling for sale of food;
 - (iii) uses the equipment in or for the sale or handling for sale of food or in or for the cleaning of any other equipment; or
 - (d) fails to comply with a condition of the further order;
- commits an offence against this Act.
- Maximum penalty—100 penalty units.
- (12) An order under subsection (1) or a further order under subsection (2) may be made with respect to—

- (a) any food store, food vehicle or equipment specified in the order or further order; or
- (b) a food store or food vehicle so specified and all equipment contained therein or equipment so specified and contained therein; or
- (c) all equipment contained in a food store or food vehicle so specified.

Part 5

Administration and enforcement

24 Authorised officers

- (1) The chief executive may appoint an officer or employee of the department as an authorised officer.
- (2) An appointment under subsection (1)—
 - (a) must be in writing; and
 - (b) may be of general application or be limited to a particular purpose; and
 - (c) may be revoked at any time by the chief executive.
- (3) The chief executive officer of a local government may appoint any of the following persons as an authorised officer for the local government and its area—
 - (a) an employee of the local government;
 - (b) if another local government consents—an employee of the other local government;
 - (c) another person under contract to the local government.
- (4) The chief executive officers of 2 or more local governments may appoint an employee of, or another person under contract to, 1 of the local governments to be an authorised officer for the local governments' areas.
- (5) A person may be appointed under this section for the Act generally or for stated provisions of the Act.

- (6) Each authorised officer must be issued with an identity card containing a recent photograph of the officer.
- (7) The identity card must be issued by—
 - (a) if the authorised officer is an officer or employee of the department—the chief executive;
 - (b) if the authorised officer is an officer of a local government—the local government.
- (8) An authorised officer exercising powers under this Act in relation to another person must produce the authorised officer's identity card on demand by the other person.

26 Duty of local government

- (1) The local government of an area within which or part of which this Act is in force shall superintend and see to the execution of section 16(1), in so far as the subsection relates to standards 3.1.1, 3.2.2 and 3.2.3 of the food standards code,⁷ and of part 4 and, if required by the regulations so to do, shall superintend and see to the execution of such regulations and, where the chief executive makes orders under this Act, shall superintend and see to the execution of such of those orders as the chief executive determines and in any case shall do and provide such acts, matters and things as are necessary for the purpose in question.
- (2) A regulation may exclude a food store, food vehicle or equipment from the operation of subsection (1).
- (3) This section does not operate to prevent the chief executive from exercising the powers or authorities or discharging the functions or duties conferred or imposed on a local government under subsection (1) in a case where the chief executive is satisfied that the local government concerned has failed to do so or where, for any other reason, the chief executive considers it desirable to do so.

⁷ Food standards code, standards 3.1.1 (Interpretation and Application), 3.2.2 (Food Safety Practices and General Requirements) and 3.2.3 (Food Premises and Equipment)

27 Certain vehicles taken to be within area of local government

- (1) For this Act, a vehicle on a river, harbour or other waters not within a local government area is taken to be within the area of the local government declared under a regulation or, if a declaration has not been made, the local government whose area is nearest to the vehicle.
- (2) Subsection (1) does not apply to a vehicle of the Australian Defence Force or that belongs to a foreign country.

28 Powers of authorised officers

- (1) For the purposes of this Act and subject to subsection (9), an authorised officer—
 - (a) may, subject to subsection (2), enter any premises or other place in or at which the officer believes on reasonable grounds any article is sold or handled for sale and therein—
 - (i) may make such investigation and inquiry as are necessary to ascertain whether this Act is being complied with;
 - (ii) may make an inspection and examination thereof and of articles, fittings or fixtures found including anything that the officer believes on reasonable grounds is used or capable of being used for or in connection with the sale or handling for sale of any article;
 - (iii) may, subject to section 29(6), take and remove therefrom any article or samples of any article;
 - (iv) may open or order to be opened any container used for the transporting of goods, or any package or other receptacle of any kind that the officer believes on reasonable grounds contains any article;
 - (v) may require a person to produce to the officer any licence, registration, permit, approval, certificate or authority under this Act granted and issued to that person or alleged by that person to have been

Food Act 1981

- granted and issued to the officer or any books, accounts, records or documents and may inspect, examine and make copies of or extracts from any licence, registration, permit, approval, certificate or authority or any book, account, record or document so produced or remove it for the purpose of making a copy thereof or extracts therefrom;
- (vi) may seize and detain for such time as is necessary any article found by means of or in relation to which the officer believes on reasonable grounds this Act has been contravened;
 - (vii) may mark, fasten, secure or seal—
 - (A) an article found;
 - (B) any door, gate or opening that the officer believes on reasonable grounds affords access to an article;
 - (viii) may take and remove therefrom anything or sample of anything, other than an article, found that the officer believes on reasonable grounds may be used as evidence in a proceeding under this Act;
 - (ix) may question any person to ascertain whether this Act is being complied with and require that person to answer any question put;
 - (x) may take such photographs or films or audio or visual recordings as the officer considers necessary; or
- (b) may at any time purchase food from a person selling or handling for sale food by payment or offer of the current market value of that food; or
 - (c) may require a person found by the officer committing an offence against this Act or who the officer believes on reasonable grounds has committed an offence against this Act or whose name and address are in the officer's opinion reasonably required to state the person's full name and the address of the person's usual place of residence and, if the officer suspects on reasonable grounds that a name or address so stated is false, may

Food Act 1981

- require the person to produce evidence of the correctness thereof; or
- (d) may in a case where the officer is obstructed or believes on reasonable grounds that the officer may be obstructed in the exercise of the powers or authorities or the discharge of the functions or duties conferred or imposed upon the officer by or under this Act call to the officer's aid another authorised officer; or
 - (e) may stop, detain and search any vehicle used or that the officer believes on reasonable grounds is being or is likely to be used for the transporting of any article or in or on which the officer believes on reasonable grounds any article is sold or handled for sale and may exercise in relation to that vehicle any of the powers or authorities and discharge any of the functions or duties conferred or imposed upon the officer by or under this subsection; or
 - (f) may call to the officer's aid a person who the officer thinks is competent to assist the officer in the exercise of the officer's powers or authorities or the discharge of the officer's functions or duties and a person so acting in aid, while so acting, shall have the same powers and authorities as are conferred upon an authorised officer under this Act; or
 - (g) may use such force as is reasonably necessary in the exercise of the powers or authorities or the discharge of the functions or duties conferred or imposed upon the officer by or under this Act; or
 - (h) may exercise such other powers or authorities and discharge such other functions or duties as are prescribed.
- (2) Before an authorised officer enters a part of any premises or other place which part is used exclusively as a dwelling house the officer shall, save where the officer has the permission of the occupier of that part to the officer's entry, obtain from a justice a warrant to enter.
- (3) A justice who is satisfied upon the complaint of an authorised officer that there is reasonable cause to suspect—

- (a) that in any premises or other place an offence against this Act has been, is being or is likely to be committed;
- (b) that there is in any premises or other place anything in respect of which an offence against this Act has been, is being or is likely to be committed;

may issue a warrant directed to an authorised officer to enter the premises or other place named in the warrant for the purpose of exercising therein the powers and authorities conferred upon an authorised officer by or under this Act.

- (4) A warrant shall be, for the period of 1 month from the date of its issue, sufficient authority for the authorised officer and all persons acting in aid of the officer—
 - (a) to enter the premises or other place specified in the warrant; and
 - (b) to exercise therein the powers and authorities conferred upon an authorised officer by or under this Act.
- (5) For the purposes of subsections (2) to (4), premises that are used as a dwelling house do not include the curtilage of those premises.
- (6) For the purpose of gaining entry to any premises or other place, an authorised officer may call to the officer's aid such persons as the officer thinks necessary and those persons, while acting in aid of an authorised officer in the lawful exercise by the officer of the officer's power of entry, shall have a like power of entry.
- (7) Where an article is sold or handled for sale during the night-time, an entry and inspection under this section may be made at all reasonable times during the daytime or night-time but otherwise such entry and inspection shall be made at all reasonable times during the daytime.
- (8) A person is not obliged under this Act to answer any question or give any information or evidence tending to criminate the person.
- (9) The powers and authorities conferred and the functions and duties imposed by or under this Act on an authorised officer who is an officer of a local government shall be exercised or, as the case may be, discharged by that officer only within the

area of the local government of which the officer is an officer or on any vehicle deemed under section 27 to be within that area for the purposes of this Act and only so far as the exercise of those powers or authorities and the discharge of those functions or duties are required for or directed towards the discharge of a function or duty imposed on the local government by or under this Act.

29 Procedure on taking samples

- (1) Where an authorised officer takes or otherwise obtains a sample of food with the intention that it be submitted for analysis, the officer shall, before or as soon as practicable after obtaining the sample, inform the owner of the food comprised in the sample or, if the owner is not present or readily available, the person from whom the sample was obtained or the person having charge of that food of the officer's intention to have the sample analysed.
- (2) The authorised officer shall comply with all regulations that prescribe the number of samples to be obtained or a method of obtaining samples or of dealing with samples obtained in relation to the class or description of food concerned or the analysis proposed to be carried out.
- (3) Subject to subsection (4), where the regulations do not otherwise prescribe in relation to the class or description of food concerned or the analysis proposed to be carried out and an authorised officer obtains a sample of food with the intention that the sample be submitted for analysis, the officer shall—
 - (a) divide the sample into 3 separate parts and mark and seal or fasten each part in such manner as its nature will permit;
 - (b) leave 1 part with the owner of the food or other person from whom the sample was obtained or a person appearing to be the servant or agent of that owner or other person;
 - (c) submit 1 of the remaining parts for analysis;
 - (d) retain the other remaining part for future comparison.

- (4) Where the regulations do not prescribe a method of dealing with a sample in relation to the class or description of food concerned or the analysis proposed to be carried out and if the division of a sample for analysis into 3 separate parts in accordance with subsection (3) would in the opinion of the authorised officer—
- (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis;
 - (b) furnish parts insufficient for accurate analysis;
 - (c) render the sample in any other way unsuitable for analysis including a method of analysis prescribed in relation to the food from which the sample was taken;
- the authorised officer shall deal with the sample in such manner as is appropriate in the circumstances having regard to this Act.
- (5) Where a sample of food is taken by an authorised officer in the form of separate or severable objects, it shall not be necessary for the officer in dividing that sample into parts in accordance with this section to divide any 1 of those objects and it shall be sufficient compliance with this section if the officer—
- (a) takes a number of those objects; and
 - (b) divides the number so taken into the requisite number of parts so that each part consists of 1 or more than 1 of such separate or severable objects; and
 - (c) deals with those parts in accordance with subsection (2), (3) or, as the case requires, (4).
- (6) Notwithstanding this Act, where food is kept for retail sale in a closed package a person shall not be required by an authorised officer to provide a sample that is less than the whole of that package.
- (7) An authorised officer shall be deemed to have complied with this section notwithstanding failure by the owner of the food or other person specified in subsection (3)(b) to accept any part or parts required to be delivered to the officer in accordance with this section.

- (8) This section does not apply to the procuring for analysis of a sample of food sold through a food vending machine if the authorised officer obtains the sample by properly making payment for it and no person present at the time the officer obtains the sample admits to being in charge of the machine.

29A When an article etc. must be analysed by an analyst

If an authorised officer wishes to have an article, other thing or sample taken under section 28(1)(a)(iii) or (viii) analysed, the officer must have it analysed by an analyst.

30 Offences with respect to authorised officers and articles

A person who—

- (a) except with the authority of an authorised officer or pursuant to an order of a court—
- (i) removes, alters or interferes in any way with—
 - (A) an article seized and detained under this Act;
 - (B) any article or other thing or a sample of any article or other thing taken or otherwise obtained by an authorised officer under section 28;
 - (ii) erases, alters, opens, breaks or removes a mark, seal or fastening placed by an authorised officer in the exercise of the officer's powers or authorities or the discharge of the officer's functions or duties under this Act—
 - (A) on an article other than part of a sample or any sample unit or package left by the authorised officer with a person from whom a sample was taken or otherwise obtained;
 - (B) on any door, gate or opening affording access to an article; or
- (b) refuses to sell to an authorised officer food or to allow the officer to take a sample of food or any other article in such quantity as the officer reasonably requires; or

- (c) refuses or neglects, when required by or under this Act to do so, to render assistance or to furnish information to an authorised officer or other person; or
- (d) fails, upon demand duly made, to produce to an authorised officer for examination any book, account, record or document required or authorised by or under this Act to be produced or fails to allow an authorised officer to examine or to make a copy of or an extract from any book, account, record or document so produced; or
- (e) fails to comply with any lawful direction or order of an authorised officer; or
- (f) fails upon demand duly made orally by an authorised officer to deliver up to the officer an article authorised by or under this Act to be seized by the officer or delivered up to the officer; or
- (g) knowingly makes a false or misleading statement orally or in writing to an authorised officer exercising a power or authority or discharging a function or duty under this Act; or
- (h) assaults, threatens, abuses, insults, intimidates or attempts to intimidate any authorised officer or other person in the exercise of powers or authorities or the discharge of functions or duties under this Act; or
- (i) when required by an authorised officer to do so, fails to state his or her name and the address of his or her usual place of residence or states a false name or address; or
- (j) prevents a person from being questioned by an authorised officer; or
- (k) in any manner other than a manner referred to in paragraphs (a) to (j) obstructs or attempts to obstruct an authorised officer or other person in the exercise of powers or authorities or the discharge of functions or duties under this Act;

commits an offence against this Act.

Maximum penalty—100 penalty units.

31 Duties of officer upon seizure and detention of article

An authorised officer, upon the seizure and detention by the officer of an article under this Act, shall forthwith—

- (a) give notice in the approved form of the seizure and detention to the person apparently in charge of the article;
- (b) if there is no person apparently in charge of the article and the name and address in Queensland of a person appearing to the authorised officer to be the consignor or owner of the article is set out on or attached to the article or a package containing the article—give notice in the approved form of the seizure and detention to that person;
- (c) in any other case, if the name and address in Queensland of the importer or consignee of the article or of his or her agent are known to the authorised officer—give notice to such 1 of those persons as the authorised officer determines.

32 Keeping and storage of certain articles

An article that has been seized and detained or taken or otherwise obtained under this Act by an authorised officer may, at the direction of an authorised officer—

- (a) be kept and stored in, at or on the premises or other place or vehicle where it was seized and detained or taken or otherwise obtained;
- (b) be removed to any other proper place and there kept and stored.

33 Remedy in respect of articles seized

- (1) Where an article is seized and detained by an authorised officer under section 28, the person from whom the article was seized may within the prescribed number of days after the seizure make application in the approved form to a Magistrates Court under the *Justices Act 1886* for an order directing the authorised officer to release the article seized by the officer.

- (2) In subsection (1)—
prescribed number of days means, in the case of an article that is—
- (a) food—3; or
 - (b) equipment—14; or
 - (c) a package—3; or
 - (d) material used in packing food—14; or
 - (e) the whole or a part of anything, including a food vehicle, used for or in connection with the sale or transporting for sale of food—14; or
 - (f) labelling or advertising material used, or capable of being used, in connection with the sale of food—14.
- (3) The applicant shall forthwith give to the authorised officer responsible for the seizure and detention of the article in question a copy of the application made under subsection (1).
- (4) The court shall thereupon appoint a place, date and time for the hearing of the application and notify the applicant and the authorised officer thereof.
- (5) Upon the hearing of an application under subsection (1) the court—
- (a) if it is satisfied that—
 - (i) the authorised officer responsible for the seizure and detention of the article did not have reasonable grounds for believing that the article was one by means of or in relation to which this Act had been contravened; or
 - (ii) the article was not one by means of or in relation to which this Act had been contravened;may set aside the seizure and detention of the article and order that the article be released from detention otherwise the court shall refuse the application and confirm the seizure and detention;
 - (b) may make such order as it thinks fit in respect of the costs and expenses of and incidental to—
 - (i) the application; and

- (ii) the removal and storage of the article seized.
- (6) An order made under subsection (5)(b) shall be final and without appeal.
- (7) If an application—
 - (a) is refused—then on the refusal; or
 - (b) is not made under subsection (1)—then when the period in which the application could have been made under the subsection ends;

the seized article becomes—

 - (c) if it was seized by an authorised officer who is an officer or employee of the department—the property of the State;
 - (d) if it was seized by an authorised officer who is an officer of a local government—the property of the local government.
- (8) A seized article that becomes the property of the State may be destroyed or otherwise disposed of by the chief executive.
- (9) A seized article that becomes the property of a local government may be destroyed or otherwise disposed of by the local government.

34 Destruction or other disposal of seized food

Notwithstanding sections 32 and 33, where an authorised officer has seized food under this Act and—

- (a) the owner of the food consents to the destruction or other disposal thereof; or
- (b) the food is in the opinion of the authorised officer decayed, deteriorated or putrefied;

the authorised officer—

- (c) may destroy or otherwise dispose of the food; or
- (d) if the owner of the food or the person in whose possession the food was at the time of seizure so requests—may permit the owner or, as the case may be, that person to destroy or otherwise dispose of the food

subject to such reasonable conditions as the authorised officer stipulates.

35 Liability for costs and expenses of storage or destruction or other disposal of seized article

- (1) Where an article is seized under this Act and—
- (a) an application is not made for its release under section 33(1); or
 - (b) the article is destroyed or otherwise disposed of pursuant to section 34 (if food) or to section 33(8) or (9);

the owner of the article at the time of its seizure or, where the article is at the time of its seizure in the possession of a person who is not the owner and the identity of the owner is not known, the person in whose possession the article was when seized shall be liable to pay the costs and expenses incurred in or in connection with the storage, destruction or other disposal of that article.

- (2) Costs and expenses referred to in this section remaining unpaid may be recovered by action in a court of competent jurisdiction—
- (a) in the case of costs and expenses incurred by or on behalf of a local government—as a debt due and owing to the local government; or
 - (b) in the case of costs and expenses incurred by or on behalf of the department—as a debt due and owing to the State.

36 Authorisation and duties of analysts

- (2) The chief executive, from time to time by signed writing, may authorise a person, who the chief executive considers is appropriately qualified, to carry out analyses for the purposes of this Act and may at any time revoke an authority so given.
- (3) An authority given under subsection (2) may be in respect of a particular type of analysis specified in the authority.

- (4) A person authorised under this section who does not desire to carry out analyses in accordance with the person's authority may furnish to the chief executive a notice in writing to that effect and upon receipt of such notice the chief executive shall revoke the authority given to that person.
- (5) An analyst, as soon as practicable after an article is submitted to the analyst for that purpose—
 - (a) shall personally analyse the article; or
 - (b) shall supervise the analysis of the article by another person;and thereupon shall give to the person who submitted the article for analysis a certificate in the approved form of the result of the analysis.
- (6) The chief executive shall prepare and at all times maintain a list of persons authorised under this section and shall revise that list on 1 January in each year.
- (7) The revised list shall be published in such manner as the chief executive thinks fit.
- (8) An analyst who carries out an analysis for the purposes of this Act shall, where a method of analysis has been prescribed in a particular case, follow that method and certify accordingly in the certificate of analysis given by the analyst.

37 Supply of results of analysis

The chief executive, upon demand made in that behalf, shall supply a copy of the result of an analysis of an article carried out under this Act by an officer of the Department of Health to the person from whom that article was taken or otherwise obtained under section 28 or to the manufacturer, packer or importer or agent of the manufacturer of that article or the agent in Queensland of that agent.

38 Prohibition of use of result of analysis for certain purposes

A person who for the purposes of any trade or advertisement uses in whole or in part the result of an analysis made for the

purposes of this Act commits an offence against this Act.
Maximum penalty—20 penalty units.

39 Delegation by Minister

- (1) The Minister may delegate the Minister's powers under this Act to—
 - (a) an appropriately qualified officer or employee of the department; or
 - (b) an employee of a local government.

- (2) In subsection (1)(a)—

appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.

Example of 'standing'—

A person's classification level in the department.

39A Delegation by chief executive

- (1) The chief executive may delegate the chief executive's powers under this Act to—
 - (a) an appropriately qualified officer or employee of the department; or
 - (b) an employee of a local government.

- (2) In subsection (1)(a)—

appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.

Example of 'standing'—

A person's classification level in the department.

40 Secrecy

- (1) Save as provided by subsection (2), a person shall not—
 - (a) disclose information; or
 - (b) publish a document or part of a document;

obtained by the person in connection with the administration of this Act unless the disclosure or publication is made—

- (c) with the consent of the person from whom the information or document was obtained; or
- (d) in connection with the administration of this Act; or
- (e) by or with the prior approval of the Minister or the chief executive; or
- (f) for the purposes of a proceeding under or arising out of this Act or a report of such proceeding.

Maximum penalty—40 penalty units.

- (2) Any authorised officer or other person who is so authorised by the chief executive generally or in a particular case may communicate information that comes to the officer's knowledge in the exercise of the officer's powers or authorities or the discharge of the officer's functions or duties under this Act to an officer or authority administering a corresponding law or to such Commonwealth department or authority as the chief executive specifies.

Part 5A Appeals

40A Who may appeal

An applicant for the payment of compensation under section 19C who is dissatisfied with the chief executive's decision to refuse to pay compensation or about the amount of compensation may appeal against the decision.

40B Starting an appeal

- (1) An appeal may be started at—
 - (a) the Magistrates Court nearest the place where the person lives or carries on business; or
 - (b) a Magistrates Court at Brisbane.

- (2) The notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed with the registrar of the court within 28 days after—
 - (a) if the person is given notice of the decision under section 19C(5)—the day the person is given the notice; or
 - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.
- (3) The court may, at any time, extend the time for filing the notice of appeal.

40C Hearing procedures

- (1) In hearing the appeal, the court is not bound by the rules of evidence and must comply with natural justice.
- (2) The appeal is by way of rehearing, unaffected by the chief executive's decision, on the material before the chief executive and any further evidence allowed by the court.

40D Powers of court on appeal

- (1) In deciding the appeal, the court may confirm the chief executive's decision or substitute another decision for the chief executive's decision.
- (2) The chief executive must give effect to the court's decision.

40E Appeal to District Court

An appeal lies to the District Court from a decision of a Magistrates Court under section 40D, but only on a question of law.

Part 6 Miscellaneous provisions

40F Labelling requirement about ingredient in food

- (1) A label on a large package of food must not contain a statement relating to a particular ingredient present in the food in the package unless the label also contains a statement of the proportion by weight in which the ingredient is present.
- (2) A person must not sell food that is labelled contrary to subsection (1).

Maximum penalty—40 penalty units.

- (3) In this section—

large package means a package with a surface area of at least 100cm².

41 Defence for s 40F relating to food for export

It is a defence to a charge of an offence against section 40F for the defendant to prove that—

- (a) the food in respect of which the charge is brought is to be exported to another country; and
- (b) the labelling of the food complies with the laws in force in the country to which the food is exported at the time at which it is exported.

42 Liability of defendant for certain costs and expenses

- (1) Save as is otherwise expressly provided by this Act, a person who is convicted of an offence against this Act or who is charged with an offence against this Act of which the person is found guilty or to which the person pleads guilty and in respect of which a conviction is not recorded is liable, in addition to a penalty and costs in respect of the taking of proceedings for the offence, for the payment of the costs and expenses incurred in or in connection with the examination, seizure, analysis, destruction or other disposal of any article in respect of which the proceedings are taken and the court, upon the conviction or other determination of the proceedings as aforesaid, shall make an order accordingly.

- (2) Costs and expenses ordered to be paid by the court under subsection (1) shall be deemed to form part of the costs of and incidental to the proceedings and shall be recoverable in the same manner as those costs are recoverable.

43 Power of court to order forfeiture

- (1) A court—
- (a) that convicts a person of an offence against this Act; or
 - (b) before which a person is charged with an offence against this Act of which the person is found guilty or to which the person pleads guilty and in respect of which a conviction is not recorded;
- may order that—
- (c) the article by means of or in relation to which the offence was committed; or
 - (d) any similar article belonging to and found in the possession of the defendant at the time of the commission of the offence;
- be forfeited to Her Majesty.
- (2) Subject to subsection (3), a court, in addition to exercising the powers conferred upon it by subsection (1), may, upon the application of an authorised officer and such notice as the court determines being given to such persons as the court determines, order that any article seized or any article of a nature similar to that of an article seized by that officer under this Act found with the article so seized be forfeited to Her Majesty.
- (3) A court is not empowered to order forfeiture of an article under subsection (2) unless it is satisfied that the article is one by means of or in relation to which this Act is or has been contravened.
- (4) Every article forfeited to Her Majesty under this Act shall be disposed of in the manner determined by the Minister.

44 Offences generally and penalty

- (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.
- (2) A person who—
 - (a) fails to do that which the person is directed or required to do; or
 - (b) does that which the person is forbidden to do;by a person acting under the authority of this Act commits an offence against this Act.
- (3) Save where a specific penalty is otherwise prescribed, a person who commits an offence against this Act is liable to a penalty of 40 penalty units.

45 Proceedings for offences

- (1) Save where it is otherwise expressly provided, a prosecution for an offence against this Act—
 - (a) shall be taken by way of summary proceedings under the *Justices Act 1886* within 12 months after the offence is committed or within 12 months after the commission of the offence first comes to the knowledge of the complainant, whichever period is the later to expire;
 - (b) may be instituted by the chief executive or, in an appropriate case, the local government of the area in which the offence is committed or an authorised officer or by a person authorised in writing in that behalf by the Minister or the chief executive or that local government.
- (2) The summons in a prosecution for an offence against this Act in which an analyst's certificate is used shall be made returnable not less than 14 days after the date on which it is served.
- (3) A copy of the analyst's certificate proposed to be used by the prosecution shall be served with the summons.
- (4) An endorsement on the analyst's certificate that a copy of it was duly served with the summons shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that service.

- (5) A prosecution for an offence against this Act in respect of food taken or otherwise obtained for analysis under section 28 shall be instituted not later than 90 days after the day on which the food was so taken or otherwise obtained.
- (6) Notwithstanding this Act or any other Act, in a proceeding on a complaint under this Act, the court may make an order on any matter within its jurisdiction though no application or complaint is made in respect of that matter.
- (7) Penalties recovered in respect of offences against this Act shall—
 - (a) where the penalty has been recovered upon the complaint of a local government or its authorised officer or other person authorised by it—be paid into the general fund of the local government; and
 - (b) in any other case—be paid into the consolidated fund.

45A Alternative verdicts for serious food offences

- (1) If, on the trial of a person charged with an offence against section 9,⁸ the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 12(1),⁹ the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 12(1), and the person is liable to punishment accordingly.
- (2) If, on the trial of a person charged with an offence against section 10,¹⁰ the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 12(2), the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 12(2), and the person is liable to punishment accordingly.

8 Section 9 (Handling of food in unsafe way)

9 Section 12 (Handling and sale of unsafe food)

10 Section 10 (Sale of unsafe food)

46 Analyst's certificate to be evidence

- (1) Where in respect of a proceeding for an offence against this Act a copy of a certificate of analysis—
 - (a) if obtained on behalf of the prosecution—is served with the summons; or
 - (b) if obtained on behalf of the defendant—is given to the prosecutor at least 3 days before the return day;

the certificate, a copy of which has been so served or given purporting to be signed by an analyst shall, on its production in the proceeding, be sufficient evidence of the matters set forth therein unless an order is made in accordance with subsection (2).

- (2) Where a certificate to which subsection (1) applies is produced or it is proposed to produce such a certificate, the court, where it is satisfied, whether upon an application or by other means, that in the circumstances of the case the analyst who issued the certificate should be called as a witness in the proceeding, may order that the analyst be called as a witness by the party who produces or proposes to produce the certificate and for that purpose may grant any necessary adjournment.
- (3) An order made under subsection (2) may provide that the analyst be called in the stead of production by the party of the certificate in question.
- (4) Where an order is made under subsection (2), the court shall adopt such procedure as to it seems just and equitable to enable the analyst to be called and to be examined by the parties irrespective of the stage reached in the proceeding.

47 Independent analysis

Where, in a proceeding under this Act for an offence in respect of food a sample of which has been taken or otherwise obtained under this Act, there is disagreement between the evidence of the analyst for the prosecution and that of the analyst for the defence, the court shall, on the application of a party to the proceeding and may, if it thinks fit, without such application having been made, order that the authorised officer concerned deliver up or send in such manner as the

court determines the part or parts of any sample retained under section 29 to an independent analyst for analysis or to the analyst for the prosecution and the analyst for the defence for joint analysis.

48 Protection of information and reports

In a proceeding for an offence against this Act—

- (a) a witness on behalf of the prosecution shall not be compelled to disclose the fact that the witness received information, the nature of the information received or the name of the person who furnished the information;
- (b) an authorised officer shall not be compelled to produce a report made or received by the officer in the officer's official capacity or containing confidential information.

49 Probative effect of second contravention etc.

- (1) Where, upon the hearing of a charge of an offence against a provision of this Act, it is shown that any person so charged has previously been prosecuted in respect of a contravention of or failure to comply with this Act in any similar (though not necessarily identical) respect occurring within a period of 3 years before the contravention or failure to comply to which the charge relates, it shall be deemed that the contravention or failure to comply to which the charge relates has occurred with the knowledge and approval of that person unless the person proves—
 - (a) that the contravention or failure to comply to which the charge relates was due to the act or default of a person over whom the person had no control; and
 - (b) that the person exercised all due diligence to ensure that the contravention or failure to comply to which the charge relates did not occur.
- (2) In the application of subsection (1), it is immaterial that upon a prosecution in respect of a contravention or failure to comply occurring within the period of 3 years referred to in that subsection the defendant was not convicted for any

reason other than that the contravention or failure to comply had not been proved.

- (3) Where, in connection with a charge of an offence against a provision of this Act, it is intended to make reference to a prosecution of any defendant in respect of a contravention of or failure to comply with this Act occurring within the period of 3 years referred to in subsection (1), a notice of intention to make such reference shall be served with the summons to answer the charge.
- (4) An endorsement on a copy of a notice under subsection (3) that the notice was duly served with the summons shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that service and, if the defendant to whom the notice relates is not present in person before the court, it may take account of the prosecution to which the notice relates as if the defendant had appeared and admitted it.
- (5) Where proof of a contravention of or failure to comply with this Act occurring on an occasion within a period of 3 years referred to in subsection (1) depends upon an analysis of any article and there exists a certificate of such analysis, a copy of such certificate may be served with the summons to answer the charge to which that occasion is relevant, whereupon its service may be evidenced as provided by section 45(2), and section 46 shall apply in respect of the certificate.

50 Liability for offence by employee

- (1) Where a person commits an offence against this Act as an employee, then, without derogating from the Criminal Code, section 7, the employer of that person shall be deemed to have committed the offence and, notwithstanding the Criminal Code, section 23 or any other rule of law or practice, to be criminally responsible for the act or omission concerned therein and may be charged with the offence and punished accordingly.
- (2) However, it is a defence in a proceeding against the employer for the offence if it is proved the employer exercised all due diligence to prevent the commission of the offence by the employee.

- (3) A person is not liable to be convicted of an offence against this Act committed by the person as an employee if the person satisfies the court that the offence was committed while the business of the person's employer was being conducted under the personal superintendence of that employer or of a manager or any other representative of that employer and that the offence was committed with the knowledge of that employer, manager or representative.
- (4) Save as provided by subsection (3), this section applies so as not to prejudice liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

51 Liability for offence by body corporate

- (1) Where a body corporate commits an offence against this Act then, without derogating from the Criminal Code, section 7, each of the following persons shall be deemed to have committed the offence and, notwithstanding the Criminal Code, section 23 or any other rule of law or practice, to be criminally responsible for the act or omission concerned therein and may be charged with the offence and punished accordingly—
 - (a) the person who at the time the offence is committed was the chairperson of directors, managing director or other governing officer by whatever name called or other member of the governing body thereof by whatever name called;
 - (b) every person who at the time the offence is committed manages or acts or takes part in the management, administration or government of the business in Queensland thereof.
- (2) This section applies so as not to limit or affect in any way the liability of a body corporate to be proceeded against and punished for an offence against this Act committed by it.
- (3) It is a defence to a charge for an offence against this Act brought against a person specified in subsection (1)(a) or (b) to prove that the offence was committed without that person's consent or connivance and that the person exercised due diligence to prevent the commission of the offence.

52 Right of defendant to have third person before court

- (1) A defendant charged with an offence against this Act who alleges that the contravention or failure to comply constituting the offence was due to the act or default of another person may, upon compliance with this section, have that other person brought before the court by which the proceeding is to be heard and determined.
- (2) A defendant who desires to invoke this section—
 - (a) shall give to the complainant and the court, at least 10 days before the return day of the summons in question, notice in writing of the person's intention to do so; and
 - (b) shall make a complaint before a justice of the allegations against the other person; and
 - (c) shall forthwith file in the court the complaint so made.
- (3) The court shall thereupon issue a summons directed to the other person requiring the other person to appear before the court on the date and at the time and place specified in the summons and where that date is not the return date of the original summons in the proceeding shall enter necessary adjournments and notify the parties accordingly.
- (4) A copy of the complaint made under subsection (2) shall be served with the summons issued by the court on that complaint together with copies of such other documents filed in the proceeding as the court determines.
- (5) On the hearing of the complaints—
 - (a) the original complainant or the complainant's counsel or solicitor as well as the other person who the defendant has alleged committed the offence—
 - (i) may cross-examine the defendant if the defendant gives evidence and any witness called by the defendant; and
 - (ii) may call evidence in rebuttal;
 - (b) the court—
 - (i) may convict the other person if the contravention of or failure to comply with this Act is proved and the original defendant satisfies the court that the

contravention or failure to comply was due to the act or default of that other person; and

- (ii) shall dismiss the complaint against the original defendant and discharge the original defendant, if in addition the original defendant satisfies the court that the original defendant has exercised all due diligence to ensure compliance with the provisions of this Act in question; and
 - (iii) may make such orders as to costs of the proceeding or any step therein as it thinks fit.
- (6) Where it appears to the chief executive that an offence against this Act has been committed in respect of which some person may be charged and the chief executive is reasonably satisfied that—
- (a) the offence was due to the act or default of some other person; and
 - (b) the first mentioned person could successfully defend a proceeding in respect of the offence by invoking this section;

the chief executive may cause to be instituted proceedings against that other person for that offence without proceedings first being instituted against the first mentioned person.

- (7) In a proceeding in accordance with subsection (6) that other person may be charged with the offence with which the first mentioned person might have been charged and, on proof that the offence was due to the act or default of that other person, the other person may be convicted of the offence.

53 Protection against liability

- (1) Any act, matter, thing, recommendation or decision done or made by or any agreement, arrangement or contract entered into by—
- (a) the Minister; or
 - (b) the chief executive; or
 - (c) a local government; or
 - (d) any authorised officer or other officer; or

- (e) an analyst; or
- (f) a person acting with the authority of the Minister, the chief executive, a local government, any authorised officer or other officer or an analyst;

for the purpose of carrying out or giving effect to this Act or done in good faith and purporting to be for the purposes of this Act shall not subject them or any of them or the Crown to any action, liability, claim or demand.

- (2) Any cost or expense reasonably incurred by a person acting or purporting to act in a manner referred to in subsection (1) shall be deemed to be a cost or an expense authorised by or under this Act.

54 Mode of service of documents

Any notice, requisition, order or other writing under this Act required or authorised to be given to or served on a person shall be duly given or served if—

- (a) it is served personally on the person to whom it is directed;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (d) where it is addressed to the owner or occupier of premises, it is left with some adult person on the premises or, if there is no such person on the premises—it or a true copy of it is fixed on some conspicuous part of the premises;
- (e) where it is addressed to the chief executive or a local government, it is left with some person at the office of the chief executive or, as the case may be, local government or forwarded by post to the chief executive or, as the case may be, local government.

55 Evidentiary provisions

- (1) In a proceeding for the purposes of this Act—
- (a) it shall not be necessary to prove the appointment of the chief executive or other officer or the authority of an authorised officer or analyst or his or her authority to do an act, take a proceeding or give any direction or order;
 - (b) a signature purporting to be that of the chief executive or other officer or an authorised officer or analyst shall be taken to be the signature it purports to be, until the contrary is proved;
 - (c) a document purporting to be a copy of any licence, registration, permit, approval, certificate, order, notice or authority under this Act shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of that licence, registration, permit, approval, certificate, order, notice or authority;
 - (d) a document purporting to be signed by the chief executive, or, as the case requires, the chief executive officer of a local government stating that at a specified time or during a specified period there was or was not in force any licence, registration, permit, approval, certificate, order, notice or authority under this Act as described in the document granted or given to a specified person or in respect of a specified thing and that such licence, registration, permit, approval, certificate, order, notice or authority was or was not subject to the terms, conditions or restrictions set out in the document shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that document;
 - (e) a certificate purporting to be signed by a person authorised to grant it shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;
 - (f) a certificate purporting to be signed by the chief executive, or, as the case requires, the chief executive

officer of a local government certifying as to the receipt or otherwise of any notice, application or payment or that any amount of fees or other moneys specified in the certificate is payable under this Act by a specified person and has not been paid shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;

- (g) a certificate or document relating to a motor vehicle purporting to be issued under the *Transport Infrastructure (Roads) Act 1991*¹¹ shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate or document and that the person named therein as the person in whose name the motor vehicle is registered was the person using the motor vehicle at the material time or during the material period;
- (h) an allegation or averment in a complaint—
 - (i) that a place is or that any act, matter or thing was done or omitted within a specified district;
 - (ii) that any person, premises or other place, vehicle or equipment was or was not or were or were not at any material time licensed, registered, authorised or approved under this Act;
 - (iii) that food was handled by a specified person;
 - (iv) that a specified substance is or is not food within the meaning of this Act;
 - (v) that any licence, registration, permit, approval, certificate or authority required under this Act to be obtained was not duly obtained by the person required to obtain it;
 - (vi) of the date on which the commission of an offence against this Act came to the knowledge of the complainant;

11 Now see *Transport Operations (Road Use Management) Act 1995*, section 178.

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that allegation or averment;

(i)—

- (i) a sale of food shall be evidence, until the contrary is proved, that the food was sold for human consumption;
 - (ii) the finding of food in any premises or other place or vehicle used for selling or handling for sale food shall be evidence, until the contrary is proved, that the food so found was intended for sale for human consumption;
 - (iii) the finding of food in any premises or other place or vehicle used for the handling for sale of food shall be evidence, until the contrary is proved, that the food so found was intended for sale;
 - (iv) the obtaining of a sample of food under this Act with the intention that it be submitted for analysis shall be evidence, until the contrary is proved, that the food of which a sample was so obtained was food for human consumption;
 - (j) the onus of proof that food was not sold, or intended for sale for human consumption is upon the person charged with the offence;
 - (k) in respect of food comprising a sample taken or otherwise obtained for submission for analysis, each of the parts into which that food is divided shall be taken to be of uniform composition with the other such parts, until the contrary is proved.
- (2) This section does not prejudice or in any way affect other means of proving the elements of an alleged offence.

56 Approval of forms

The chief executive may approve forms for use under this Act.

57 Regulations

- (1) The Governor in Council may make regulations under this Act.
- (2) The regulations—
 - (a) may provide that in cases specified therein, whether on conditions so specified or unconditionally, persons, acts, articles, matters or things or a class of persons, acts, articles, matters or things may be exempted from the provisions of the regulations either wholly or to such extent as is so specified;
 - (b) may adopt wholly or partly and specifically or by reference and with any alteration, amendment, modification or variation any of the standards, rules, codes, specifications or methods of any association, body or institution whether as in force or recommended at the time of adoption or as amended from time to time;
 - (c) may provide for the approval of the chief executive to be the standard to be applicable in respect of a particular matter or thing;
 - (d) may confer powers or authorities or impose functions or duties in connection with the regulations on a government department, public authority or local government, owners or occupiers of premises or other places or equipment, or owners or operators of vehicles or other persons.
- (3) A regulation may make provision for a matter mentioned in schedule 1.
- (4) The chief executive may cause to be published codes of practice in connection with matters and things that may be made the subject of regulations for the purpose of giving advice and guidance to persons responsible for compliance with those regulations.
- (5) This section does not authorise the making of a regulation that is inconsistent with the food standards code as applying for this Act.

58 Savings—authorised officers

- (1) A person who, immediately before the commencement day, was an authorised officer mentioned in repealed section 24(1) is taken to have been appointed as an authorised officer, under section 24 as in force from the commencement day, as follows—
 - (a) if the person had been appointed under the *Health Act 1937* by the chief executive (health), the person is taken to have been appointed under section 24(1) by the chief executive;
 - (b) if the person had been appointed under the *Health Act 1937* by a local government, the person is taken to have been appointed under section 24(3) by the chief executive officer of the local government;
 - (c) if the person had been appointed under the *Health Act 1937* by 2 or more local governments, the person is taken to have been appointed under section 24(4) by the chief executive officers of the local governments.
- (2) A person who, immediately before the commencement day, was an authorised officer mentioned in repealed section 24(2) is taken to have been appointed as an authorised officer, under section 24 as in force from the commencement day, as follows—
 - (a) if the person was authorised under repealed section 24(2)(a), the person is taken to have been appointed under section 24(1) by the chief executive;
 - (b) if the person was authorised under repealed section 24(2)(b), the person is taken to have been appointed under section 24(3) by the chief executive officer of the relevant local government.
- (3) A reference in this section to a repealed provision is a reference to the provision as in force before the commencement day.
- (4) In this section—

chief executive (health) means the chief executive under the *Health Act 1937*.

commencement day means the day the amendments of section 24 under the *Public Health Act 2005*, schedule 1, commence.

59 Savings—analysts

- (1) A person who, immediately before the commencement day, was authorised under repealed section 36(1) to carry out analyses for this Act is taken to have been authorised by the chief executive under section 36(2) as in force from the commencement day.

- (2) In this section—

commencement day means the day the amendment of section 36 under the *Public Health Act 2005*, schedule 1, commences.

repealed section 36(1) means section 36(1) as in force before the commencement day.

Schedule 1 Subject matter for regulations

section 57

- 1 The powers, authorities, functions and duties of persons engaged in the administration of this Act.
- 2 The qualifications of authorised officers, analysts and other officers and persons and the means by which qualifications of any person are assessed, whether by examination or otherwise.
- 3 The licensing by the chief executive or a local government of persons for specified purposes.
- 4 The registration by the chief executive or a local government of premises or other places, vehicles or equipment for specified purposes; the inspection of premises or other places, vehicles or equipment in respect of which registration has been granted or is sought.
- 5 Applications for and the grant, issue, revocation, cancellation, suspension or surrender of licences, registrations, permits, approvals, certificates and authorities under this Act and transfers, renewals and duplicates thereof; the terms and conditions on which licences, registrations, permits, approvals, certificates and authorities may be granted, issued, revoked, cancelled, suspended, surrendered, transferred or renewed; the records to be kept in relation thereto.
- 6 The prescription of standards for the nature, substance, composition, strength, weight, quantity, purity or quality of food generally or food of a specified class or description or of any ingredient or component part thereof or for the nature or proportion of any substance that may be mixed with or used in the preparation or preservation thereof; the variations (if any) from standards.
- 7 The prohibition of the addition to, mixture with or use in the preparation of or presence in food generally or food of a specified class or description of a specified substance or a specified substance exceeding a prescribed quantity or proportion.

Schedule 1 (continued)

- 8 The prescription of the quantity or proportion of a specified substance that is to be the quantity or proportion or the maximum or minimum quantity or proportion that shall or may be added to, mixed with or used in the preparation of or present in food generally or food of a specified class or description.
- 9 The prohibition in the sale or the handling for sale of food generally or food of a specified class or description of the use of any equipment, articles or materials containing a specified substance or a specified substance exceeding a prescribed quantity or proportion.
- 10 The prescription or prohibition of specified modes of handling food generally or food of a specified class or description.
- 11 The prescription of the temperature at which food generally or food of a specified class or description that is handled for sale shall be kept.
- 12 The prohibition of the sale of food generally or food of a specified class or description containing any micro-organism or a micro-organism of a specified kind or a micro-organism of a specified kind in excess of a specified number in a specified quantity.
- 13 The provision for and prescription of all matters and things for or with respect to securing the safety and suitability of food and the conditions and practices in connection with the sale or handling for sale of food and without limiting the generality of this provision for or with respect to—
 - (a) the cleanliness of premises or other places, vehicles or equipment in, at, on or from which food is sold or handled for sale and fittings, fixtures or equipment in, at or on such premises or other places, vehicles or equipment;
 - (b) the provision and proper use of satisfactory facilities for the protection of food in, at or on premises or other places, vehicles or equipment in, at, on or from which food is sold or handled for sale;

Schedule 1 (continued)

- (c) the design and construction of premises or other places, vehicles, equipment, fittings or fixtures used for or in connection with the sale or handling for sale of food;
 - (d) the prohibition or regulation of the use of specified materials or materials of a specified class in the manufacture of equipment, fittings or fixtures;
 - (e) the clothing to be worn by persons attending equipment or in, at or on premises or other places or vehicles in, at, on or from which food is sold or handled for sale;
 - (f) the standards of cleanliness and hygiene to be maintained;
 - (g) preventing or minimising the spread of disease;
 - (h) the provision and use of equipment, fittings or fixtures;
 - (i) prescribing standards for equipment, fittings or fixtures and requiring equipment, fittings or fixtures of specified kinds to be approved by the chief executive; specifying the procedure for obtaining such approval;
 - (j) the inspection and testing of equipment, fittings or fixtures and the inspection of premises or other places or vehicles in, at, on or from which food is sold or handled for sale;
 - (k) the provision and maintenance of an adequate water supply and drainage, sewerage, lighting and ventilation facilities in premises or other places, vehicles or equipment in, at, on or from which food is sold or handled for sale.
- 14 The provision for and prescription of all matters and things for or with respect to food vending machines and without limiting the generality of this provision for or with respect to—
- (a) the location, surroundings and cleanliness thereof;
 - (b) the mode of construction thereof with particular reference to the provision of means for maintaining cleanliness and operating temperatures;
 - (c) maintenance and servicing thereof and the keeping of records in relation thereto;

Schedule 1 (continued)

- (d) marking on or affixing thereto operating instructions, evidence of the currency of registration thereof and the name and address or other particulars of the person who receives or shares in the proceeds of the sale of food therefrom;
 - (e) requiring labels or other writings containing specified words, statements, expressions or specified pictorial representations or designs to be affixed thereto or prohibiting the use in such labels or other writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or representations or designs of a similar or other specified nature;
 - (f) regulation and control of the temperature of food contained therein;
 - (g) the prevention of the adulteration or contamination of food contained therein;
 - (h) the inspection thereof and of their contents;
 - (i) the prohibition of the operation thereof and rendering them inoperable whilst in a faulty condition;
 - (j) the prohibition or regulation of the sale therefrom of goods other than food or food of any class or description with food of another class or description;
 - (k) the prohibition or regulation of the use thereof for dispensing food other than food that they are designed to dispense;
 - (l) generally, the control and use thereof.
- 15 Regulation and control and where necessary prohibition and restriction of advertisements relating to food generally or food of a specified class or description; requiring advertisements to contain specified words, statements, expressions or specified pictorial representations or designs or prohibiting the use therein of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or pictorial representations or designs of a similar or

Schedule 1 (continued)

other specified nature or of statements, claims, designs, devices or abbreviations of a specified nature.

- 16 The prescription of the mode of labelling food generally or food of a specified class or description or packages of food generally or of food of a specified class or description; the forms or kinds of labels; the matter to be contained in labels including specified words, statements, expressions, pictorial representations or designs of a specified kind; the size, style or colour of any such matter or the nature or colour of the background on which it appears; requiring labels that are specified to be written on or attached to food or to packages of food; prohibition generally as to the matter to be contained in labels and without limiting the generality of this provision of the use on labels of specified words, statements or expressions or of words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a similar or other specified nature; requiring that where food generally or food of a specified class or description that is not in a package is displayed for sale it shall be displayed in conjunction with a label bearing such matter as is prescribed.
- 17 The provision for and requirements with respect to the seizure, recall, destruction, denaturation or disposal of food that has become damaged, deteriorated, impoverished, contaminated or perished to such degree as is specified or of food of a specified class or description; specifying the circumstances in which food shall be destroyed or denatured.
- 18 The prescription of modes of making containers, wrappers or other packages or packing materials for food so as to avoid contact with injurious substances; the substances or materials that shall not be used in making containers, wrappers or other packages or packing materials; the minimum size of and the packing required for an article not being food that will be enclosed in a container, wrapper or other package; provision for the requirement that specified food be packed in a specified manner; prohibition of specified modes of packing food.
- 19 The provision for and requirements as to writings containing specified words, statements or expressions or words,

Schedule 1 (continued)

statements or expressions having the same or a similar effect or specified pictorial representations or designs to be affixed to premises or other places, vehicles or equipment used in selling or handling for sale food or food of a specified class or description; prohibition of the use in such writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a similar or other specified nature.

- 20 The prescription of methods of analysis to be observed in analyses under or for the purposes of this Act.
- 21 The prescription of methods for taking or otherwise obtaining samples for the purposes of this Act and dealing with samples so taken or otherwise obtained; the rates of the payments to be made for samples taken or otherwise obtained for the purposes of this Act; the number of samples to be so taken or otherwise obtained in specified cases.
- 22 The signing, giving, serving and enforcement of notices for or with respect to the rectification of acts or omissions that constitute a contravention of or failure to comply with this Act.
- 23 The books and records to be kept by the proprietor, manager or person in charge of any premises or other place, vehicle or appliance in, at, on or from which food is sold or handled for sale.
- 24 The transportation, storage, distribution, inspection and sale of food of a specified class or description.
- 25 Securing the purity of water used in the handling of food or in any process in connection with such handling.
- 26 The provision for premises or other places, vehicles, appliances, methods, processes, packages, seals or closures and sources of water used in connection with the sale or handling for sale of food to be approved by the chief executive and requirements to that effect.
- 27 Fees, charges, allowances, costs and expenses payable or to be paid under or for the purposes of this Act and the fixing thereof; matters and things in respect of which they are

Schedule 1 (continued)

payable or to be paid; methods of collection thereof; manner, time and place of payment thereof; persons by whom and to whom they are payable; all matters with respect to the recovery thereof.

- 29 The provision for and requirements as to laboratory and testing facilities to be provided in, at or on premises or other places or vehicles where food is handled for sale and prescription of procedures and facilities to be used for the examination of food and notification to persons prescribed of the results thereof.
- 30 Penalties that may be imposed for contravention of or failure to comply with the regulations, not exceeding in each case 50 penalty units.
- 31 The manner in which any application, recommendation, report, order, notice, requisition or other document may be proved for any purpose.

Schedule 2 Changes to food standards code

section 5B(2)(a)

- 1 The editorial notes in the code do not apply.
- 2 The definition '*appropriate enforcement agency*' in clause 1 of standard 3.1.1 is replaced with the following definition—
'*appropriate enforcement agency* means—
 - (a) in relation to a food business—the local government in whose area the food premises of the business are situated; or
 - (b) in relation to food premises—the local government in whose area the premises are situated.'
- 3 In the definition '*food premises*' in clause 1 of standard 3.1.1, the words ', pontoons and any other place declared by the relevant authority to be premises under the Food Act' are replaced with the words 'and pontoons'.
- 4 The definition '*sell*' in clause 1 of standard 3.1.1 is replaced with the following definition—
'*sell* has the same meaning as it has in the Act.'
- 5 The following definitions are included in clause 1 of standard 3.1.1—
'*relevant authority* means the chief executive of the Queensland department of government in which the Act is administered.
'*local government* means a local government as defined in section 36 of the *Acts Interpretation Act 1954* of Queensland.'
- 6 The definition '*primary food production*' in clause 1 of standard 3.1.1 is replaced with the following definition—
'*primary food production* means production of primary produce within the meaning of section 11 of the *Food Production (Safety) Act 2000* of Queensland.'

Schedule 2 (continued)

- 7 In clause 2(4)(c) of standard 3.1.1, the words ‘another Act’ are replaced with the words ‘an Act’.

Schedule 3 Dictionary

section 5

advertisement means—

- (a) words, whether written or spoken;
- (b) a pictorial representation or design;
- (c) any other representation by any means whatever;

used or apparently used to promote directly or indirectly the sale of food.

analysis includes an examination or testing of food or another thing.

analyst means a person authorised by or under this Act to carry out analyses for the purposes of this Act.

animal includes an amphibian, bird, crustacean, fish, mollusc and reptile.

approved form see section 56.¹²

article means—

- (a) food;
- (b) equipment;
- (c) a package;
- (d) material used in packing food;
- (e) the whole or a part of anything, including a food vehicle, used for or in connection with the sale or transporting for sale of food;
- (f) labelling or advertising material used or capable of being used in connection with the sale of food.

authorised officer means a person appointed as an authorised officer under section 24.

12 Section 56 (Approval of forms)

Schedule 3 (continued)

chief health officer means the chief health officer of the department.

corresponding law means a law of another State declared under a regulation to be a law that makes provision substantially similar to a provision of this Act.

equipment means the whole or part of—

- (a) any utensil, machinery, instrument, device, apparatus or appliance used, or designed or intended for use, in connection with the handling of food; or
- (b) any substance, utensil, machinery, instrument, device, apparatus or appliance that is used, or that is designed or intended for use, in cleaning anything mentioned in paragraph (a).

examine includes weigh, count, test and measure.

exercised all due diligence includes took all reasonable precautions.

food see section 5A.

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 and whether it involves the handling or sale of food on one occasion only.

food standards code see section 5B.

food store means any premises or other place kept or used for the sale or handling for sale of food.

food vehicle means a vehicle kept or used for the sale or handling for sale of food.

food vending machine means a machine or mechanical device used or capable of being used for selling food without

Schedule 3 (continued)

intervention or attention by or on behalf of the vendor at the time of the sale or supply.

handling—

- (a) of food, includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving and displaying of food; or
- (b) of an article other than food, includes the manufacturing, collecting, processing, storing, transporting, delivering, preparing, treating, packing, and displaying of the article.

ingredient includes an ingredient of an ingredient.

label includes any tag, brand, mark, statement in writing, representation, design or other descriptive matter on or attached to or used or displayed in connection with or accompanying food or a package of food.

package includes a container and wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packed and, if food is carried or sold or intended to be carried or sold in more than one package, includes every one of the packages.

premises includes land whether or not appurtenant to a building, a building or part thereof or any tent, stall or other structure whether permanent or temporary.

proprietor—

- (a) in relation to a food store—means the owner or, where the owner is not the occupier, the occupier of the food store and includes a person in charge or apparently in charge of the food store;
- (b) in relation to a food vehicle—means—
 - (i) where the vehicle is not the subject of a hire purchase agreement—the owner;
 - (ii) where the vehicle is the subject of a hire purchase agreement or otherwise hired or leased—the hirer or lessee under that agreement;

Schedule 3 (continued)

and includes a person in charge or apparently in charge of the vehicle;

- (c) in relation to equipment—means—
 - (i) where the equipment is in or at a food store—the proprietor of the food store;
 - (ii) where the equipment is in or on a food vehicle—the proprietor of the food vehicle;
- (d) in relation to a food business—means—
 - (i) the person carrying on the food business; or
 - (ii) if that person can not be identified, the person in charge of the food business.

publish means insert in a newspaper or other publication, send to a person by post or otherwise, deliver to a person, leave upon premises or any other place in the occupation of a person, disseminate by broadcast, telecast or projected image whether moving or still or bring to the notice of the public in any other manner.

recall order means an order under part 3 requiring the recall or disposal, or both, of food.

sample includes any part or unit of a sample.

sell see section 5C.

servicing, when used in relation to a food vending machine, means stocking or replenishing that machine with food.

State includes Territory.

substance includes any mixture or compound.

this jurisdiction means Queensland.

unsafe see section 5D.

unsuitable see section 5E.

vehicle means a device whether or not operational that is usually a means of transportation by land, water or air and includes any cart, caravan, trailer, bicycle, motor vehicle,

Schedule 3 (continued)

railway carriage or wagon, ship, boat, barge, hulk, aircraft, airship or air cushion vehicle.

Endnotes

1 Index to endnotes

	Page
2 Date to which amendments incorporated	74
3 Key	75
4 Table of reprints	75
5 Tables in earlier reprints	76
6 List of legislation	76
7 List of annotations	77
8 List of forms notified or published in the gazette	84

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 December 2005. Future amendments of the Food Act 1981 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1992 Act No. 66	18 December 1992	5 May 1994
2	1995 Act No. 57	28 November 1995	5 December 1995
2A	1996 Act No. 61	20 December 1996	9 May 1997
3	1996 Act No. 61	20 December 1996	7 November 1997
3A	1998 Act No. 41	27 November 1998	21 December 1998
3B	2000 Act No. 5	23 March 2000	5 May 2000
3C	2001 Act No. 78	1 January 2002	8 January 2002
4	2001 Act No. 78	1 January 2002	5 April 2002

Reprint No.	Amendments included	Effective	Notes
4A	2003 Act No. 9	28 March 2003	
4B	2005 Act No. 48	1 December 2005	

5 Tables in earlier reprints

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Food Act 1981 No. 44

date of assent 12 June 1981

s 22 never proclaimed into force and rep 1994 No. 87 s 3 sch 3 pt 1

remaining provisions commenced 1 July 1982 (proc pubd gaz 26 June 1982 p 1640)

amending legislation—

Food Act and Health Act Amendment Act 1984 No. 22 pt 2

date of assent 22 March 1984

commenced on date of assent

Food Act Amendment Act 1989 No. 72

date of assent 24 August 1989

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch 2

date of assent 25 October 1989

commenced on date of assent (see s 2(1))

Health Act and Food Act Amendment Act 1990 No. 59 pt 3

date of assent 18 September 1990

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 2

date of assent 17 December 1991

commenced on date of assent (see s 2)

Health Legislation Amendment Act 1992 No. 66 pts 1, 5, s 33 sch 1

date of assent 7 December 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1992 (1992 SL No. 450)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 2, sch 3 pt

1

date of assent 1 December 1994

commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1 (this Act is amended, see amending legislation below)

date of assent 28 November 1995

commenced on date of assent

amending legislation—

Statute Law Revision Act 1995 No. 58 ss 1–2, 4 sch 1 (amends 1995 No. 57 above)

date of assent 28 November 1995

commenced on date of assent (see s 2(1) sch 1)

Health Legislation Amendment Act (No. 2) 1996 No. 61 ss 1–2, 15 sch

date of assent 9 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 402)

Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(1) sch 1

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 November 1998 (1998 SL No. 346)

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2(1)–(2), 373 sch 2

date of assent 23 March 2000

commenced on date of assent (see s 2(1)–(2))

Health Legislation Amendment Act 2001 No. 78 pts 1, 5 s 24 sch 1

date of assent 15 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 244)

Health and Other Legislation Amendment Act 2003 No. 9 ss 1, 67 sch

date of assent 28 March 2003

commenced on date of assent

Public Health Act 2005 No. 48 ss 1–2, 492 sch 1

date of assent 2 November 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2005 (2005 SL No. 280)

7 List of annotations

Title amd 2001 No. 78 s 25**PART 1—PRELIMINARY****Objects of Act****s 2** prev s 2 om R2 (see RA s 37)
pres s 2 ins 2001 No. 78 s 26**This Act not affected by Food Production (Safety) Act 2000****s 3** prev s 2 om 1991 No. 97 s 3 sch 2
pres s 2 ins 2001 No. 78 s 26

Amendments and savings

s 4 om 1991 No. 97 s 3 sch 2

Definitions

prov hdg sub 2001 No. 78 s 27(1)

s 5 amd 1995 No. 57 s 4 sch 1; 2001 No. 78 s 27(2)

Note—s 5 contained definitions for this Act. Definitions are now located in sch 3 (Dictionary).

Meaning of “food”

prov hdg ins 1995 No. 57 s 4 sch 1

s 5A (prev s 5(3)) renum 1995 No. 57 s 4 sch 1

sub 2001 No. 78 s 28

Meaning of “food standards code”

s 5B ins 2001 No. 78 s 28

Meaning of “sell”

s 5C ins 2001 No. 78 s 28

Meaning of “unsafe” food

s 5D ins 2001 No. 78 s 28

Meaning of “unsuitable” food

s 5E ins 2001 No. 78 s 28

Operation of local laws

prov hdg ins 1995 No. 57 s 4 sch 1

s 6 prev s 6 om 1995 No. 57 s 4 sch 1

pres s 6 (prev s 5(4)) renum 1995 No. 57 s 4 sch 1

Entry and inspection of Crown premises

s 7 amd 1995 No. 57 s 4 sch 1; 2001 No. 78 s 24 sch 1

Power of chief executive to make orders directed to local government

prov hdg amd 1998 No. 41 s 14(1) sch 1

s 8 amd 1998 No. 41 s 14(1) sch 1

PART 2—OFFENCES RELATING TO FOOD

pt hdg sub 2001 No. 78 s 29

Division 1—Serious offences relating to food

div hdg ins 2001 No. 78 s 29

Handling of food in unsafe way

s 9 amd 1992 No. 66 s 33 sch 1

sub 2001 No. 78 s 29

Sale of unsafe food

s 10 amd 1992 No. 66 s 33 sch 1

sub 2001 No. 78 s 29

False description of food

s 11 amd 1992 No. 66 s 33 sch 1

sub 2001 No. 78 s 29

Division 2—Other offences relating to food**div hdg** ins 2001 No. 78 s 30**Handling and sale of unsafe food****s 12** amd 1992 No. 66 s 33 sch 1
om 2001 No. 78 s 29
ins 2001 No. 78 s 30**Handling and sale of unsuitable food****s 13** amd 1992 No. 66 s 33 sch 1
om 2001 No. 78 s 29
ins 2001 No. 78 s 30**Misleading conduct relating to sale of food****s 14** amd 1992 No. 66 s 33 sch 1
om 2001 No. 78 s 29
ins 2001 No. 78 s 30**Sale of unfit equipment or packaging or labelling material****s 15** amd 1992 No. 66 s 33 sch 1
om 2001 No. 78 s 29
ins 2001 No. 78 s 30**Compliance with food standards code****s 16** amd 1992 No. 66 s 33 sch 1
om 2001 No. 78 s 29
ins 2001 No. 78 s 30**False descriptions of food****s 17** amd 1995 No. 57 s 4 sch 1
om 2001 No. 78 s 29
ins 2001 No. 78 s 30**Application of provisions outside jurisdiction****s 17A** ins 2001 No. 78 s 30**Division 3—Defences****div 3 (ss 17B–17G)** ins 2001 No. 78 s 31**PART 3—EMERGENCY POWERS****pt hdg** sub 2001 No. 78 s 32**Making of order****s 18** sub 2001 No. 78 s 32**Nature of order****s 19** amd 1995 No. 57 s 4 sch 1
sub 2001 No. 78 s 32**Special provisions relating to recall orders****s 19A** ins 2001 No. 78 s 32**Way of making orders****s 19B** ins 2001 No. 78 s 32

Compensation

s 19C ins 2001 No. 78 s 32

Failure to comply with order

s 19D ins 2001 No. 78 s 32

PART 4—HYGIENE REQUIREMENTS AND CONTROL OF FOOD STORES AND OTHER PLACES, FOOD VEHICLES AND EQUIPMENT

pt hdg amd 2001 No. 78 s 24 sch 1

Prohibition of cultivation and the like of food in certain circumstances

s 20 amd 1992 No. 66 s 33 sch 1; 1998 No. 41 s 14(1) sch 1
om 2001 No. 78 s 24 sch 1

Powers with respect to unclean food store, food vehicle or equipment

prov hdg amd 2001 No. 78 s 24 sch 1

s 21 amd 1992 No. 66 s 33 sch 1; 1995 No. 57 s 4 sch 1; 1998 No. 41 s 14(1) sch 1;
2001 No. 78 s 24 sch 1

Administration of Act

s 23 om 1995 No. 57 s 4 sch 1

PART 5—ADMINISTRATION AND ENFORCEMENT**Authorised officers**

s 24 amd 1991 No. 97 s 3 sch 2

sub 1992 No. 66 s 29

amd 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1) sch 1; 2005 No. 48 s 492 sch 1

Power of Minister to act in emergency

prov hdg amd 1998 No. 41 s 14(1) sch 1

s 25 amd 1998 No. 41 s 14(1) sch 1
om 2001 No. 78 s 24 sch 1

Duty of local government

s 26 amd 1990 No. 59 s 3.2; 1995 No. 57 s 4 sch 1; 1998 No. 41 s 14(1) sch 1;
2001 No. 78 ss 33, 24 sch 1

Certain vehicles taken to be within area of local government

s 27 sub 1995 No. 57 s 4 sch 1

Powers of authorised officers

s 28 amd 1995 No. 57 s 4 sch 1; 2000 No. 5 s 373 sch 2; 2001 No. 78 s 24 sch 1

Duty of police officers

s 28A ins 1989 No. 72 s 3

amd 1998 No. 41 s 14(1) sch 1

om 2000 No. 5 s 373 sch 2

When an article etc. must be analysed by an analyst

s 29A ins 2001 No. 78 s 34

Offences with respect to authorised officers and articles

s 30 amd 1984 No. 22 s 4; 1989 No. 103 s 3 sch; 1992 No. 66 s 33 sch 1

Duties of officer upon seizure and detention of article

s 31 amd 1995 No. 57 s 4 sch 1

Remedy in respect of articles seized

s 33 amd 1984 No. 22 s 5; 1992 No. 66 s 30; 1995 No. 57 s 4 sch 1; 1996 No.61 s 15 sch; 1998 No. 41 s 14(1) sch 1; 2001 No. 78 s 24 sch 1

Liability for costs and expenses of storage or destruction or other disposal of seized article

s 35 amd 1984 No. 22 s 6; 1992 No. 66 s 31; 1996 No. 61 s 15 sch

Authorisation and duties of analysts

s 36 amd 1995 No. 57 s 4 sch 1; 1998 No. 41 s 14(1) sch 1; 2005 No. 48 s 492 sch 1

Supply of results of analysis

s 37 amd 1998 No. 41 s 14(1) sch 1

Prohibition of use of result of analysis for certain purposes

s 38 amd 1992 No. 66 s 33 sch 1

Delegation by Minister

s 39 sub 1995 No. 57 s 4 sch 1
amd 1996 No. 61 s 15 sch

Delegation by chief executive

prov hdg amd 1998 No. 41 s 14(1) sch 1
s 39A ins 1995 No. 57 s 4 sch 1
amd 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1) sch 1

Secrecy

s 40 amd 1992 No. 66 s 33 sch 1; 1998 No. 41 s 14(1) sch 1

PART 5A—APPEALS

pt 5A (ss 40A–40E) ins 2001 No. 78 s 35

PART 6—MISCELLANEOUS PROVISIONS**Labelling requirement about ingredient in food**

s 40F ins 2001 No. 78 s 36

Defence for s 40F relating to food for export

prov hdg sub 2001 No. 78 s 37(1)
s 41 amd 2001 No. 78 s 37(2)–(3)

Liability of defendant for certain costs and expenses

s 42 amd 1984 No. 22 s 7

Offences generally and penalty

s 44 amd 1992 No. 66 s 33 sch 1; 2001 No. 78 s 24 sch 1

Proceedings for offences

s 45 amd 1984 No. 22 s 8; 1995 No. 57 s 4 sch 1; 1998 No. 41 s 14(1) sch 1

Alternative verdicts for serious food offences

s 45A ins 2001 No. 78 s 38

Analyst's certificate to be evidence

s 46 amd 1995 No. 57 s 4 sch 1

Probative effective of second contravention etc.

s 49 amd 1995 No. 57 s 4 sch 1; 2001 No. 78 s 24 sch 1; 2005 No. 48 s 492 sch 1

Liability for offence by employee

s 50 amd 1984 No. 22 s 9; 1995 No. 57 s 4 sch 1; 2001 No. 78 s 39

Liability for offence by body corporate

s 51 amd 1984 No. 22 s 10; 1989 No. 103 s 3 sch

Right of defendant to have third person before court

s 52 amd 1995 No. 57 s 4 sch 1; 1998 No. 41 s 14(1) sch 1; 2001 No. 78 s 24 sch 1

Protection against liability

s 53 amd 1998 No. 41 s 14(1) sch 1

Mode of service of documents

s 54 amd 1998 No. 41 s 14(1) sch 1

Evidentiary provisions

s 55 amd 1998 No. 41 s 14(1) sch 1; 2001 No. 78 s 24 sch 1

Approval of forms

s 56 sub 1995 No. 57 s 4 sch 1
amd 1998 No. 41 s 14(1) sch 1

Regulations

s 57 amd 1984 No. 22 s 11; 1995 No. 57 s 4 sch 1; 1998 No. 41 s 14(1) sch 1; 2001
No. 78 ss 40, 24 sch 1; 2003 No. 9 s 67 sch

Savings—authorised officers

s 58 prev s 58 ins 1992 No. 66 s 32
sub 1995 No. 57 s 4 sch 1 (amd 1995 No. 58 s 4 sch 1)
exp 28 February 1996 (see s 58(3))
pres s 58 ins 2005 No. 48 s 492 sch 1

Savings—analysts

s 59 ins 2005 No. 48 s 492 sch 1

FIRST SCHEDULE—AMENDMENTS OF THE HEALTH ACT 1937–1980

om 1991 No. 97 s 3 sch 2

SCHEDULE 1—SUBJECT MATTER FOR REGULATIONS

sch hdg (prev sch) amd 1995 No. 57 s 4 sch 1
renum 2001 No. 78 s 41

sch amd 1992 No. 66 s 33 sch 1; 1995 No. 57 s 4 sch 1; 1998 No. 41 s 14(1) sch 1;
2001 No. 78 s 24 sch 1

SCHEDULE 2—CHANGES TO FOOD STANDARDS CODE

ins 2001 No. 78 s 42

SCHEDULE 3—DICTIONARY

ins 2001 No. 78 s 43

Note—definitions for this Act were originally located in s 5

def “**advertisement**” amd 2001 No. 78 s 27(5)

reloc 2001 No. 78 s 27(15)

def “**analysis**” sub 2001 No. 78 s 27(3)–(4)

- reloc 2001 No. 78 s 27(15)
- def **“analyst”** reloc 2001 No. 78 s 27(15)
- def **“animal”** sub 2001 No. 78 s 27(3)–(4)
 - reloc 2001 No. 78 s 27(15)
- def **“appliance”** om from s 5 2001 No. 78 s 27(3)
- def **“appropriate designation”** om from s 5 2001 No. 78 s 27(3)
- def **“approved form”** ins 1995 No. 57 s 4 sch 1
 - reloc 2001 No. 78 s 27(15)
- def **“article”** amd 1992 No. 66 s 28(2); 2001 No. 78 s 27(6)–(7)
 - reloc 2001 No. 78 s 27(15)
- def **“authorised officer”** sub 1992 No. 66 s 28(3)
 - reloc 2001 No. 78 s 27(15)
 - sub 2005 No. 48 s 492 sch 1
- def **“chief health officer”** ins 1992 No. 66 s 28(1)
 - reloc 2001 No. 78 s 27(15)
- 2nd def **“Chief Health Officer”** om from s 5 1994 No. 87 s 3 sch 2
- def **“corresponding law”** sub 1995 No. 57 s 4 sch 1
 - reloc 2001 No. 78 s 27(15)
- def **“drug”** om from s 5 2001 No. 78 s 27(3)
- def **“equipment”** ins 2001 No. 78 s 27(4)
 - reloc 2001 No. 78 s 27(15)
- def **“examine”** reloc 2001 No. 78 s 27(15)
- def **“exercised all due diligence”** ins 2001 No. 78 s 27(4)
 - reloc 2001 No. 78 s 27(15)
- def **“food”** amd 1995 No. 57 s 4 sch 1
 - sub 2001 No. 78 s 27(3)–(4)
 - reloc 2001 No. 78 s 27(15)
- def **“food business”** ins 2001 No. 78 s 27(4)
 - reloc 2001 No. 78 s 27(15)
- def **“food standards code”** ins 2001 No. 78 s 27(4)
 - reloc 2001 No. 78 s 27(15)
- def **“food store”** amd 2001 No. 78 s 27(8)
 - reloc 2001 No. 78 s 27(15)
- def **“food vehicle”** amd 2001 No. 78 s 27(9)
 - reloc 2001 No. 78 s 27(15)
- def **“food vending machine”** amd 2001 No. 78 s 27(10)
 - reloc 2001 No. 78 s 27(15)
- def **“handling”** ins 2001 No. 78 s 27(4)
 - reloc 2001 No. 78 s 27(15)
- def **“ingredient”** reloc 2001 No. 78 s 27(15)
- def **“label”** reloc 2001 No. 78 s 27(15)
- def **“Local Authority”** om from s 5 1992 No. 66 s 28(4)
- def **“Minister”** om from s 5 1991 No. 97 s 3 sch 2
- def **“package”** sub 2001 No. 78 s 27(3)–(4)
 - reloc 2001 No. 78 s 27(15)
- def **“person”** om from s 5 1991 No. 97 s 3 sch 2
- def **“premises”** reloc 2001 No. 78 s 27(15)
- def **“proprietor”** amd 2001 No. 78 s 27(11)–(13)
 - reloc 2001 No. 78 s 27(15)
- def **“prepare”** om from s 5 2001 No. 78 s 27(3)

- def “**publish**” reloc 2001 No. 78 s 27(15)
 def “**recall order**” ins 2001 No. 78 s 27(4)
 reloc 2001 No. 78 s 27(15)
 def “**regional health authority**” ins 1992 No. 66 s 28(1)
 om from s 5 1996 No. 61 s 15 sch
 def “**sample**” reloc 2001 No. 78 s 27(15)
 def “**sell**” sub 2001 No. 78 s 27(3)–(4)
 reloc 2001 No. 78 s 27(15)
 def “**servicing**” reloc 2001 No. 78 s 27(15)
 def “**State**” ins 1995 No. 57 s 4 sch 1
 reloc 2001 No. 78 s 27(15)
 def “**substance**” reloc 2001 No. 78 s 27(15)
 def “**this jurisdiction**” ins 2001 No. 78 s 27(4)
 reloc 2001 No. 78 s 27(15)
 def “**unsafe**” ins 2001 No. 78 s 27(4)
 reloc 2001 No. 78 s 27(15)
 def “**unsuitable**” ins 2001 No. 78 s 27(4)
 reloc 2001 No. 78 s 27(15)
 def “**vehicle**” amd 2001 No. 78 s 27(14)
 reloc 2001 No. 78 s 27(15)

8 List of forms notified or published in the gazette

(The following information about forms is taken from the gazette. Because failure to notify or publish a form in the gazette does not invalidate the form, it may be necessary to check with the relevant government department for the latest information about forms (see SIA s 58(8)).)

Form 1 Version 1—Application for licence

pubd gaz 21 June 1996 p 1062

Form 2 Version 2—Notice of Isolation of Pathogen

pubd gaz 15 January 1999 p 117

Form 3 Version 1—Application for renewal of licence

pubd gaz 21 June 1996 p 1062

Form 4 Version 1—Certificate of renewal of licence

pubd gaz 21 June 1996 p 1062

Form 5 Version 2—Notice of Appeal against the Refusal of an Authorised Officer to give a Certificate under Section 21(2)

pubd gaz 15 January 1999 p 117

Form 6 Version 1—Certificate of registration of premises, place or vehicle

pubd gaz 21 June 1996 p 1062

Form 7 Version 1—Certificate of provisional registration of premises, place or vehicle

pubd gaz 21 June 1996 p 1062

Form 8 Version 1—Application for renewal of registration of premises, place or vehicle

pubd gaz 21 June 1996 p 1062

Form 9 Version 1—Certificate of renewal of registration of premises, place or vehicle

pubd gaz 21 June 1996 p 1062

Form 10 Version 1—Application for the transfer of registration of premises, place or vehicle

pubd gaz 21 June 1996 p 1062

Form 11 Version 1—Application for Food Store Exemption

pubd gaz 17 April 1998 p 1608