Food Bill 2005

Explanatory Notes

Title of the Bill

Food Bill 2005

Objectives of the Bill

The objectives of the Bill are to ensure food for sale is safe and suitable for human consumption, to prevent misleading conduct relating to the sale of food and to apply the Food Standards Code.

Achievement of the Objectives

The Bill integrates the national approach to food safety and refines the current legislative regime governing the sale of food in Queensland. The Bill repeals the *Food Act 1981*and will establish a framework that:

- requires all food businesses, not exempted from the application of the Bill, to comply with the National Food Standards Code, including the Food Safety Standards
- requires certain food businesses, primarily those 'for profit' food businesses that handle and sell unpackaged food to be licensed
- requires certain high-risk food businesses to prepare, implement and maintain food safety programs.

National arrangements

On 3 November 2000 all States, Territories and the Commonwealth signed an Intergovernmental Agreement (IGA) on Food Regulation. In accordance with the IGA, all States and Territories agreed to adopt Annex A of the national Model Food Act developed by the Australia New Zealand Food Authority. The Annex A provisions included policy objectives, definitions (including a definition of 'food business'), obligations and offences. On 1 January 2002 Queensland amended the *Food Act 1981* (the "1981 Act") to incorporate the Annex A provisions.

The Bill regulates "food businesses", using essentially the same nationally agreed definition as the 1981 Act. A food business is an activity or business that involves:

- the handling of food intended for sale, or
- the sale of food.

The definition of "food business" includes one-off activities, commercial, charitable and community activities.

Food businesses exempt from the application of the Bill

The Bill does not apply to:

- food businesses conducted by the State, for example, food services operated by Queensland Rail;
- State school tuckshops operated by parents and citizens associations;
- food that is given away for free to a non-profit organisation, apart from business promotions.

Complying with the Food Safety Standards

Annex A of the Model Food Act, among other things, imposes a legal obligation on food businesses not to sell or handle food that is unsafe or unsuitable and requires food businesses to comply with the Food Standards Code (the "Code"). The Code reflects international best practice which is designed to help ensure that food sold in Australia is safe to eat. The Bill retains the requirements contained in Annex A which were included in the 1981 Act and accordingly, all food businesses, other than those exempted from the application of the legislation, are required to comply with the Code.

Licensing of food businesses

The Bill requires food manufacturers and 'for profit' retailers of unpackaged food (eg restaurants and cafes), other than those that pose low or negligible risks to the public, to obtain a licence from their local government (see clause 48). The Bill has a much more limited application to non-profit organisations. These groups will only be required to be licensed if they sell *meals* on at least 12 days each financial year. However, they will still be required to handle food safely in accordance with the Act. Further, the following activities undertaken by non-profit organisations are expressly exempt from the licensing requirements:

- the sale of 'low risk' meals such as a breakfast of cereal and toast;
- the sale of meals where the consumer helps in its preparation;
- the sale of pre-packaged meals stored and prepared according to the manufacturer's instructions; and
- the sale of food from a 'restaurant' or similar at a non-government school or other educational or training facility used as part of its hospitality training.

Also, delivered meals services ('meals on wheels') will only require a licence if they also prepare the meal (many meals are prepared by another organisation such as a hospital or restaurant).

Local governments are to conduct regular inspections of licensed food businesses to ensure that these businesses are selling safe food and local governments may recover their monitoring costs by charging reasonable fees for licensing and inspections of food businesses.

In order to obtain a licence, a food business must satisfy certain objective criteria that indicate an ability to provide safe food. For example, a local government can consider the suitability of the premises for safely carrying out food business activities, the applicant's previous compliance with food legislation and the applicant's skills and knowledge in providing safe food.

Food safety programs

Under the Bill, certain high-risk food businesses will be required to develop and implement food safety programs (Clause 99). This requirement applies to licensed food businesses if the food business:

- conducts off-site catering;
- conducts on-site catering where on-site catering is the primary activity undertaken by the food business at the premises or part of the premises under the licence;
- is carried on by a private hospital under the *Private Health Facilities Act 1999*;
- is one that is prescribed by a regulation as one that handles potentially hazardous food that is reasonably likely to pose a risk to public health or safety.

A food safety program is a pro-active measure designed to identify and eliminate food safety failures by the food business before the food reaches

consumers. The Bill provides that approved food safety auditors will regularly check to ensure that food businesses are complying with their food safety programs and the Standards.

Alternative Ways of Achieving Policy Objectives

A review of the 1981 Act was undertaken after the amendments were made to the Act to incorporate the Annex A provisions of the Model Food Act. A Discussion Paper on the review of the *Food Act 1981* was released for public comment in August 2002. The Discussion Paper canvassed a number of issues such as the application of the proposed legislation to State facilities and non-profit organisations, revised licensing arrangements, food safety programs and auditing, the roles and responsibilities of enforcement agencies, and monitoring and enforcement powers. A Public Benefit Test (PBT) was also undertaken as part of this review.

The PBT report analysed alternative options to achieving a reduction in the incidence of food-borne illnesses. They included requirements for food businesses to register their food premises with the local government, no licensing or registration requirements ('negative licensing') or retaining the existing licensing of persons and registration of premises under the *Food Hygiene Regulation 1989*. The PBT Report concluded that these options were less effective than the approach proposed by the Bill.

The PBT Report recommended that a three–tiered regulatory approach be adopted to manage public health risks associated with the provision of food. This three-tiered system is founded on a universal food safety requirement that all food businesses that are not exempted from the proposed legislation must comply with the Food Standards Code. The second tier requires food businesses that handle unpackaged foods, (eg. restaurants and other eating establishments, retailers of ready-to-eat food sold for eating elsewhere, caterers, delicatessens and food businesses that provide meals with accommodation), to be licensed. The third tier requires high-risk food businesses to prepare, implement and maintain food safety programs in addition to being licensed.

The regulatory response in the Bill strikes a balance between securing optimum public health outcomes and minimising compliance costs for businesses.

Estimated Cost for Government Implementation

There are administrative as well as operational costs (including monitoring and enforcement costs) under the Bill for local government. However, these

costs are offset by the revenue raised through licensing fees and the local government's ability to set fees for providing a service or taking action under the legislation. In addition, fines imposed by a court as a result of a prosecution (eg. where a food business sells unsafe food or a licensee contravenes a condition of his or her licence) by local government will be payable to local government.

Consistency with Fundamental Legislative Principles

Aspects of the Bill which raise possible fundamental legislative principles issues are outlined below.

Compliance with Food Standards Code

Clause 39 of the Bill requires that any person who conducts a food business must comply with the Food Standards Code. As the Code is not subject to disallowance by Parliament, it may be regarded as inconsistent with fundamental legislative principles. However, its inclusion is essential as it has been incorporated into food safety legislation in all other jurisdictions, and is nationally recognised on food standards issues. These provisions are in the current *Food Act 1981*.

The Queensland Government provides input to the development of the Food Standards Code through a mechanism prescribed under the *Food Standards Australia New Zealand Act 1991(Cth)*. This process requires Food Standards Australia New Zealand to conduct two rounds of public consultation on proposals to vary existing standards or to include new standards in the Code. The Australia and New Zealand Food Regulation Ministerial Council needs to endorse any proposal before it becomes law. The Council consists of Health Ministers from each jurisdiction.

Disapplication of Criminal Code

Clause 45 expressly disapplies section 23 of the Criminal Code in relation to offences under Chapter 2 ('Offences relating to food'), and section 24 of the Criminal Code in relation to offences under Chapter 2 Part 2, ('Other offences relating to food'). This may be seen as removing an individual's rights. However, if these sections were not expressly disapplied, unnecessary litigation may occur in order to decide the effect of section 45 in relation to sections 23 and 24 of the Criminal Code.

This exclusion is consistent with those in other modern safety legislation, such as the *Dangerous Goods Safety Management Act 2001, Workplace Health and Safety Act 1995*, the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999.* This provision is also in the current *Food Act 1981*. The exclusion of these sections of the Criminal Code is balanced by the fact that defences are written into the Bill in Chapter 2, Part 3. With reference to the defence of due diligence, 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.

Emergency Powers

Chapter 7, Part 4 of the Bill provides for the chief executive to make orders 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. No appeal mechanism is provided for businesses or persons affected by the issuing of such orders, which may be argued to be inconsistent with the principles of natural justice.

However, this provision is considered justifiable as:

- the orders are likely to relate to urgent matters that constitute a serious danger to public health; and
- the Bill provides for persons bound by an order who suffer a loss as a result of the order to seek compensation if the person considers that there were insufficient grounds for the order.

Similar provisions are included in the current *Food Act 1981*.

Powers of entry

Under clause 175 an authorised person may, without consent or a warrant, enter a premises at which a business proprietor carries on a food business if it is open for business or otherwise open for entry.

A power of entry to food business premises when the premises are open for business is consistent with other modern legislation and is necessary to ensure that the requirements of the Bill are being complied with and that the potential health risks associated with the handling or sale of food are minimised.

Clause 204 provides that in emergency circumstances, authorised persons with emergency powers may enter premises without warrant and exercise

search and seizure powers. These powers may only be exercised to avoid an imminent risk of death or serious illness of any person from food being handled or sold on the premises. In these circumstances such measures are justified because any delay that may be encountered in obtaining a warrant could be fatal. As a necessary check to this power, the Bill contains the safeguard that if the emergency power is improperly used, compensation is payable under Clause 213.

Reasonable excuse for failure to comply with document production requirement

Clause 200 makes it an offence for a person to fail to provide a document to an authorised person unless the person has a reasonable excuse. The provision specifies that non-compliance on the basis of a tendency to incriminate the person is not a reasonable excuse. This provision may be regarded as compromising the person's protection against self-incrimination.

An authorised person's power to require a person to produce a document or make a document available for inspection is limited to documents issued to, or required to be kept by, the person under the Bill, for example, a licence. Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person. This is consistent with the recommendations of the recent Queensland Law Reform Commission Report, *The Abrogation of the Privilege Against Self-incrimination*.

This provision may be required in the following circumstances –

- where an authorised person in a second local government area is inspecting a mobile food business and needs to verify that the person is licensed by the other local government;
- where an authorised person is doing an inspection of, for example, a weekend market, and needs to verify 'on-the-spot' that a person is licensed;
- during an inspection of a high-risk business, an authorised person needs to confirm that the food safety program being used by the food business is the food safety program that has been approved by the local government; and

- during an inspection of a high-risk business, an authorised person needs to check records that are required to be kept under the food safety program (eg pest inspection reports).

Liability of person for conduct of representatives

Clause 259 provides that an act or omission by a person's representative, relating to an offence against the Bill, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. In these circumstances, the person will have been taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Clause 260 provides that, if a corporation is convicted of an offence against the legislation, each executive officer of the corporation is taken to have committed the offence of failing to ensure that the corporation complies with the relevant provision. The effect of this clause is to presume an executive officer of a corporation to be guilty unless the executive officer can prove that he or she took all reasonable steps to ensure the corporation complied with the provision, or that he or she was not in a position to influence the conduct of the corporation in relation to the offence.

While these provisions effectively provide for the reversal of the onus of proof, it is important to note that the offences provided for under the legislation deal with major public health issues (eg. selling unsafe food). Having regard to the object of the legislation, it is appropriate that:

- a person be required to oversee the conduct of his or her representatives and, in doing so, make reasonable efforts to ensure that his or her employees or agents comply with the requirements of the legislation;
- an executive officer who is in a position to influence the conduct of a corporation be required to ensure the corporation complies with the legislation; and
- an executive officer who is responsible for a contravention of the legislation, be accountable for his or her actions and not be able to 'hide' behind the corporation.

The provisions are therefore warranted to ensure that there is effective accountability at a corporate level.

Immunity from civil liability

Clause 274 specifies that the chief executive, a chief executive officer of a local government, an authorised person, a State analyst, an auditor employed by the State or local government or a person acting under the direction of an authorised person is not civilly liable for an act, or omission, made honestly and without negligence under the Bill.

It is not considered appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation in good faith. The clause prevents civil liability from being attached to the individual. If the official is the chief executive officer of a local government, an authorised person appointed by a local government or a person acting under the direction of an authorised person, the liability instead attaches to the local government. If the official is the chief executive, the liability attaches to the State. The proposed immunity under this clause does not extend to an official who has been negligent, even though the official may have acted in good faith.

Notification of prescribed contaminants

Clause 270 requires a person who carries on a food business to report any findings from tests on prescribed foods that show the presence of a prescribed contaminant (i.e, an antibiotic, a pathogen or another thing that may contaminate food). The report needs to be made to the chief executive of Queensland Health immediately unless the person has a reasonable excuse. The clause provides that it is not a reasonable excuse to not notify the chief executive on the grounds that the notification may incriminate the person. This provision may be regarded as compromising the person's protection against self-incrimination.

Contaminants in food for sale can lead to serious health risks to the public. The serious nature of the risks warrants removing the right to protect oneself against self-incrimination. To ensure the rights of the person making the notification are protected, the clause provides that information provided to the chief executive (primary evidence and derivative evidence) is not admissible in evidence against the individual in any civil or criminal proceedings.

However, under clause 271 the chief executive can direct the person to take immediate action to avert a health risk that may be caused by the contaminated food. This direction must be reasonable in the circumstances. Clause 270 provides that if the person fails to comply with the direction under clause 271, the information provided in the notification may be used in a proceeding against the person for an offence under the Bill to which the evidence relates.

These provisions find a balance between protecting the health of the community and upholding the objectives of the food safety standards, and providing natural justice to persons operating food businesses.

Consultation

Significant government and community consultation has occurred throughout the development of the Bill. This has included the release of a Discussion Paper on the review, in August 2002, of the 1981 Act. Information sessions on the Discussion Paper were presented at various locations throughout Queensland during the public discussion period, to encourage input from stakeholders. Queensland Health received 148 submissions on the Discussion Paper, 55 of which were from local government. The majority of submissions supported the proposal to license all food businesses other than those identified as low risk. Equally, the majority of submissions supported the proposal that highest risk food businesses must develop, implement and maintain food safety programs.

The Minister for Health's Food Safety Stakeholders Forum, which consists of key stakeholder representatives from the food industry, local and State government representatives, has met 15 times since 2001 to discuss food reforms. The Forum supported the proposals in the Discussion Paper that:

- organisations that give away food should not be caught by the legislation;
- food businesses, other than low-risk food businesses, should be licensed; and
- certain high-risk food businesses should develop, implement and maintain food safety programs.

During 2004, key non-profit organisations were consulted about the proposed approach to food safety regulation. A Public Benefit Test Report on the proposed regulatory framework for food safety in Queensland was published on Queensland Health's website in 2004.

A consultation draft of the *Food Bill* 2005 was provided to members of the Forum and, through the Local Government Association of Queensland, to all local governments. In addition the consultation draft was provided to key non-profit organisation stakeholders for comment in April 2005. A total of 28 submissions were received from stakeholders including nine submissions from non-profit organisations.

At a national level, there has been extensive consultation undertaken on the development of the Model Food Act including the release in April 1999 of

a Regulatory Impact Statement on the Model Food Act. The Australia and New Zealand Food Authority received over 600 submissions in the four rounds of public comment on the Food Safety Standards.

A consultation paper *Food Safety Management in Australia – Risk Profiling and Food Safety Programs* developed by the Food Regulation Standing Committee ("FRSC") was released to seek comments on the draft policy guidelines to implement food safety programs for high risk food businesses. Consultation commenced in March 2003 and closed on 17 April 2003 on the draft document. FRSC received 69 submissions on the consultation paper. The majority of respondents agreed that high risk food businesses should implement food safety programs.

Notes on Provisions

Chapter 1 Preliminary

Part 1 Introduction

Clause 1 specifies the short title of the Bill.

Clause 2 provides for the Bill to commence on a date to be fixed by proclamation.

Part 2 Application and purposes of Act

Division 1 Application

Clause 3 specifies that the Bill binds all persons except the State or a government owned corporation.

Clause 4 provides exemptions from the application of the legislation for food sold by State school tuckshops operated by a parents and citizens

association and the handling of food intended to be given away for free to a non-profit organisation for sale by that organisation. Accordingly, a person who bakes a cake or makes biscuits for a non-profit organisation like a junior football club committee, for sale by the committee at a cake stall, is exempt from the application of the Bill. Clause 4 also defines the terms 'State school' and 'parents and citizens association'. The term 'non-profit organisation' is defined in Schedule 3 of the Bill to mean an organisation that is not carried on for the profit or gain of its individual members and is engaged in activities for a charitable, cultural, educational, political, social welfare, sporting or recreational purpose.

Clause 5 provides that the Act applies to ships in Queensland waters and waters outside of Queensland provided that the ship is travelling from a place in Queensland to another place in Queensland. The clause provides that the Act does not apply to ships of the Australian Defence Force, another country or where the ship is in waters outside of Queensland and travelling from and to a place not in Queensland.

Clause 6 outlines the relationship between the Bill and civil liabilities or remedies. The effect of this clause is that a breach of an obligation under the Bill would not expose a person to liability under a civil action for breach of statutory duty. However, another civil right or remedy would not be affected or limited by the Bill. Clause 6 also provides that compliance with the Bill does not necessarily show that a civil obligation, which exists apart from the Bill, has been satisfied or has not been breached.

Clause 7 specifies that the *Food Production (Safety) Act 2000* which deals with primary food production, is additional to, and does not limit, the Bill.

Division 2 Purposes of Act

Clause 8 identifies the main purposes of the Bill.

Clause 9 outlines how the main purposes are to be achieved.

Part 3 Interpretation

Division 1 Dictionary and notes in text

Clause 10 provides that the dictionary in schedule 3 defines particular words used in the Bill.

Clause 11 states that notes in the text of the Bill are part of the Bill.

Division 2 Particular definitions

Clauses 12 – 15 and 17 – 19 define certain terms for the purposes of the Bill. These definitions are consistent with the definitions contained in the Model Food Act Annex A provisions and the 1981 Act. The definitions are integral to an understanding of the extent of the obligations under the Bill to persons who manufacture or sell unpackaged food.

Clause 12 defines the term 'food' for the purposes of the Bill. The definition of 'food' includes ingredients and processing aids used in making food. The definition excludes a substance or thing which is declared a therapeutic good under the *Therapeutic Goods Act 1989* (Cwlth).

The term also includes water sold for human consumption by a food business or used by a food business in preparing food for sale to consumers. Accordingly, 'water' is food if—

- a person bottles or packages water for retail sale;
- a person takes water in a tanker from a water source (eg a reticulated water supply outlet) and sells that water to a consumer for the purposes of filling the consumer's rainwater tank;
- a person sells water from his or her rainwater tank to another person; or
- a food business uses reticulated water on their premises to cook food for consumers.

Clause 13 defines the term 'food business' to mean a business, enterprise or activity (whether of a commercial, charitable or community nature) that handles food for sale or sells food. The clause further provides that a

business, enterprise or activity is still a food business even if it handles or sells food on one occasion only.

Clause 14 defines the term 'food standards code' by reference to the definition of that term in the *Food Standards Australia New Zealand Act 1991* (Cwlth). The clause also provides for modifications to the Code contained in schedule 2 of the Bill or prescribed by regulation so as to ensure consistency with Queensland's food safety regulatory system. The clause also provides that the Bill does not adopt Food Safety Standard:

- 3.2.1 (Food Safety Programs) as the Bill's provisions under Chapter 4 cover the field on food safety programs
- clause 4 (Notification) of Standard 3.2.2 (Food Safety Practices and General Requirements) as the requirement for food businesses to notify their appropriate enforcement agency of their intention to commence business is a Model Food Act Annex B provision which is not required, under the IGA to be adopted; and
- clause 9 (Production of uncooked comminuted fermented meat [UCFM]) of Standard 1.6.2 (Processing requirements) as this clause deals with the auditing of food safety programs for manufacturers of UCFM and the Bill provides under Chapter 6 for the auditing of food safety programs.

Clause 15 defines the term 'handling' for the purposes of the Bill.

Clause 16 defines the term 'manufacture' and lists certain activities that constitute manufacturing. The clause clarifies that 'manufacture' does not include certain activities, for example, preparing and packing sandwiches in a package at a café for retail sale at the café.

Clause 17 defines the term 'off-site catering'. Under clause 99 of the Bill, a person who conducts off-site or on-site catering as defined, is required to develop and implement a food safety program.

Off-site catering occurs where a food business (defined in clause 13) serves potentially hazardous food (both terms are separately defined in schedule 3) at a place other than the principal place of business for the food business. Off-site catering would be conducted by, for example, food businesses such as 'spit-roast' companies that prepare the food at one place, transport it to another place and serve it to consumers at the latter place. The clause

clarifies that off-site catering does not include the mere delivery of food on order with the consumer (eg delivering pizzas from a takeaway pizza shop).

Clause 18 defines the term 'on-site catering'. The clause clarifies that on-site catering does not include preparing and serving food at an eating establishment (defined in the clause to include restaurants or cafes where the preparation and service of the food is done in accordance with the individual orders of patrons for immediate consumption at the premises). In addition, the clause specifies that mere preparation and display of food for self-service by consumers (eg from a buffet in a restaurant) is not on-site catering.

Clause 19 defines the term 'sell'. In addition to activities usually perceived as those of selling food, the Bill covers such activities as offering food as a prize, supplying a meal to staff, bartering or displaying food, and giving food away for advertising purposes.

The effect of the definitions of 'sell' and 'food business' is to apply offences in the legislation to a broad range of activities undertaken by persons. The effect of excluding certain activities from the definition of 'sell' is to exclude those activities from the operation of the Bill. Given the breadth of the meaning of the term "sell" a number of exemptions apply.

The term 'sell' will not apply to the preparation and supply of food at a private residence to a person employed at that residence, for example, preparing and supplying meals to a live-in gardener or housekeeper. To highlight the fact that a private residence is excluded from involvement in "selling" food on a commercial basis, the term 'private residence' excludes residential services under the *Residential Services (Accreditation) Act 2002*, residential care premises under the *Aged Care Act 1997* (Cwlth), farmstay and bed and breakfast facilities.

The term 'sell' does not include the preparation and supply of food at a private residence for a fee, for example, preparing and supplying food to a student boarding in the home. Additionally, it does not extend to child care and family day care centres where the child's parent supplies food for his or her child during attendance at the child care or family day care centre.

Clause 20 defines the term 'unsafe' as it relates to "unsafe food". This definition takes into consideration what occurs after a consumer has purchased food. For example, if a person purchased raw meat and left it at room temperature for an extended period, the raw meat would not be considered 'unsafe' when sold. Also, food is not considered 'unsafe' because it may cause an adverse reaction to a minority of persons. For example, a food product that contains peanuts may cause an allergic

reaction in some people, but would be considered safe for the majority of persons.

Clause 21 defines the term 'unsuitable' food. This clause provides that food is unsuitable if, for example, it is damaged or deteriorated to such an extent that affects its reasonable intended use.

Part 4 Roles of the State and local governments

Clause 22 details the matters under the Bill for which only the State has administration and enforcement responsibility.

Clause 23 details the matters under the Bill for which only local governments have administration and enforcement responsibility.

Clause 24 details the matters under the Bill which are to be jointly administered and enforced by both State and local governments.

Clause 25 enables the chief executive (on behalf of the State) and the chief executive officer (on behalf of a local government) to enter into a collaborative arrangement whereby the State may assist local government in relation to the administration or enforcement of a local government responsibility under the Bill. Equally, an agreement may be made whereby a local government may assist the State in relation to the administration or enforcement of a State responsibility under the Bill.

Clause 26 provides that the chief executive may administer and enforce a local government matter under the Bill, if the chief executive is reasonably of the opinion that the local government has failed to act under the Bill in relation to a risk associated with the sale of unsafe or unsuitable food or has failed to prevent a significant risk to public health. When forming an opinion about the significance of the risk to public health, the chief executive must have regard to the potential consequences for the health of individuals and the number of persons likely to be exposed to the risk.

It is not intended that this power will be exercised in instances of minor risks to the public associated with the sale of unsafe or unsuitable food. Rather it is intended that the power be exercised in circumstances where there are severe consequences for the health of individuals or the unattended risk will impact on a large number of persons.

Accordingly, the chief executive may form a reasonable opinion that a risk to public health is significant if only a few individuals are affected but the

consequences for those few are severe. Additionally, the chief executive may reasonably be of the opinion that a risk to public health is significant if a large number of individuals are likely to be affected by the risk even though the consequences for those individuals may be relatively minor.

The reasonable costs and expenses incurred by the chief executive in acting under this clause are a debt payable by the local government to the State.

Clause 27 provides that before exercising the power under clause 26, the chief executive must first consult with the chief executive officer of the local government and give the local government a reasonable opportunity to reduce the risk or prevent the risk from recurring.

Clause 28 allows the chief executive to require information from a local government about the local government's administration and enforcement of the Bill for a matter for which the local government has responsibility, either solely or under clauses 24 or 25 of the Bill. This will allow, for example, the chief executive to record details in the register to be kept by the chief executive under clause 264 of mobile food businesses licensed by local governments.

Clause 29 provides for reporting by the chief executive to local governments about the administration of the Bill by the chief executive and local governments.

Clause 30 prevents local governments from making local laws about a matter relating to the purposes of the Bill unless it is necessary to carry out or give effect to the local government's administration or enforcement of the Bill.

Clause 31 clarifies that a local government may make a resolution or local law about the fees payable to it for providing a service (eg. issuing a licence) or taking action (eg. inspecting a food business) under the Bill. However, the clause provides that any local law or resolution made by a local government about prescribing fees and charges must not be more than the cost to the local government in providing the service or taking the action.

Chapter 2 Offences relating to food

Part 1 Serious offences relating to food

Clauses 32 – 34 create serious food offences that are consistent with the offence provisions contained in the Model Food Act Annex A and the 1981 Act. These serious food offences attract high maximum penalties (including imprisonment for up to two years) as persons committing these offences are considered to know, or ought to know, that their actions constitute a severe health risk to individuals or to a potentially large number of consumers.

Clause 32 makes it an offence to handle food for sale in an unsafe way.

Clause 33 makes it an offence to sell unsafe food.

Clause 34 makes it an offence to falsely describe food in a manner that will or may lead to a person suffering physical harm, or to sell falsely described food that will or may lead to a person suffering physical harm.

Part 2 Other offences relating to food

Clauses 35 – 41 create other offences relating to food and are consistent with the offence provisions contained in the Model Food Act Annex A and the 1981 Act.

Clause 35 makes it an offence to handle food for sale in an unsafe way or to sell unsafe food.

Clause 36 includes similar offences in relation to handling or selling unsuitable food.

Clause 37 includes offences for misleading conduct in relation to the sale of food. The offences apply to persons conducting a food business who—

- engage in conduct that is misleading or deceptive or is likely to mislead or deceive;
- cause food to be advertised, packaged or labelled in a way that falsely describes the food; and

- sell food that is packaged or labelled in a way that falsely describes the food.

Clause 38 makes it an offence for a person to sell equipment, packaging or labelling material that would make food unsafe.

Clause 39 creates offences for non-compliance with the Food Standards Code.

Clause 40 outlines the circumstances in which food would be considered to be falsely described under the Bill. For example, selling a fillet of fish described as barramundi that was another type of fish would be falsely describing the fish and therefore an offence under the Bill.

Clause 41 clarifies that in relation to the offences under Chapter 2 of the Bill, it does not matter that the food was sold or intended for sale outside Queensland.

Part 3 Defences

Clauses 42 – 47 provide for defences against the offences under Chapter 2 in certain circumstances and are consistent with the defence provisions of both the Model Food Act Annex A and the 1981 Act.

Clause 42 provides that in a proceeding for an offence under Chapter 2 relating to the publication of an advertisement it is a defence for a person to prove that the person was a publisher of advertisements or arranged for the publication of advertisements and the publication occurred in the normal course of the person's business. However, the defence would not be available if the person knew the publication was an offence; the person who caused the publication was the proprietor or otherwise engaged in the conduct of a food business; or the person had previously been advised by the chief executive that the publication of that type would constitute an offence under the Bill.

Under clause 43, it is a defence to a contravention of a provision of the Food Standards Code to prove that the food is to be exported to a foreign country and the food complies with corresponding food laws of the receiving country.

Clause 44 provides that in a proceeding for an offence under Chapter 2 it is a defence to prove that the person exercised all due diligence to prevent the commission of the offence. The dictionary in schedule 3 of the Bill defines the term 'exercised all due diligence' to include taking all reasonable

precautions. The clause provides the ways in which a person may show that he or she has exercised due diligence, including for example, by proving that the person complied with an accredited food safety program or another type of quality assurance program.

Clause 45 clarifies that the defence in section 23 of the Criminal Code does not apply to an offence under Chapter 2, and that the defence in section 24 of the Criminal Code does not apply to an offence under Chapter 2, Part 2 (Other offences relating to food).

Clause 46 provides that it is a defence to an offence under clauses 32, 35 or 36 (offences relating to the handling of food) if the person destroyed or disposed of the food immediately after the food was handled.

Clause 47 provides that it is a defence to an offence under clause 38 (Sale of unfit equipment or packaging or labelling material) if the person proves that he or she had a reasonable belief that the equipment or material concerned was not intended for use in connection with the handling of food.

Chapter 3 Licences for particular food businesses

Part 1 Preliminary

Clause 48 specifies which food businesses ('licensable food businesses') will be required to hold a licence issued by local government:

- food manufacturers ("manufacture" is defined in clause 16);
- commercial organisations which retail "unpackaged food" (defined in schedule 3 of the Bill); and
- non-profit organisations which provide meals for a fee on 12 or more days each financial year ("meal" is defined in schedule 3 of the Bill).

Examples of commercial organisations which retail "unpackaged food" would include:

- restaurants, cafes and delicatessens;
- food catering businesses;

- takeaway food outlets;
- motels supplying meals with accommodation; and
- pie vans or food businesses that sell unpackaged food from a vending machine.

The provision of meals on 12 or more occasions a financial year by a non-profit organisation applies to food that is, or is intended to be, eaten by a person sitting at a table, or a fixed structure used as a table, with cutlery and the food is of adequate substance as to be ordinarily accepted as a meal.

Examples of non-profit organisations providing meals on 12 or more occasions would be:

- a sporting club which operates a restaurant, open daily to the public, and channels revenue into the sporting activity;
- a homeless men's hostel which provides dinner or breakfast and charges a fee for the accommodation and meal;
- a women's club where members pay for dinner at its weekly meeting;
- a boarding school or university college dining room where meals are provided to boarders; or
- a nursing home.

Clause 48 also identifies the types of food businesses that are not required to hold a licence. These food businesses may be separated into four broad categories – retailers of food that are not potentially hazardous, food businesses currently regulated under other laws that impose food safety requirements, certain activities undertaken by non-profit organisations and food businesses prescribed by a regulation.

The first category comprises those food businesses that sell foods that are not potentially hazardous and therefore are considered low risk (clause 48(2)(c) – (h)). Included in this category are retailers of—

- unpackaged 'snack food' (the term 'snack food' is separately defined in clause 48);
- whole fruit or vegetables;
- beverages (other than fruit or vegetable juices processed at the place of sale) or ice (including flavoured ice);
- seeds, spices, dried herbs, tea leaves, coffee beans, ground coffee; and

- a food business that grinds coffee.

The second category relates to persons who conduct food businesses currently regulated under other laws (clause 48(2)(a) – (b)). These persons are—

- accreditation holders under the *Food Production (Safety) Act 2000*; and
- holders of a buyers licence under the *Fisheries Regulation 1995* where under that licence the holder processes (defined in clause 48 to exclude "cooking") or sells fisheries resources.

The third category relates to the sale of food, under specified circumstances, by non-profit organisations (clause 48(2)(i) – (k)). The circumstances include—

- where the 'meal' provided by the non-profit organisation consists only of fruit, cereal, toast, or a similar food. For example, an independent school tuckshop provides a breakfast to school athletes that consist of fruit salad and breakfast cereals.
- where the consumer of the meal helps to prepare the meal. Some non-profit organisations provide a range of community and residential support services for people with disabilities. For example, groups of people with disabilities live in suburban houses and participate in community life as fully as possible. They may pay a weekly fee for accommodation, meals and some support services. Some residents of community group homes who actively participate in meal preparation may need limited assistance, while others in a household may need a high level of support to perform a component of meal preparation. These food preparation activities, where the consumer participates, are exempted from licensing under the Bill.
- where the meal is pre-prepared by another entity and the non-profit organisation merely follows the meal's manufacturer's direction for the preparation of the meal. For example, an independent school tuckshop may microwave a pre-packaged lasagne, in accordance with the manufacturer's instructions, and then sell that item to a consumer.
- where the food sold has been prepared as part of an educational or training activity conducted by the organisation involving food preparation, hospitality or catering. For example, youth

organisations may charge a fee for the cost of camps, which include education in meal preparation.

The fourth category relates to the sale of other food prescribed under a regulation.

Part 2 Offences about carrying on licensable food businesses

Clause 49 makes it an offence for a person to carry on a licensable food business unless the person holds a licence.

Clause 50 makes it an offence for a licensee to carry on a licensable food business from premises unless the premises are stated on the licensee's licence. This offence does not apply to a licensee whose food business involves off-site catering (the definition of 'off-site catering' is defined in clause 17 of the Bill) as the handling of food will occur at a place other than the licensee's principal place of business.

Clause 51 makes it an offence for a licensee to fail to comply with the conditions of his or her licence. A prosecution for an offence against this provision may be maintained irrespective of whether the licence is suspended or cancelled because of the failure to comply.

Part 3 Applications for, and issue of, licences

Division 1 Applications for licence

Clause 52 specifies which local government an application for a licence to conduct a licensable food business is to be made to. An application for a licence for fixed or temporary premises must be made to the local government for the area in which the premises are located while an application in relation to mobile premises may be made to any local government.

Clause 53 specifies the matters that must be included in an application for a licence.

Clause 54 provides that if an applicant for a food business licence is also a food business required under clause 99 to develop and implement a food safety program, the application for a licence must be accompanied by the proposed food safety program. The clause further provides that an applicant for a licence who is not required under clause 99 to develop and implement a food safety program, may, if the applicant so wishes, forward a proposed food safety program together with a licence application to the local government for approval.

Clause 55 specifies that the local government must consider the application and either grant, or refuse to grant, the application.

Clause 56 specifies the criteria of which the local government must be satisfied before an approval is granted.

Clause 57 sets out the criteria that the local government may consider when deciding whether a person is suitable to hold a licence including, whether the applicant has been convicted of a 'relevant offence'. The definition of "relevant offence" includes an offence against the 1981 Act.

The suitability criteria set out in this clause may be taken into account by a local government, not only when deciding applications for new licences, but also when deciding applications to renew a licence under clause 72 or when deciding whether a ground exists under clause 78 to suspend or cancel a licence.

Clause 58 specifies the criteria that the local government may consider when deciding whether premises are suitable for carrying on a food business, including whether the premises comply with the outcomes based Food Safety Standard 3.2.3 (Food premises and equipment). The clause further provides that a local government must obtain the advice of an authorised person as to whether, in the authorised person's opinion, the premises are suitable.

Clause 59 enables the local government to make inquiries to decide the suitability of an applicant to hold a licence and the suitability of the premises for carrying on a food business. The clause also provides that the local government may require an applicant to provide further information or documentation the local government reasonably requires to decide the application. The further information or document must, if the notice requires, be verified by a statutory declaration. If an applicant fails to comply with the requirement, the applicant is taken to have withdrawn the application.

Division 2 Decisions on applications for licence

Clause 60 specifies that if the local government decides to grant the application, the local government must issue the licence. If the local government imposes conditions on the licence or refuses to grant the application, the local government must give an information notice to the applicant. The clause also clarifies that it does not apply to a decision to issue a provisional licence under clause 64.

Clause 61 provides that, if the local government fails to decide an application for a licence within the specified timeframes, the application is taken to have been refused. The applicant is entitled to be given an information notice by the local government if the application is refused under this clause. These timeframes may be extended under clauses 62 or 66.

Clause 62 enables a local government to extend the timeframes specified in clause 61 because of the complexity of the issues that need to be considered in deciding the application. The local government is required to notify the applicant that the timeframe for deciding the application has been extended.

Clause 63 specifies that where an application for a licence is accompanied by a food safety program and the local government grants the application, the food safety program is taken to have been accredited by the local government. The exception to this provision is for provisional licences (discussed below) where the reason for the issuing of the provisional licence may be that the food business is temporarily unable to comply with its food safety program.

Division 3 Provisional licences

Clause 64 provides for the granting of a provisional licence. This form of licence may be issued where a local government, though not fully satisfied the application meets all of the criteria for granting the licence under clause 56 nevertheless considers that it will grant the licence at a later point in time. A provisional licence can not be renewed but may be extended to the maximum term applicable to provisional licences – three months (see clause 68).

Clause 65 specifies that a provisional licence ends at the end of its term or when a licence is granted or an application is refused under clause 60.

Clause 66 clarifies that the period for consideration of an application for a licence before it is deemed to be refused (clauses 61 or 62) is extended until the end of the term of the provisional licence.

Part 4 Term and conditions of licences

Clause 67 specifies a licence, other than a provisional licence, remains in force for up to 3 years unless sooner cancelled or suspended.

Clause 68 specifies that a provisional licence may be granted for a term not exceeding 3 months. The clause also provides that where a local government grants a provisional licence for a period of less than 3 months it may extend that period to 3 months.

Clause 69 specifies the standard conditions of a licence. Clause 69(1)(e) also allows the local government to impose additional conditions on a licence if the local government considers appropriate for the individual food business under the licence. Clause 69(2) specifies that additional conditions may be imposed upon the licence when it is issued, renewed, restored, amended or at another time. Clause 69(3) requires that the licensee must be given an information notice if additional conditions are imposed under clause 69(2)(b). Clause 69(4) specifies that the holder of a provisional licence must comply, to the extent possible, with the condition that the food premises comply with Food Standards Code, standard 3.2.3 (Food premises and equipment). This is because the issuing of a provisional licence by a local government may be on the basis that the food business premises do not fully comply, at the time of the application, with standard 3.2.3.

Part 5 Renewal, restoration and amendment

Division 1 Preliminary

Clause 70 specifies that Part 5 does not apply to a provisional licence.

Clause 71 requires the local government that issued the licence to give a licensee at least 60 days notice of the expiry of his or her licence.

Division 2 Renewal, restoration and amendment

Subdivision 1 Applications

Clause 72 specifies the timeframes within which an application for renewal of a licence must be made by a licensee and sets out the procedural requirements for the application. The local government must consider the application and either renew or refuse to renew the licence. The clause also specifies the criteria in respect of which the local government may have regard when deciding whether to grant the application. An information notice must be given to the licensee if the local government decides either to refuse to renew the licence or impose conditions on the licence.

Clause 73 enables a person whose licence has expired, to apply for restoration of his or her licence in limited circumstances. It is important to note, having regard to clause 68 (Term of provisional licence) that this clause does not apply to provisional licence holders. Clause 73(7) likewise specifies that the ability to apply for a restoration of a licence is not available to a person if his or her licence is cancelled under clause 82.

Clause 74 specifies that a licensee may apply to the local government to amend a licence. The application must comply with the requirements in clause 85. Clause 74 specifies that the local government may amend a licence by changing the location of the premises providing the local government is satisfied the proposed premises are suitable for carrying on a food business. This clause also provides that the local government must consider the application and either grant or refuse the application. An information notice must be given to the licensee if the local government decides to either refuse to amend the licence or impose conditions on the licence.

Subdivision 2 Inquiries about applications and continuation of licences

Clause 75 enables the local government to require a licensee who has applied to amend a licence to provide further information or documentation the local government reasonably considers is needed to decide the application. The local government may require the information or documentation be verified by statutory declaration. If the licensee fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 76(1) specifies that if a licensee applies for a renewal under clause 72, the licence remains in force from the end of the licence term, until the application is decided under clause 72 (i.e the licence is renewed or refused to be renewed) or the day the application is withdrawn under clause 75(2). A similar situation applies to applicants seeking to restore their licences under clause 73. Clause 76(3) specifies that a licence continues in force until the applicant receives an information notice if the local government decides to refuse to renew or restore the licence. The clause also specifies that the continuation of a licence under the provision does not apply if the licence is earlier cancelled or suspended.

Clause 77 sets out the timeframes within which the local government must decide an application for renewal, restoration or amendment of a licence and specifies that if the application is not decided within these timeframes, the application is taken to have been refused. The applicant is entitled to be given an information notice by the chief executive if the application is refused under this clause.

Part 6 Suspension or cancellation of licences

Clause 78 sets out the grounds for suspending or cancelling a licence.

Clause 79 provides that the local government must give a show cause notice to a licensee if the local government believes a ground exists to suspend or cancel the licence and:

- the licensee has not been given, and it is not intended to give the licensee, an improvement notice about the matter to which the ground relates; or

- the licensee has been given an improvement notice and has failed, without a reasonable excuse, to comply with the notice.

Clause 79(3) and (4) sets out the particulars that a show cause notice must contain and specify that the show cause period must end at least 21 days from the giving of the notice.

Clause 80 provides that the licensee may make written representations about the show cause notice to the local government and that the local government must consider all the representations.

Clause 81 enables the local government to end the show cause process after considering the accepted representations made by the licensee under clause 80. The local government must give a notice to the licensee of the decision to take no further action about the show cause notice.

Clause 82 provides that after considering any accepted representations made by the licensee under clause 80, the local government still considers a ground exists to suspend or cancel the licence, the local government may suspend or cancel the licence in accordance with the proposed action stated in the show cause notice. This clause applies also to a situation where there are no accepted representations by the licensee under clause 80.

The clause also provides that, if the local government decides to suspend or cancel the licence, it must immediately give an information notice for the decision to the licensee.

Clause 83 sets out the grounds and procedures for the immediate suspension or cancellation of a licence.

Clause 84 makes it an offence for the licensee not to return a licence to the local government within 7 days after receiving an information notice that the licence has been cancelled or suspended, unless the licensee has a reasonable excuse.

Part 7 Other provisions about licences and licensees

Division 1 Requirements for applications

Clause 85 specifies the requirements for applications for a licence, renewal of a licence, restoration of a licence and amendment of a licence.

Division 2 Food safety supervisors

A 'food safety supervisor' is a person who is responsible for day to day food safety, has relevant expertise or experience in food safety matters, and who is reasonably available for local government to contact about any regulatory issues, such as arranging an inspection (see schedule 3 - definition of 'food safety supervisor'). The expertise or experience required of a food safety supervisor will vary according to the nature of the food business. Whilst food safety supervisors have certain responsibilities to discharge under the Bill, the overall accountability for the sale of safe and suitable food rests with the licensee.

Clause 86 provides that a licensee must have a food safety supervisor for the food business under the licence within 30 days of the licence being issued. The clause also provides that the food safety supervisor may be the licensee and that a licensee may appoint more than 1 food safety supervisor for the food business.

Clause 87 obliges the licensee to ensure that the food safety supervisor is reasonably available to be contacted by local government or persons who handle food in the food business.

Clause 88 sets out the timeframes within which a licensee must advise the local government of the details of the food safety supervisor for the food business after the issuing of a licence, when the person stops being a food safety supervisor or where there is a change of specified details about the food safety supervisor.

Division 3 Carrying on licensable food business from mobile premises

Clause 89 specifies that while a licensee carries on a licensable food business from mobile premises in a second local government area, the licensee has the obligations under the licensee's licence.

Clause 90 outlines the action the second local government may take while a licensee carries on a licensable food business from mobile premises in its area. The second local government has the same powers as the first local government would have had if the food business was being carried out in its area but may not cancel, suspend, impose conditions on, or take any other action in relation to the licensee's licence. Examples of action the

second local government could take are prosecuting for an offence or issuing an improvement notice under clause 209.

Clause 91 allows a second local government to advise the first local government if it considers that a thing done or omitted to be done by a licensee is a contravention of the conditions of the licensee's licence.

Clause 92 deals with the situation where the second local government advises the first local government that a licensee has done or omitted to do a thing while in the second local government area. The clause specifies that the first local government may take action as if the thing had been done or omitted to be done in its area.

Division 4 General provisions

Clause 93 provides that if a licence is issued jointly to more than 1 person, a reference in the Act to a licensee is a reference to each of the persons.

Clause 94 provides that the licence must be in the approved form and sets out the particulars that must be stated in the licence.

Clause 95 enables a licensee to surrender a licence by notice, accompanied by the licence, to the local government that issued the licence.

Clause 96 provides that a licensee may apply for a replacement licence if the licence has been damaged, destroyed, lost or stolen and sets out the requirements of the replacement application.

Clause 97 enables the local government to replace a licence if the local government is satisfied the licence has been lost, stolen, destroyed or damaged and the action the local government must take upon receipt of an application. A licensee does not contravene the condition of his or her licence under clause 69(1)(c)(i) to display that licence if it has been lost, stolen, destroyed or damaged for that period between when an application for the replacement was made until the time the replacement licence is issued.

Clause 97(5) provides that where a local government refuses to grant the application, the local government must give the applicant an information notice for the decision.

Chapter 4 Food safety programs

Part 1 Preliminary

The Bill adopts the approach endorsed by the Australia New Zealand Food Regulation Ministerial Council that certain higher-risk food businesses implement food safety programs. The Bill also provides that other food businesses, not identified and therefore not required, to have a food safety program, may voluntarily opt into having a food safety program under the Bill. A food business that voluntarily opts into having a food safety program under the Bill may use this to demonstrate that the person exercised due diligence in preventing an offence relating to food (clause 44(3)(a)).

A food safety program is a pro-active measure designed to identify and eliminate food safety failures by the food business before the food reaches consumers. The Bill provides that approved food safety auditors will regularly check to ensure that food businesses are complying with their food safety programs.

Clause 98 specifies the contents of a food safety program.

Clause 99 identifies the higher-risk food businesses that are required to develop, implement and maintain a food safety program. The clause provides that food safety programs are required for food businesses that:

- conduct off-site catering (defined in clause 17);
- conduct on-site catering on premises stated in the licence where it is the primary food activity of the food business at the premises (on-site catering is defined in clause 18);
- conduct on-site catering at part of the premises under the licence if it is the primary food activity of the food business in that part of the premises. For example, a food business may have multiple areas within the premises stated in the licence. Some of those areas are set aside for buffets or café dining. In addition to these discrete areas, there is also a specific room within the premises that is primarily used to conduct catered food events (eg a function room inside a large hotel used for on-site catering);
- are part of the operations of a private hospital; or
- are prescribed by regulation.

Clause 99(2) provides that a regulation may exempt a food business that does on-site catering from part of the premises under the licence from the food safety program requirements. The regulation will impose upper limits on certain criteria for on-site catering being conducted from part of a food premises before a food safety program is required. The limits may apply to the size of the area and its seating capacity, the number of persons being catered to and the frequency of the on-site catering undertaken at that location or the proportion of the licensee's revenue derived from on-site catering.

Clause 100 provides that persons not specified in clause 99 may apply to have a food safety program accredited (i.e. a voluntary accreditation) for their food businesses.

Clause 101 provides that a person need not comply with the requirements under Chapter 4 Part 2 of the Bill (Applications for accreditation of food safety programs) if the person was obliged to forward to the local government for accreditation a proposed food safety program together with his or her licence application as required under Chapter 3, Part 3. The effect of this provision is to streamline the application process for food businesses, required under clause 99 to have a food safety program, by requiring these businesses to supply their proposed food safety program, along with their application for a licence, to the local government. This 'once only' process avoids the necessity for these food businesses to make separate applications to a local government for licensing and accreditation of a food safety program.

Part 2 Applications for accreditation of food safety programs

Clause 102 specifies the procedure to be followed by a person who seeks to have a food safety program accredited by a local government.

Clause 103 requires the local government to consider the application and either accredit or refuse to accredit the food safety program. In making that decision, the local government must obtain and consider the advice of an auditor as to whether the food safety program complies with the criteria in clause 98.

Clause 104 specifies the criteria for the accreditation of a food safety program.

Clause 105 provides that the local government may require an applicant to provide further information or documentation the local government reasonably requires to decide the application. The further information or document must, if the notice requires, be verified by a statutory declaration. If an applicant fails to comply with the requirement, the applicant is taken to have withdrawn the application.

Clause 106 specifies that if the local government decides to accredit the food safety program, the local government must record that fact on the program, give the accredited program to the applicant, and retain a copy of the program. If the local government refuses to accredit the food safety program, the local government must give an information notice to the applicant.

Clause 107 sets out the timeframes within which the local government must decide an application and specifies that if the application is not decided within these timeframes, the application is taken to have been refused. An information notice must be given to the licensee if the local government decides to refuse to accredit the food safety program.

Clause 108 enables the local government to extend the timeframes specified in clause 107 because of the complexity of the issues that need to be considered in deciding the application. The local government is required to notify the applicant that the timeframe for deciding the application has been extended.

Part 3 Matters about compliance audits for accredited food safety programs

The purpose of a compliance audit of a food business is to ensure that the food business is complying with the business's food safety program and the Food Standards Code (see definition of 'compliance audit' in schedule 3 of the Bill).

Clause 109 provides that a local government must advise the holder of an accredited food safety program of the frequency of compliance audits that are to be conducted. This advice must also be accompanied by an information notice about the decision. The clause also provides criteria that the local government must have regard to in determining the frequency of the compliance audits. Clause 109(4) specifies that this does not affect the mandatory initial compliance audit required by clause 157.

Clause 110 enables the local government to change the frequency of compliance audits (either by increasing or decreasing the frequency) in the interests of public health and safety and taking into account the food business's compliance or otherwise with its food safety program. An information notice must be given to a food business if the local government intends to increase the frequency of its compliance audits.

Clause 111 provides that a regulation may limit the frequency of compliance audits for particular food businesses. A local government may not determine a frequency in excess of any that may be prescribed by a regulation for that particular food business.

Part 4 Amendment of accredited food safety programs

Division 1 Amendment by holder of accredited food safety program

Clause 112 provides that where a food business proposes to change its activities and the food safety program no longer adequately identifies and controls the food safety hazards for the changed food business activity the holder of the program must amend the program before implementing the change.

Clause 112(3) provides that the holder of the food safety program must apply to the local government that originally accredited the program to approve the amendments to the program. The local government must consider the application and either approve or refuse to approve the amendment. In making that decision, the local government must decide whether the amendment satisfies the same criteria as for accrediting a food safety program under clause 104.

Clause 112(6) and (7) specifies that if the local government refuses to approve the amendment, the local government must give an information notice to the applicant. If the local government approves the amendment, the local government must record that fact on the program, give the program to the applicant, and retain a copy of the program.

Clause 112(8) specifies that where the holder of an accredited food safety program applies for an amendment of the program under this clause, the food safety program as amended by the holder is taken to comply with

clause 98 until the application is decided or the application is withdrawn under clause 113(2).

Clause 113 provides that the local government may require an applicant to provide further information or documentation the local government reasonably requires to decide the application. The further information or document must, if the notice requires, be verified by a statutory declaration. If an applicant fails to comply with the requirement, the applicant is taken to have withdrawn the application.

Division 2 Amendment of accredited food safety program – local government's initiative

Clause 114 enables the local government to direct the holder of an accredited food safety program to amend the program because the program no longer complies with clause 98 or that the program no longer can effectively control the food safety hazards of the food business. The clause requires the local government to give the holder of the program a written notice which includes details about the nature of the amendment to be made by the holder and the day when the holder must make the amendment which must be at least 30 days after the notice is given. The notice must be accompanied by an information notice for the decision to give the direction.

Clause 115 provides that a person directed under clause 114 to amend the accredited food safety program must give the amended program to the local government.

Clause 115(2) provides that if the local government is satisfied the amendment complies with the direction, the local government must record that fact on the program, give the program to the applicant, and retain a copy of the program.

Part 5 Cancellation of accreditation, and surrender, of particular food safety programs

As indicated previously, any food business may develop, implement and maintain a food safety program to demonstrate their commitment to ensuring food for sale is safe and suitable.

Clause 116 specifies that this Part applies to those food businesses that are not required under clause 99 to have accredited food safety programs.

Clause 117 sets out the grounds for cancelling the accreditation of the food safety program.

Clause 118 provides that the local government must give a show cause notice to the holder of the program if the local government believes a ground exists to cancel the program's accreditation.

Clause 118(2) and (3) sets out the particulars that a show cause notice must contain and specify that the show cause period must end at least 21 days from the giving of the notice.

Clause 119 provides that the holder may make written representations about the show cause notice to the local government and that the local government must consider all the representations.

Clause 120 enables the local government to end the show cause process after considering the accepted representations made by the holder under clause 119. The local government must give a notice to the holder of the decision to take no further action about the show cause notice.

Clause 121 provides that after considering any accepted representations made by the holder under clause 119, the local government still considers a ground exists to cancel the accreditation, the local government may cancel the accreditation. This clause applies also to a situation where there are no accepted representations by the holder under clause 119. The clause also provides that, if the local government decides to cancel the accreditation, it must as soon as practicable give an information notice for the decision to the holder.

Clause 122 enables a holder of an accredited food safety program, to which Part 5 applies, to surrender the program by notice, accompanied by the program, to the local government that accredited the program.

Part 6 Other provisions about accredited food safety programs

Clause 123 requires licensees, who are required under clause 99 to have a food safety program, to comply with the program.

Clause 124 requires licensees, who are required under clause 99 to have a food safety program, to keep copies of the program at the food business premises.

Clause 125 requires licensees, who are required under clause 99 to have a food safety program, to have the program available for inspection by the licensees' employees.

Clause 126 provides that it is an offence for a licensee to advertise that he or she has an accredited food safety program if they are not the holder of an accredited food safety program under the Bill.

Chapter 5 Auditors

Part 1 Functions and approval of auditors

Division 1 Functions

Clause 127 outlines the functions of an auditor, including advising local governments about the accreditation of food safety programs and conducting audits of food safety programs.

Clause 128 provides that a person may apply to the chief executive of Queensland Health for an approval as an auditor.

Clauses 129 to 131 outline the considerations the chief executive must take into account before approving a person as an auditor. The chief executive may only approve a person as an auditor if the chief executive is satisfied that the person has the necessary expertise or experience and the applicant is a suitable person to be an auditor. Clause 131 details the matters the chief

executive may have regard to in considering whether the applicant is a suitable person.

Clause 132 enables the chief executive to make inquiries to decide the suitability of an applicant to be an auditor. The clause also provides that the chief executive may require an applicant to provide further information or documentation the chief executive reasonably requires to decide the application. The further information or document must, if the notice requires, be verified by a statutory declaration. If an applicant fails to comply with the requirement, the applicant is taken to have withdrawn the application.

Clause 133 specifies that if the chief executive decides to grant the application, the chief executive must issue the approval. If the chief executive imposes conditions on the approval or refuses to grant the application, the chief executive must give an information notice to the applicant.

Clause 134 provides that if the chief executive fails to decide an application within the specified timeframes, the application is taken to have been refused. The applicant is entitled to be given an information notice by the chief executive if the application is refused under this clause.

Part 2 Term and conditions of approval

Clause 135 specifies an approval remains in force for up to 3 years unless sooner cancelled or suspended.

Clause 136 specifies the standard conditions of an approval including additional conditions the chief executive considers appropriate for the proper conduct of an audit, eg a condition that the auditor may only audit certain types of food businesses. The chief executive may also impose additional conditions on the approval when it is issued, renewed or at another time.

Clause 136(2) states that an auditor must give immediate notice to the chief executive of any direct or indirect financial or other interests the auditor has in the food business.

Clause 136(5) requires that the auditor must be given an information notice if additional conditions are imposed under clause 136(3)(b).

Clause 137 provides that an auditor must comply with the conditions stated in the approval. A failure to comply may render the auditor liable to a fine as well as a suspension or cancellation of the auditor's approval.

Part 3 Renewal of approvals

Clause 138 specifies the timeframes within which an application for renewal of an auditor's approval must be made by the auditor and sets out the procedural requirements for the application. The chief executive must consider the application and either renew or refuse to renew the approval. The clause also specifies the criteria in respect of which the chief executive may have regard when deciding whether to grant the application. An information notice must be given to the auditor if the chief executive decides either to refuse to renew the approval or impose conditions on the approval.

Clause 139 enables the chief executive to require an auditor who has applied to renew the approval to provide further information or documentation the chief executive reasonably considers is needed to decide the application. The chief executive may require the information or documentation be verified by statutory declaration. If the auditor fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 140 specifies that if an auditor applies for a renewal under clause 138, the approval remains in force from the end of the term of approval, until the application is decided under clause 138 or the day the application is withdrawn under clause 139(2). The clause also specifies that the continuation of an approval under the provision does not apply if the approval is earlier cancelled or suspended.

Part 4 Amending conditions of approvals – application by auditor

Clause 141 specifies that an auditor may apply to the chief executive to amend the conditions of the auditor's approval imposed under clause 136(1)(b). For example, a condition imposed under clause 136(1)(b) may be that the auditor is only approved to audit food safety programs

implemented by private hospitals. The auditor has now just completed relevant studies to audit manufacturers of UCFM and seeks to amend the approval so that the auditor may also audit these manufacturers.

Clause 141(4) specifies that the chief executive may amend the conditions of the auditor's approval if satisfied the applicant has the relevant expertise or experience relevant to the proposed auditing activity to be undertaken by the auditor.

This clause also provides that the chief executive must consider the application and either grant or refuse the application. An information notice must be given to the auditor if the chief executive decides to refuse to amend the approval.

Clause 142 enables the chief executive to require an auditor who has applied to amend an approval to provide further information or documentation the chief executive reasonably considers is needed to decide the application. The chief executive may require the information or documentation be verified by statutory declaration. If the auditor fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 143 sets out the timeframes within which the chief executive must decide an application for an amendment of an approval and specifies that if the application is not decided within these timeframes, the application is taken to have been refused. The applicant is entitled to be given an information notice by the chief executive if the application is refused under this clause.

Part 5 Suspension or cancellation of approvals

Clause 144 sets out the grounds for suspending or cancelling an auditor's approval.

Clause 145 provides that the chief executive must give a show cause notice to an auditor if the chief executive believes a ground exists to suspend or cancel the approval. The clause also specifies the details the notice must contain and specify that the show cause period must end at least 21 days from the giving of the notice.

Clause 146 provides that the auditor may make written representations about the show cause notice to the chief executive and that the chief executive must consider all the representations.

Clause 147 enables the chief executive to end the show cause process after considering the accepted representations made by the auditor under clause 146. The chief executive must give a notice to the auditor of the decision to take no further action about the show cause notice.

Clause 148 provides that after considering any accepted representations made by the auditor under clause 146, the chief executive still considers a ground exists to suspend or cancel the approval, the chief executive may suspend or cancel the approval in accordance with the proposed action stated in the show cause notice. This clause applies also to a situation where there are no accepted representations by the auditor under clause 146. The chief executive must immediately give an information notice to the auditor if the chief executive decides to suspend or cancel the approval.

Clause 149 sets out the grounds and procedures for the immediate suspension or cancellation of an approval.

Clause 150 makes it an offence for the auditor not to return the approval to the chief executive within 7 days after receiving an information notice that the approval has been cancelled or suspended, unless the auditor has a reasonable excuse.

Part 6 General provisions

Clause 151 specifies the requirements for applications for an approval as an auditor, renewal of an approval and the amendment of the conditions of an approval.

Clause 152 specifies that an approval must be in the approved form with stated particulars shown.

Clause 153 enables an auditor to surrender an approval by notice, accompanied by the approval, to the chief executive.

Clause 154 provides that an auditor may apply for a replacement approval if the approval has been damaged, destroyed, lost or stolen and sets out the requirements of the replacement application.

Clause 155 enables the chief executive to replace an approval if the chief executive is satisfied the approval has been lost, stolen destroyed or

damaged and the action the chief executive must take upon receipt of an application. If the chief executive refuses to grant the application, the chief executive must give the applicant an information notice for the decision.

Chapter 6 Audits of accredited food safety programs

Part 1 Preliminary

Clause 156 identifies the purposes of Chapter 6 of the Bill.

Part 2 Audits

Division 1 Compliance audits

There are three types of audits that may be conducted by approved food safety auditors:

- ***compliance audits***, are conducted by auditors to ascertain whether a food business is complying with its food safety program and the food safety code, standards 3.2.2 and 3.2.3;
- ***nonconformance audits***, are conducted by auditors as a follow up audit on a food business to ascertain whether the food business has remedied any breaches of their food safety program identified in a compliance audit; and
- ***check audits*** are conducted by approved food safety auditors employed by Queensland Health, on a food safety program previously audited by another auditor to ensure the first auditor is conducting audits satisfactorily. This is a measure to maintain the integrity of the auditing system.

Clause 157 specifies that the holder of an accredited food safety program must arrange with an auditor to have the first compliance audit undertaken within 6 months after the program is accredited by the local government.

The clause also provides, that the first compliance audit must be undertaken by the food business despite any decision on frequency of audits for the food business by the local government. The term 'compliance audit' is defined in schedule 3 of the Bill.

Clause 158 requires licensees who, under clause 99 are required to have a food safety program, to have compliance audits in accordance with the frequency determined by the local government under Chapter 4, Part 3 of the Bill.

Division 2 Check audits and nonconformance audits

Clause 159 enables the chief executive Queensland Health to arrange a check audit to be conducted on an accredited food safety program.

Clause 160 enables the local government to arrange a nonconformance audit of a food safety program if the local government has received at least three audit reports about a particular food safety program in a 12 month period and each report shows the holder has not remedied a particular nonconformance with the program.

Division 3 Auditor's reports and responsibilities

Clause 161 identifies what must be included in audit report, including:

- whether the food business is complying with its program;
- if the food business is not complying with its program or the Food Safety Standards 3.2.2 (Food Safety Practices and General Requirements) or 3.2.3 (Food Premises and Equipment) and the reasons why the food business is not complying with these obligations;
- if the food business is not complying with its program or the Food Safety Standards 3.2.2 or 3.2.3 the details of any action taken or proposed to be taken to remedy the non-compliance;
- whether the food safety program should be amended; or
- whether the auditor needs to conduct a non-conformance audit or whether the frequency of audits should be changed.

The auditor must within 14 days of completing the audit provide one copy of that report to the food business and one copy to the local government that accredited the food safety program.

Clause 162 provides that if an auditor performing an audit on a food safety program forms a reasonable belief that an offence against the Act has been committed and the contravention poses an imminent and serious risk to the safety of food for sale, the auditor must inform the local government that accredited the food safety program. The clause also provides that the auditor must inform the local government within a maximum period of 24 hours of forming the belief that the contravention has occurred.

Part 3 Other matters

Clause 163 makes it an offence to obstruct an auditor in the conduct of an audit, unless the person has a reasonable excuse.

Clause 164 makes it an offence to pretend to be an auditor.

Chapter 7 Monitoring and enforcement

Part 1 Authorised persons

Division 1 Preliminary

Clause 165 provides that an authorised person has the powers given under the Bill. In exercising these powers, an authorised person is subject to the directions of the relevant administering executive (i.e. chief executive of health or, for a local government, the chief executive officer).

Clause 166 limits an authorised person to exercising powers only in the local government area for which the person is appointed. The clause also clarifies that if the authorised person is appointed by two or more local governments the authorised person may only exercise the powers in the local government areas for which the person was appointed.

Clause 167 details the functions of authorised persons.

Division 2 Appointment of authorised persons

Clause 168 empowers the chief executive or, for a local government, the chief executive officer (together referred to as 'administering executives') to appoint authorised persons. To allow smaller local governments to "share" an authorised person, provision is made for the chief executive officers of two or more local governments to appoint the same person. The clause also states that the administering executive must be satisfied the person has the necessary expertise or experience to be an authorised person.

Clause 169 specifies that an authorised person holds office on the conditions stated in their instrument of appointment or a signed notice given to the authorised person by the local government. The powers of an authorised person may be limited by the instrument of appointment or the signed notice.

Clause 170 requires the administering executive to issue an identity card to each authorised person. An authorised person must produce or display the authorised person's identity card if exercising a power in relation to a person. However, if it is not practicable in the circumstances to do so before exercising the power, the identification must be produced as soon as is practicable (clause 171).

Clause 172 states the ways in which an authorised person may cease to hold office. The methods detailed are not exhaustive.

Clause 173 states that an authorised person may resign by written notice to the administering executive or in the case of an authorised person appointed by 2 or more chief executive officers, give the notice to one of the chief executive officers.

Clause 174 requires an authorised person to return the authorised person's identity card within 21 days of ceasing to be an authorised person.

Part 2 Powers of authorised persons

Division 1 Entry of places

Clause 175 confers on an authorised person a right to enter a place without the occupier's consent or a warrant if the place is:

- a public place and entry is made when it is open to the public; or
- premises at which a business proprietor carries on a food business and the entry is made when the premises are open for business or otherwise open for entry.

The provision also specifies that the authority to enter premises open for carrying on business or otherwise open for entry does not apply to premises that are part of the place where a person resides.

Division 2 Procedure for entry

Clause 176 outlines the procedures an authorised person must follow when seeking consent to enter a place. This clause also provides that, should the issue arise in a proceeding whether the occupier consented to the entry and an acknowledgement of consent is not produced in evidence, the onus of proof to prove the entry was lawful lies with the person relying on the lawfulness of the entry.

Clause 177 makes provision for an authorised person to apply to a magistrate for a warrant to enter a place. Under this provision, a magistrate may refuse to consider an application until an authorised person provides the magistrate with the information the magistrate requires.

Clause 178 sets out the grounds that a magistrate must be satisfied of before issuing a warrant and specifies the information that must be stated in the warrant.

Clause 179 makes provision for an authorised person to apply for a warrant by phone, fax, radio or another form of communication because of urgent or other special circumstances.

Clause 180 provides that a warrant issued under Clauses 177 – 179 is invalidated only if a defect in the warrant affects the substance of the warrant in a material particular.

Clause 181 outlines the procedures that must be followed by an authorised person prior to entering a place under a warrant.

Division 3 General powers

Clause 182 specifies what powers are available to an authorised person who has entered a place under clause 176 for the purposes of monitoring and enforcing compliance with the Act.

Clause 183 makes it an offence for a person to fail to help an authorised person if requested under clause 182(3)(f), unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with the request to give information or provide a document on the basis that complying might tend to incriminate the person.

Clause 184 makes it an offence for a person to fail to provide an authorised person with information requested under clause 182(3)(g), unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with the request to give information on the basis that complying might tend to incriminate the person.

Division 4 Stopping or moving motor vehicles

Clause 185 allows an authorised person to ask or signal a person in charge of a motor vehicle to stop the vehicle if the authorised person suspects on reasonable grounds, or is aware, that a thing in or on the vehicle may provide evidence of the commission of an offence against the Act.

Clause 185(3) and (4) require authorised persons exercising powers under this clause to identify themselves and produce their identity card immediately the vehicle is stopped. Clause 185(5) and (6) make it an offence to fail to comply with an authorised person's request or signal without a reasonable excuse and specify that it is a reasonable excuse if obeying the request or signal would have endangered the person or someone else, and the person obeys the request or signal as soon as it is practicable to do so.

Clause 185(7) allows an authorised person to give directions that a stationary vehicle not be moved, or be moved and kept at a stated reasonable place. Clause 185(9) makes it an offence to fail to comply with a direction without a reasonable excuse.

Division 5 Power to seize evidence

Clause 186 provides an authorised person with the power to seize a thing at a place entered, without consent or a warrant, if the authorised person reasonably believes that the thing is evidence of an offence.

Clause 187 provides an authorised person with the power to seize a thing at a place if the authorised person:

- obtained the necessary consent to enter the place; and the authorised person reasonably believes that the thing is evidence of an offence against the Act; and seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent; or
- enters the place with a warrant and seizes evidence for which the warrant was issued; or
- reasonably believes another thing at the place is evidence of an offence against the Act and needs to be seized to secure evidence or to prevent repeat offences; or has just been used in committing an offence against the Act.

Division 6 Dealing with seized things

Clause 188 enables an authorised person to take action in relation to a thing which has been seized by either moving the thing from the place where it was seized or leaving the thing at the place of seizure but restrict access to it.

Clause 189 makes it an offence for a person to tamper, or attempt to tamper with a seized thing, or with those actions taken by an authorised person to restrict access to seized things without an authorised person's consent.

Clause 190 makes provision for an authorised person to require the person in control of a thing to be seized to take it to a stated reasonable place by a stated reasonable time; and if necessary, to remain in control of it at the stated place for a reasonable time. It is an offence for a person to fail to comply with a requirement or further requirement made under this clause unless the person has a reasonable excuse.

This clause also provides that the cost of complying with a requirement or further requirement made by an authorised person to the person in control

of a thing to be seized, is to be borne by the person the requirement is made to. However, if a compensation order is made under clause 213 for loss or expense incurred because of the exercise of power, the person to whom the requirement is made will not bear the costs of complying with the requirement.

Clause 191 specifies that an authorised person who has required a person under clause 190 to take a thing to a place may require the person to return the thing to its original place. It is an offence for a person not to comply with the requirement to return the thing to its original place.

This clause also provides that the cost of complying with a requirement under this clause must be borne by the person the requirement is made to. However, if a compensation order is made under clause 213 for loss or expense incurred because of the exercise of power, the person to whom the requirement is made will not bear the costs of complying with the requirement.

Clause 192 requires an authorised person to issue a receipt for a seized thing to the person from whom the thing was seized. However, if this proves impractical, the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Clause 193 sets out the circumstances in which a seized thing will be forfeited to the State or local government for whom the person was acting, for example if the owner cannot be found after making reasonable inquiries, or if it cannot be returned to its owner, after making reasonable efforts. The clause also provides what actions a State or local government may take with respect to the forfeited thing.

Clause 194 specifies when an authorised person must return a seized thing to its owner, if the thing has not been forfeited.

Clause 195 provides for the owner of any seized thing to have access to it for inspection or copying (if a document) until it is forfeited or returned.

Clause 196 enables an authorised person to destroy a thing that has been seized if the thing is contaminated, or wholly or partly consists of filthy, decomposed or putrid matter, or that poses an immediate risk to public health or safety.

Division 7 Power to obtain information

Clause 197 enables an authorised person, if an offence has or appears to have been committed against the Act, to require the person to state the person's name and residential address, and to produce evidence of the correctness of the stated name or address. When making such a requirement, the authorised person must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

Clause 198 makes it an offence to fail to comply with a request made under clause 197, unless the person has a reasonable excuse. However, a person does not commit an offence against this clause by not complying with such a request if it is not proved that the person committed the offence against the Act that was suspected by the authorised person.

Clause 199 makes provision for an authorised person to:

- require a person to produce a document for their inspection which has been issued to the person under the Act, or is required to be kept by the person under the Act;
- require a person to certify that a copy of the document or an entry in a document is a true copy; and
- keep a document until such time as a copy of the document or entry in a document is certified as a true copy.

Clause 200 makes it an offence for a person to fail to comply with a request to produce a document under section 199, unless the person has a reasonable excuse. It is not a reasonable excuse not to comply with the request on the basis that complying might tend to incriminate the person.

Clause 201 makes it an offence for a person to fail to comply with a request to certify a document under clause 199, unless the person has a reasonable excuse.

Clause 202 enables an authorised person to require a person to give information to the authorised person about an offence against the Act. It is an offence for a person to fail to comply with such a request, unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with the request to give information on the basis that complying might tend to incriminate the person.

Division 8 Emergency powers of authorised persons

Clause 203 gives emergency powers to authorised persons. The emergency powers may be used only where an authorised person is satisfied that they are necessary to avoid an imminent risk of death or serious illness of any person from food being handled or sold on the premises. The emergency power may not be used at a place or part of a place used only for residential purposes. It should also be noted that compensation will be payable under clause 213 if the emergency power is not used properly. The authorised person may also not be protected from liability under clause 274 if the authorised person has acted dishonestly or negligently.

Clause 204 provides that an authorised person may enter a place without a warrant or consent of the occupier and outlines the procedures that must be followed prior to entering the place.

Clause 205 enables an authorised person to give directions to persons on the premises. The authorised person may also exercise any of the powers set out under Part 2 (Powers of authorised persons).

Clause 206 provides that an authorised person may also authorise another person to exercise the powers under this clause. In exercising the emergency powers the authorised person must ensure that as little inconvenience is caused to persons on the premises and as little damage as practicable in the circumstances.

Clause 207 makes it an offence for a person to fail to comply with a direction given under clause 205 unless the person has a reasonable excuse.

Clause 208 provides that the powers of an authorised person under this division do not limit any power an authorised person has apart from the division.

Division 9 Improvement notices

Clause 209 enables an authorised person to give an improvement notice to a food business proprietor if the authorised person reasonably believes that:

- a person carrying on the food business is contravening a provision of the Act or has contravened same in circumstances

that make it likely that the contravention would continue or be repeated; and

- the matter is capable of being rectified and it is appropriate to give the person an opportunity to rectify the matter; and
- if the person is a licensee, a local government has not given a show cause notice to the person under clause 79.

This clause also specifies the matters the notice must state and make it an offence to fail to comply with a notice without a reasonable excuse. An improvement notice might be given, for example, if the food premises are in an unclean state which may affect the safety of the food being handled or sold. The notice may also state the reasonable steps the person must take to rectify the matter, and may include measures to prevent recurrence of the matter that is to be rectified.

Clause 210 provides that where an improvement notice may have the effect of stopping a person's business from operating and the improvement notice is to be given by an authorised person employed by a local government, the local government must approve the giving of that notice before it is issued to the person. It is expected that a local government would delegate this power only to its chief executive or some other employee holding a senior position within the local government.

Clause 211 requires an authorised person to note the date of compliance with an improvement notice. The authorised person must give written confirmation that the improvement notice, has been complied with, to the person to whom it was issued, if requested.

Part 3 General enforcement matters

Division 1 Notice of damage and compensation

Clause 212 requires an authorised person to give notice if property is damaged by an authorised person when exercising or purporting to exercise a power, or by a person acting under the direction or authority of an authorised person. The notice must set out the particulars of the damage and be given to the person who appears to be the owner of the property. However, if for some reason this proves impractical, the authorised person must leave the notice in a conspicuous position and in a secure way.

Clause 213 makes provision for a person to be compensated by a local government or the State, where the person has incurred loss or expense because of the exercise or purported exercise of a power by an authorised person under part 2 other than the power under clause 196 to destroy a seized thing.

Division 2 Other matters

Clause 214 makes it an offence to obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Clause 215 makes it an offence to impersonate an authorised person.

Part 4 Emergency powers of chief executive

Clause 216 enables the chief executive to make orders binding on persons so as 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.

Clause 217 details the nature of the orders that may be made. For example, the chief executive may make an order that particular food held by a food business be destroyed or impounded.

Clause 218 provides details about recall orders that may require the recall and or disposal of food which is considered unsafe. A person is bound by a recall order and must, if the chief executive incurs costs in connection with the recall order, pay the chief executive the costs associated with the recall order.

Clause 219 specifies how orders are to be made, and when an order has effect. The clause also provides that the chief executive must, as soon as practicable, publish the order in a newspaper.

Clause 220 enables a person to seek compensation from the chief executive if the person suffers loss as a result of an order made under part 4, and the affected person considers there were insufficient grounds for the making of the order.

Clause 221 provides that it is an offence for a person to fail to comply with an order made under this Part unless the person has a reasonable excuse.

Part 5 Injunctions

Clause 222 provides that where a person has committed, is committing or proposes to commit a serious food offence the chief executive of Queensland Health or the chief executive officer of a local government may seek an injunction to prevent or reduce the possibility of a serious danger to public health.

Clause 223 provides that the chief executive of Queensland Health or the chief executive officer of a local government may apply to the District Court for an injunction in relation to the conduct mentioned in clause 222.

Clause 224 confers power on the District Court to hear and decide an application for an injunction in relation to the conduct or failure specified in clause 222 and sets out the court's powers to grant a range of injunctions. It should be noted that the District Court may exercise these powers at any time whether or not a prosecution for the serious food offence has been initiated.

Clause 225 provides that the court may grant the injunction on the terms the court considers appropriate.

Clause 226 provides that no undertakings as to damages or costs may be required to be made where the chief executive or the chief executive officer of a local government seeks an injunction under this part.

Chapter 8 Analysis of things

Part 1 State analysts and approval of laboratories

Clauses 227 and 228 outline the qualifications required and conditions under which a person may be appointed and hold office as a "State analyst".

Clause 229 states the ways in which a State analyst may cease to hold office. The methods detailed are not exhaustive.

Clause 230 states that a State analyst may resign by written notice to the chief executive.

Clause 231 allows the chief executive to approve a laboratory for this part.

Part 2 Other matters about analysis of things

Clause 232 provides that any analysis of a thing taken by an authorised person under the Act must be done by a State analyst. The clause also provides the procedures the State analyst must follow in analysing a thing.

Clause 233 provides that a certificate of analysis is to include details of the methodology used in analysing the thing.

Clause 234 provides that, if requested, the chief executive is to give a copy of the certificate of analysis to the person from whom the thing was taken or the manufacturer or importer of the thing.

Clause 235 prohibits a person from using information contained in a certificate of analysis to advertise or promote the thing.

Chapter 9 Reviews and appeals

Part 1 Internal review of decisions

Clause 236 specifies that a person who is given, or is entitled to be given, an information notice under chapters 3, 4 or 5 may appeal against the decision. This clause also specifies that the appeal must be, in the first instance, by way of application for internal review under clause 237.

Clause 237 specifies that an application for review of an original decision is to be made to either the local government or chief executive that gave, or should have given, the person an information notice.

Clause 238 sets out the process and time-frames for the lodgement of an application for the review of an original decision made by either the local government or chief executive.

Clause 239 enables the person reviewing the original decision made either by the local government or chief executive to make a further decision in relation to a matter under review to confirm the original decision, amend the original decision or substitute another decision for the original decision.

The clause also provides that if the person reviewing the original decision does not notify an applicant within 30 days of the decision, the original decision is taken to have been confirmed.

Clause 240 makes provision for a Magistrates Court to stay the operation of an original decision, if an application has been lodged for the review of the original decision.

Part 2 Appeals

Clause 241 enables a person to appeal to a Magistrates Court where the person is dissatisfied with the decision made by the person reviewing an original decision made by the local government or chief executive.

Clause 242 specifies that any appeal must be made to the Magistrates Court in the local government area of the local government that made the original decision. The clause also sets out the notification requirements and time-frames for an appeal to the Magistrates Court.

Clause 243 allows the Magistrates Court to stay the operation of a decision made under clause 239, where an appeal has been made to the Court regarding the decision.

Clause 244 specifies the powers that the Magistrates Court has in deciding an appeal and provides that an appeal is by way of rehearing.

Clause 245 sets out the powers that a Magistrates Court may exercise in deciding an appeal.

Clause 246 provides that a person may appeal against a decision of a Magistrate Court to the District Court, but only on a question of law.

Chapter 10 Legal proceedings

Part 1 Application

Clause 247 specifies that Chapter 10 applies to a proceeding under the Act.

Part 2 Evidence

Clauses 248 to 250 specify those matters that do not have to be proved in a proceeding under the Act, or which are considered to be evidence of those matters.

Part 3 Proceedings

Clause 251 provides for offences under the Act to be dealt with as summary offences and specifies the period within which proceedings for an offence can be commenced.

Clause 252 provides for alternative verdicts to serious food offences under clauses 32 and 33. For example, a person may be charged with knowingly selling unsafe food (clause 33), but found guilty of the lesser offence of selling unsafe food (clause 35(2)) if it was found the person committed an offence, but it could not be established that the person committed the more serious food offence clauses 32 and 33.

Clause 253 provides that where, in the hearing of an offence under the Act, there is a dispute between the prosecution and defence analysts over a matter, the court may make an order directing that an independent analyst analyse the thing.

Clause 254 provides that a charge for an offence involving false or misleading information or documents may state 'false or misleading' without specifying which is being relied upon.

Clause 255 enables a court on application by the State or a local government to order a person who is convicted of an offence against the Act to pay an amount equal to the costs incurred during an investigation of

the offence. The payment must be made to the state or local government that incurred the costs.

Clause 256 clarifies that an application to a court under clause 255 for the recovery of costs of an investigation of an offence against the Act is in the court's civil jurisdiction. This clause also clarifies that onus of proof is on the balance of probabilities.

Clause 257 makes provision for a court to order, on convicting a person for an offence against the Act, the forfeiture to the State or a local government of anything that has been seized.

Clause 258 provides that a thing forfeited to the State or a local government becomes the property of the State or local government. The clause also enables the State or local government to deal with the forfeited thing, as the State or local government considers appropriate, including destroying the thing.

Clause 259 specifies that an action or omission of a person's representative, in relation to an offence against the Act, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. However, the person can utilise the defence provided for under this provision and prove that they could not, by exercise of reasonable diligence, have prevented the act or omission. The rationale for this provision is discussed in the General Outline section of these Notes.

Clause 260 places an obligation on the executive officers of a corporation to ensure that the corporation complies with the legislation. As such, this provision creates an offence on the part of each executive officer in situations where the corporation has committed an offence against this Act. However, it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure the corporation complied with the provision; or were not in a position to influence the conduct of the corporation in relation to the offence.

Clause 261 provides that where a local government prosecutes an offence under the Act, any fines ordered by the court must be paid to the local government.

Chapter 11 Miscellaneous

Part 1 Guidelines and registers of auditors and food businesses

Division 1 Guidelines

Clause 262 enables the chief executive to make Guidelines to provide guidance to local governments, food businesses and the general public about matters relating to the administration of the Act. It is important to note that these Guidelines are not subordinate legislation. The clause also provides that before making or amending a Guideline, the chief executive must consult with persons who have sufficient interest in the making or amending of the Guideline.

Clause 263 requires the chief executive to publish and make available for inspection, Guidelines made under the Act.

Division 2 Registers

Clause 264 requires the chief executive to keep a register of auditors and a register of licensed mobile food businesses.

Clause 265 provides for the particulars that must be recorded in the register of auditors and register of licensed mobile food businesses.

Clause 266 requires the chief executive to make these registers available for inspection by local governments and members of the public.

Part 2 Offences about false or misleading statements or documents

Clause 267 makes it an offence for a person to state anything to an authorised person, an auditor or in an application made under Chapters 3, 4 or 5 that the person knows is false or misleading in a material particular.

Clause 268 makes it an offence to give a document to an authorised person, an auditor or give to the chief executive or a local government in an application made under Chapters 3, 4 or 5 that the person knows is false or misleading in a material particular.

Part 3 Prescribed contaminants in food

Clause 269 specifies that a regulation may prescribe certain contaminants in food that must, if isolated by a food business or a food tester, be reported to the chief executive.

Clause 270 requires a food business or a food tester to notify the chief executive of prescribed pathogens that have been found in food. The person must comply with the requirement to notify a prescribed contaminant, despite the fact that the notification may incriminate the person. The clause provides that the information given to the chief executive (primary evidence) or evidence derived from primary evidence (derived evidence) is not admissible in a civil or criminal proceeding. Subclause (5) clarifies that primary or derived evidence is not prevented from being admitted in evidence:

- in criminal proceedings about the falsity or misleading nature of the primary evidence; or
- a proceeding under this Act if the person fails to comply with a subsequent direction made by the chief executive under clause 271(2) about controlling the contaminant.

Clause 271 provides that the chief executive may issue a reasonable direction, either in writing or orally, to a person who notifies the chief executive of the isolation of a prescribed contaminant about the way in which the contaminated food must be dealt with. The clause requires the person to comply with the chief executive's direction.

Part 4 Other matters

Clause 272 makes it an offence for a person to disclose specified confidential information obtained as a result of the person performing a function under the Act, unless the disclosure is expressly authorised under subclause (3), for example if:

- the information is disclosed for a purpose under the Bill;
- the information is disclosed to certain entities identified in subclause (3)(b) that have a necessary interest in matters relating to food safety matters, for example, the exchange of information between local governments about a mobile food business;
- the disclosure is with the consent of the person to whom the information relates; or
- the disclosure is authorised under an Act or another law.

Clause 273 sets out the process for service of documents.

Clause 274 specifies that those persons who have a role in the administration of the Act are not civilly liable for an act done, or omission made, honestly and without negligence under the Act. Liability for the chief executive officer of a local government, an authorised person, or a person acting under the direction of an authorised person, attaches to the local government. In any other case, liability attaches to the State.

Clause 275 clarifies that if a food business premises, other than an Australian Defence Force premises or the premises of a foreign country, are on the foreshore, river, harbour or other waters, the premises are taken to be within the area of local government nearest to the premises.

Clause 276 specifies the chief executive's power of delegation in relation to the chief executive’s powers under the Act.

Clause 277 authorises the chief executive and the chief executive officer of a local government to approve forms for use under the Act.

Clause 278 provides that the Governor in Council may make regulations under the Act and specifies the matters about which a regulation may be made.

Chapter 12 Repeal and transitional provisions

Part 1 Repeal provisions

Clause 279 provides for the repeal of the *Food Act 1981*. This will also have the effect of repealing the *Food Hygiene Regulation 1989* and the *Food Standards Regulation 1994*.

Part 2 Transitional provisions

Division 1 Preliminary

Clause 280 defines certain terms used in this Part.

Division 2 Transitional references

Clause 281 provides that a reference in any Act or document to the repealed *Food Act 1981* (the 'repealed Act') is, if the context permits, a reference to this Act.

Division 3 Other transitional provisions

Clause 282 provides that an order made by the chief executive officer to a local government under section 8 of the repealed Act continues and must be complied with as if the *Food Act 1981* had not been repealed. Under section 8 of the repealed Act, the chief executive could direct a local government to do a thing required to be done by the local government under the repealed Act.

Clause 283 deems emergency orders made by the chief executive under Part 3 of the repealed Act and still in force at the commencement of this Act to be as made under Chapter 7, part 4 of this Act. The clause also

provides that the procedures adopted by the chief executive in compliance with Part 3 of the repealed Act about the making of an emergency order are deemed to be comply with the procedures under Chapter 7, part 4 of this Act.

Clause 284 provides that applications for compensation under the repealed Act are deemed to be applications for compensation under clause 220 of this Act. Additionally, the clause provides that if a person could have applied for compensation under the repealed Act, the person may apply for compensation under this Act.

Clause 285 provides that orders made under section 21 of the repealed Act that are still on foot at the commencement of this Act, continue in force as if section 21 of the repealed Act had not been repealed.

Clause 286 specifies that an appeal that was commenced, or could have been commenced, under a repealed provision, may be commenced and decided by a Magistrates Court as if this Act had not commenced.

Clause 287 continues the right of a person to apply to a Magistrates Court for the return of a thing seized under section 33(1) of the repealed Act.

Clause 288 provides that if the chief executive is notified of a prescribed pathogen under the *Food Standards Regulation 1994* and the chief executive has not given the person a direction in relation to that notification on the commencement of this Act, the chief executive may give the person a direction under this Act about the pathogen.

Clause 289 specifies that a licence issued for a food business under the *Food Hygiene Regulation 1989* continues in force as if made under this Act. The clause also provides for the continuation of a suspension of a licence under a repealed provision.

Clause 290 lapses licences issued for food businesses under the *Food Hygiene Regulation 1989* that are not required under this Act to be licensed.

Clause 291 provides that a pending application for a licence under a repealed provision for a food business that is required under this Act to be licensed is taken to be an application for a licence under the Act.

Clause 292 specifies that an application for renewal of a licence for a food business under a repealed provision and required under this Act to be licensed is taken to be an application for a renewal of a licence under this Act.

Clause 293 provides that applications for a licence and renewal of a licence under the *Food Hygiene Regulation 1989* for food businesses, not required under this Act to be licensed, lapse when the Act commences. This clause also specifies that the fee paid by an applicant to a local government for the application is to be refunded in full.

Clause 294 provides that existing registrations of food business premises under the *Food Hygiene Regulation 1989* lapse on the commencement of the Act.

Clause 295 provides that applications for registration of premises, renewal of registration and transfer of a registration under the *Food Hygiene Regulation 1989* lapse when the Act commences. This clause also specifies that the fee paid by an applicant to a local government for the application is to be refunded in full.

Clause 296 provides for the commencement or continuation of proceedings for an offence against a provision of the repealed Act or regulations, as if the Act had not been commenced.

Chapter 13 Amendment of Act

Clause 297 provides that Schedule 1 amends the Acts mentioned in that Schedule.

Schedule 1

Schedule 1 amends the *Food Production (Safety) Act 2000* to reflect the correct year of the *Food Act 2005*.

Schedule 2

Schedule 2 outlines the amendments made to the Food Standards Code.

Schedule 3 dictionary

Schedule 3 defines certain terms used in the Act.