



Food Act 2006

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Queensland

Food Act 2006

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Food Act 2006

An Act to provide for matters relating to handling and selling food, securing the safety and suitability of food and fixing standards for food, and for other purposes

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Food Act 2006*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Application and purposes of Act

Division 1 Application

3 Act binds all persons

(1) This Act binds all persons.

- (2) However, this Act does not bind the State, a government owned corporation or a rail government entity under the *Transport Infrastructure Act 1994*.

4 Exemption from application of Act

- (1) This Act does not apply to—
- (a) the handling or sale of food at a tuckshop operated by a parents and citizens association at a State school; or
 - (b) the handling, at a person's home, of food intended to be given away to a non-profit organisation for sale by the organisation.

Example—

baking a cake at a person's home to give to a junior football club committee for sale by the committee at a fundraising stall

- (2) In this section—

parents and citizens association see the *Education (General Provisions) Act 2006*, schedule 4.

State school see the *Education (General Provisions) Act 2006*, schedule 4.

5 General application of Act to ships

- (1) This section states the application of this Act to ships in Queensland waters and ships in waters beyond the outer limit of Queensland waters (***other waters***).
- (2) This Act applies to—
- (a) a ship in Queensland waters; and
 - (b) to the extent this Act applies in other waters, for example, under the *Crimes at Sea Act 2001*—a ship in other waters if the ship is travelling from a place in Queensland to a place in Queensland.
- (3) This Act does not apply to—

- (a) a ship in other waters if the ship is travelling from a place outside of Queensland to a place outside of Queensland; or
- (b) a ship of the Australian Defence Force or another country.

6 How Act affects particular rights and remedies

- (1) No provision of this Act creates a civil cause of action based on a contravention of the provision.
- (2) This Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (3) Without limiting subsection (2), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

7 Act not affected by Food Production (Safety) Act 2000

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

Division 2 Purposes of Act

8 Main purposes

The main purposes of this Act are as follows—

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

9 How main purposes are primarily achieved

The main purposes are to be achieved primarily by—

- (a) providing for the licensing of particular food businesses; and
- (b) requiring particular licensees to have an accredited food safety program; and
- (c) providing for the accreditation and auditing of food safety programs; and
- (d) providing for the display of nutritional information for food; and
- (e) providing for the monitoring and enforcement of compliance with this Act and the food standards code.

Part 3 Interpretation

Division 1 Dictionary and notes in text

10 Definitions

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

11 Notes in text

A note in the text of this Act is part of the Act.

Division 2 Particular definitions

12 Meaning of *food*

- (1) *Food* includes—

-
- (a) a substance or thing of a kind used, or represented as being for use, for human consumption (whether it is raw, prepared or partly prepared); and
 - (b) a substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing mentioned in paragraph (a); and
 - (c) a substance used in preparing a substance or thing mentioned in paragraph (a) if it comes into direct contact with the substance or thing mentioned in that paragraph, including, for example, a processing aid; and
 - (d) chewing gum or an ingredient or additive in chewing gum, or a substance used in preparing chewing gum; and
 - (e) water, other than reticulated water, that is—
 - (i) for sale by retail (whether it is packaged for sale or not); and
 - (ii) intended for human consumption; and
 - (f) water that is carried in bulk in a vehicle and intended for human consumption, regardless of the source of the water; and

Example of a source of water—

a reticulated water supply system

- (g) reticulated water on premises where a food business is carried on; and
- (h) a substance or thing declared to be a food under a declaration in force under the *Food Standards Australia New Zealand Act 1991* (Cwlth), section 3B;

whether or not the substance, thing, chewing gum or water is in a condition fit for human consumption.

- (2) However, **food** does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989* (Cwlth).

13 Meaning of *food business*

Food business means a business, enterprise or activity that involves—

- (a) the handling of food intended for sale; or
- (b) the sale of food;

regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature and whether it involves the handling or sale of food on 1 occasion only.

14 Meaning of *food standards code*

- (1) Subject to subsection (2), *food standards code* means the Australia New Zealand Food Standards Code as defined in the *Food Standards Australia New Zealand Act 1991* (Cwlth).
- (2) In applying the food standards code for this Act—
 - (a) the code applies with the changes—
 - (i) stated in schedule 2; or
 - (ii) prescribed under a regulation made under section 278(2)(a); and

Note—

A regulation made under section 278(2)(a) expires 1 year after it is made.

- (b) standard 3.2.1, clause 4 of standard 3.2.2, standard 3.3.1 and chapter 4 of the code do not apply.

15 Meaning of *handling of food*

Handling, of food, includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving and displaying of food.

16 Meaning of *manufacture*

(1) ***Manufacture***, in relation to food, includes the following—

(a) making food by combining ingredients;

Examples—

- producing frozen meals in a factory
- producing cake mixes

(b) significantly changing the condition or nature of food by any process;

Examples—

- milling flour
- peeling, cutting and freezing vegetables

(c) bottling or canning food, including, for example, bottling water or canning fruit;

(d) packing unpackaged food, other than unprocessed primary produce;

Example—

packing bulk ground coffee into packages for retail sale

(e) making ice.

(2) However, ***manufacture***, in relation to food, does not include the following—

(a) preparing food at a particular place for retail sale at the place, including sale for immediate consumption;

Examples—

- preparing food at a restaurant for sale to a person dining in the restaurant
- preparing and packing sandwiches in a package at a cafe for retail sale at the cafe

(b) preparing food for a food business that involves off-site catering;

(c) making ice at a particular place for use at the place;

(d) changing the condition of food merely by changing its temperature.

17 Meaning of *off-site catering*

- (1) *Off-site catering*, in relation to a food business, means serving potentially hazardous food at a place other than the principal place of business for the food business.
- (2) *Off-site catering* does not include—
- (a) merely delivering food under an arrangement with, or on the order of, a consumer; or

Example—

delivering pizzas from a takeaway pizza shop

- (b) the sale of food from mobile premises or temporary premises.

Example—

the sale of ice-creams from a mobile ice-cream van

18 Meaning of *on-site catering*

- (1) *On-site catering*, in relation to a food business, means preparing and serving potentially hazardous food, to all consumers of the food at the premises from which the business is carried on, under an agreement under which the food is—
- (a) of a predetermined type; and
- (b) for a predetermined number of persons; and
- (c) served at a predetermined time; and
- (d) for a predetermined cost.

- (2) *On-site catering* does not include—

- (a) preparing and serving food at an eating establishment; or
- (b) merely preparing and displaying food for self-service by consumers.

Example for paragraph (b)—

preparing food for consumption from a buffet at a restaurant

- (3) In this section—

eating establishment means a restaurant, cafe or similar food business that involves the preparation and service of food on the order of a person for immediate consumption by the person.

19 Meaning of *sell*

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

- (o) in relation to food, give the food away, from a food business, to a person; and
 - (p) sell for the purpose of resale.
- (2) However, *sell* does not include, in relation to food—
- (a) prepare the food at a private residence, and supply it at the residence, to a person employed at the residence for consumption by the person; or

Example—

preparing and supplying meals to a live-in gardener or housekeeper

- (b) prepare the food at a private residence and supply it at the residence for a fee.

Examples—

- preparing and supplying food at a family home to a student boarding in the home
- preparing and supplying food at the home of a person with a disability as part of a home support service for the person

- (3) For this Act, food or equipment that is displayed for the purpose of being offered as a prize or reward, or given away for the purpose of advertisement or in the furtherance of trade or business, is taken to have been displayed for sale by the owner of the food or equipment.

- (4) In this section—

bed and breakfast facility means premises from which a food business providing accommodation and breakfast for guests is carried on, if the person who carries on the business lives at the premises.

farmstay premises means premises on a farm, other than a bed and breakfast facility, at which paying guests of the farm are given food and accommodation.

private residence does not include the following—

- (a) premises in which a residential service under the *Residential Services (Accreditation) Act 2002* is conducted;

- (b) premises in which residential care within the meaning of the *Aged Care Act 1997* (Cwlth) is provided;
- (c) farmstay premises;
- (d) a bed and breakfast facility.

20 Meaning of *unsafe* food

- (1) Food is *unsafe* at a particular time if it would be likely to cause physical harm to a person who might later consume it, assuming—
 - (a) it was, after that particular time and before being consumed by the person, properly subjected to all processes, if any, that are relevant to its reasonable intended use; and
 - (b) nothing happened to it after that particular time and before being consumed by the person that would prevent its being used for its reasonable intended use; and
 - (c) it was consumed by the person according to its reasonable intended use.
- (2) However, food is not unsafe merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons.
- (3) In subsection (1)—
processes include processes involving storage and preparation.

21 Meaning of *unsuitable* food

- (1) Food is *unsuitable* if it is food that—
 - (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use; or
 - (b) contains a damaged, deteriorated or perished substance that affects its reasonable intended use; or

- (c) is the product of a diseased animal, or an animal that has died other than by slaughter, and has not been declared under an Act to be safe for human consumption; or
 - (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.
- (2) However, food is not unsuitable merely because—
- (a) it contains an agricultural or veterinary chemical in an amount that does not contravene the food standards code; or
 - (b) it contains a metal or non-metal contaminant (within the meaning of the food standards code) in an amount that does not contravene the permitted level for the contaminant as stated in the food standards code; or
 - (c) it contains a matter or substance that is permitted by the food standards code.

- (3) In this section—

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

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

Part 4 Roles of the State and local governments

22 Provisions that are administered only by the State

- (1) The following provisions of this Act are to be administered and enforced by the State and not by local governments—
- (a) sections 34, 37, 38 and 39(2) to (4);
 - (b) chapter 5;

- (c) section 159;
 - (d) chapter 6A;
 - (e) chapter 7, part 4.
- (2) This section is subject to section 25.

23 Provisions that are administered only by local governments

- (1) The following provisions of this Act are to be administered and enforced by local governments and not by the State—
- (a) section 39(1);
 - (b) chapters 3 and 4;
 - (c) chapter 6, other than section 159.
- (2) This section is subject to section 25.

24 Provisions that are administered by both State and local governments

Sections 32, 33, 35 and 36 are to be administered and enforced by the State and local governments.

25 When State and local governments administer this Act in partnership

- (1) The chief executive officer of a local government and the chief executive may agree that—
- (a) the State do a thing in the administration or enforcement of this Act for a matter mentioned in section 23(1); or
 - (b) the local government do a thing in the administration or enforcement of this Act for a matter mentioned in section 22(1).
- (2) For subsection (1)(a), the chief executive may perform functions and exercise powers for this Act for a matter mentioned in section 23(1).

- (3) For subsection (1)(b), the chief executive officer may perform functions and exercise powers for this Act for a matter mentioned in section 22(1).

26 Action by the State if local government does not administer and enforce this Act

- (1) Subsection (2) applies if the chief executive—
- (a) is satisfied a local government has not done, or sufficiently done, a thing in the administration or enforcement of this Act for a matter mentioned in section 23(1); and
 - (b) is reasonably of the opinion that doing the thing is necessary—
 - (i) to reduce a significant risk associated with the sale of unsafe or unsuitable food; or
 - (ii) to prevent a significant risk to public health or safety recurring.
- (2) The chief executive may do the thing and the reasonable costs and expenses incurred by the chief executive are a debt payable by the local government to the State.
- (3) For subsection (1)(b), in forming an opinion about whether there is a significant risk associated with the sale of unsafe or unsuitable food, or to public health or safety, the chief executive must have regard to—
- (a) the potential consequences to the health of individuals; and
 - (b) the number of persons likely to be exposed to the risk.
- (4) For this section, the chief executive may perform functions and exercise powers for this Act for a matter mentioned in section 23(1).

27 Procedure before taking action under s 26

Before the chief executive does a thing under section 26(2), the chief executive must—

- (a) consult with the chief executive officer of the local government; and
- (b) give the local government a reasonable opportunity to do the thing.

28 State may require report from local government

- (1) This section applies to a matter under this Act administered and enforced—
 - (a) by both the State and local governments under section 24 or 25; or
 - (b) by local governments only.
- (2) The chief executive, by notice, may ask a local government to give the chief executive information about the local government's administration and enforcement of the matter within a stated reasonable time.
- (3) The local government must comply with the request.
- (4) However, before giving notice under this section, the chief executive must consult with the chief executive officer of the local government.

29 Chief executive may give report to local government

- (1) The chief executive may give a local government a report about the administration of this Act by the chief executive and local governments.
- (2) The report may contain information the chief executive considers appropriate, including, for example, information about the licensing of food businesses, or enforcement, under this Act.
- (3) The chief executive may give the report when the chief executive considers it appropriate.

30 Local laws relating to purposes of Act

A local government must not make a local law about a matter relating to the purposes of this Act unless it is necessary to make the law to carry out or give effect to the local government's administration or enforcement of the Act.

31 Fees payable to local governments

- (1) A local government may make a resolution or local law about the fees payable to it for providing a service or taking action under this Act.
- (2) For a fee for providing a service or taking action, a resolution or local law under subsection (1) may only prescribe a fee that is not more than the cost to the local government of providing the service or taking the action.

Chapter 2 Offences relating to food

Part 1 Serious offences relating to food

32 Handling of food in unsafe way

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

Maximum penalty—1000 penalty units or 2 years imprisonment.

Note—

This provision is an executive liability provision—see section 260.

33 Sale of unsafe food

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

Maximum penalty—1000 penalty units or 2 years imprisonment.

Note—

This provision is an executive liability provision—see section 260.

34 False description of food

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

Maximum penalty—1000 penalty units or 2 years imprisonment.

Note—

This provision is an executive liability provision—see section 260.

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

Maximum penalty—1000 penalty units or 2 years imprisonment.

Note—

This provision is an executive liability provision—see section 260.

Part 2 Other offences relating to food

35 Handling and sale of unsafe food

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

36 Handling and sale of unsuitable food

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

Maximum penalty—400 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

Maximum penalty—400 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

37 Misleading conduct relating to sale of food

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

38 Sale of unfit equipment or packaging or labelling material

- (1) A person must not sell equipment that, if used for the purposes for which it was designed or intended to be used—
- (a) would make or be likely to make food unsafe; or
 - (b) would put other equipment, or would be likely to put other equipment, in a condition that, if the other equipment were used for the purposes for which it was designed or intended to be used, it would make, or be likely to make, food unsafe.

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

39 Compliance with food standards code

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

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

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

40 False descriptions of food

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

- (a) the food is represented as being of a particular nature or substance for which there is a prescribed standard under the food standards code and the food does not comply with that prescribed standard;
 - (b) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance in a quantity or proportion that significantly diminishes its food value or nutritive properties as compared with food of the represented nature or substance;
 - (c) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, a substance of lower commercial value than food of the represented nature or substance;
 - (d) the food is represented as being of a particular nature or substance and a constituent of the food has been wholly or partly removed so that its properties are diminished as compared with food of the represented nature or substance;
 - (e) a word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression about the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person;
 - (f) the food is not of the nature or substance represented by the way in which it is packaged, labelled or offered for sale.
- (2) Without limiting the application of subsection (1) of this section to section 34(2), food is falsely described for the purposes of section 34(2) if it is supplied in response to a purchaser's request for a particular type of food or a food that does not contain a particular ingredient, and the food is not of that type or contains that ingredient.

41 Application of provisions outside the State

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

Part 3 Defences

42 Defence relating to publication of advertisements

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

43 Defence relating to food for export

- (1) In proceedings for an offence under this chapter involving a contravention of a provision of the food standards code in relation to food, it is a defence for a person to prove that—
 - (a) the food concerned is to be exported to another country; and

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- (b) the food complies with the laws in force at the time of the alleged offence in the place to which the food is to be exported being laws that deal with the same subject matter as the provision of the food standards code concerned.
 - (2) This section does not apply to food that was originally intended for export but was sold in the State.

44 Defence of due diligence

- (1) In proceedings for an offence under this chapter, it is a defence for a person to prove that the person exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.
- (2) Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved—
 - (a) that the commission of the offence was due to—
 - (i) an act or default of another person; or
 - (ii) reliance on information supplied by another person; and
 - (b) that—
 - (i) the person carried out all checks of the food concerned as were reasonable in all the circumstances; or
 - (ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person; and
 - (c) that the person did not import the food into the State from another country; and
 - (d) if the offence involves the sale of food, that—
 - (i) the person sold the food in the same condition as when the person purchased it; or

- (ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in a contravention of this Act.
- (3) Without limiting the ways in which a person may satisfy the requirements of subsection (1) or (2)(b)(i), a person may satisfy those requirements by proving that the person complied with—
 - (a) an accredited food safety program; or
 - (b) a scheme (for example, a quality assurance program or an industry code of practice) that was—
 - (i) designed to manage food safety hazards and based on Australian national or international standards, codes or guidelines designed for that purpose; and
 - (ii) documented in some way.
- (4) In subsection (2)(a)—

another person does not include a person who was—

 - (a) an employee or agent of the defendant; or
 - (b) in the case of a defendant that is a body corporate, a director, employee or agent of the defendant.

45 Disapplication of Criminal Code, ss 23 and 24

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

46 Defence relating to handling food

In proceedings for an offence under section 32, 35(1) or 36(1), it is a defence for a person to prove that the person caused the food to which the offence relates to be destroyed or otherwise disposed of immediately after the food was handled in the way that was likely to make it unsafe or unsuitable.

47 Defence relating to sale of unfit equipment or packaging or labelling material

In proceedings for an offence under section 38(1) or (2), it is a defence for a person to prove that the person reasonably believed that the equipment or material concerned was not intended for use in connection with the handling of food.

Chapter 3 Licences for particular food businesses

Part 1 Preliminary

48 Meaning of *licensable food business*

(1) *Licensable food business* means a food business that—

- (a) involves the manufacture of food; or
- (b) is carried on by an entity other than a non-profit organisation and involves the sale of unpackaged food by retail; or

Examples—

- a restaurant or delicatessen
 - a catering business
 - a takeaway pizza shop
 - a motel supplying meals with accommodation
 - a food business that involves selling hamburgers from a motor vehicle or unpackaged food from a food vending machine
- (c) is carried on by a non-profit organisation and involves the sale, on at least 12 days each financial year, of meals prepared by the organisation at a particular place.

Examples—

- a restaurant, open daily to the public, operated by a sporting club to raise revenue for the club
 - a non-profit organisation preparing and selling meals to homeless persons at a homeless persons' hostel
 - the preparation of meals by Meals on Wheels
- (2) However, a ***licensable food business*** does not include a food business that consists only of 1 or more of the following—
- (a) the production of primary produce under an accreditation granted under the *Food Production (Safety) Act 2000*, part 5;
 - (b) the sale of unpackaged snack food;
 - (c) the sale of whole fruit or vegetables;
 - (d) the sale of seeds, spices, dried herbs, tea leaves, coffee beans or ground coffee;
 - (e) the grinding of coffee beans;
 - (f) the sale of drinks (other than fruit or vegetable juice processed at the place of sale) including, for example, tea, coffee, soft drinks and alcoholic drinks;
 - (g) the sale of ice including flavoured ice;
 - (h) the sale of meals by a non-profit organisation if—
 - (i) the meal consists only of fruit, cereal, toast, or similar food; or
 - (ii) the consumer of the meal helps to prepare it;
 - (i) the sale of meals by a non-profit organisation that—
 - (i) are pre-prepared by an entity other than the organisation; and
 - (ii) are stored and heated or otherwise prepared by the organisation in accordance with directions of the meal's manufacturer;

Example—

the sale of a frozen meal, at the canteen of an independent school, after the meal is microwaved in accordance with instructions on the meal's packaging

- (j) the sale by a non-profit organisation of a meal prepared as part of an educational or training activity conducted by the organisation involving food preparation, hospitality or catering;
 - (k) the sale of other food prescribed under a regulation.
- (3) In this section—

snack food means any of the following food that is not potentially hazardous food—

- (a) biscuits or cakes;
- (b) confectionery, corn chips, potato chips or nuts;
- (c) dried or glazed fruit;
- (d) other food prescribed under a regulation.

Part 2 **Offences about carrying on licensable food businesses**

49 Licence required to carry on licensable food business

A person must not carry on a licensable food business unless the person holds a licence to carry on the business.

Maximum penalty—1000 penalty units.

Note—

This provision is an executive liability provision—see section 260.

50 Where licensee may carry on licensable food business

- (1) A licensee must not carry on a licensable food business from premises other than premises stated in the licence for carrying on the business.

Maximum penalty—500 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

- (2) Despite subsection (1), if a licensee's food business under a licence involves off-site catering, the licensee may, to carry on the off-site catering, handle food at premises other than premises stated in the licence for carrying on the business.

51 Licensee to comply with conditions of licence

- (1) A licensee must not contravene a condition of the licence.

Maximum penalty—200 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

- (2) The penalty under subsection (1) may be imposed whether or not the licence is suspended or cancelled because of the contravention.

Part 3 Applications for, and issue of, licences

Division 1 Applications for licence

52 Application

- (1) A person may apply for a licence to carry on a licensable food business.
- (2) The application must be made to—
 - (a) for a food business that involves off-site catering—the local government for the area in which the applicant’s principal place of business is located or proposed to be located; or
 - (b) for another food business—
 - (i) if the food business is to be carried on from fixed premises or temporary premises—the local government for the area in which the premises are, or will be, located; or
 - (ii) if the food business is to be carried on from mobile premises—any local government for an area in which the business intends to operate.
- (3) The application must comply with section 85.

53 What the application must state

- (1) The application must state all of the following—
 - (a) if the applicant is a corporation—
 - (i) the corporation’s name; and
 - (ii) the names of its directors; and
 - (iii) the address of its registered office under the Corporations Act;
 - (b) if the applicant is an incorporated association—

- (i) the incorporated association's name; and
 - (ii) the names of the members of its management committee; and
 - (iii) the address of its registered office under the *Associations Incorporation Act 1981*;
- (c) for an applicant other than an entity mentioned in paragraph (a) or (b), the applicant's name and address;
- (d) for fixed premises, the address of the premises;
- (e) for mobile premises—
- (i) a description of the premises that includes—
 - (A) if the premises are a vehicle that is required to be registered—the registration number of the vehicle; or
 - (B) if the premises are a food vending machine—the serial number or other unique identifying number or mark of the food vending machine; and
 - (ii) an address, in the area of the local government to which the application is made, at which the premises may be inspected for deciding the application;
- (f) for temporary premises, the proposed location of the premises;
- (g) a brief description of the food business proposed to be carried on under the licence;

Examples—

cafe, restaurant, smallgoods manufacturing, catering, takeaway
pizza shop

- (h) if the food business involves off-site catering—the make and model of each food transport vehicle proposed to be used for the business, including the registration number if the vehicle is required to be registered;

-
- (i) if the applicant (or, if the applicant is a corporation or an incorporated association, an executive officer of the corporation or a member of the association's management committee) has a conviction for a relevant offence, other than a spent conviction—details of the offence and the circumstances of its commission;
 - (j) the details, required in the approved form for the application, to enable the local government to decide whether—
 - (i) the applicant is a suitable person to hold a licence; and
 - (ii) the premises from which the food business is to be carried on are suitable for carrying on the business;
 - (k) if known by the applicant, the name and contact details of the proposed food safety supervisor for the food business;

Editor's note—

See section 86 for requirement for licensee to have a food safety supervisor.

- (l) the term for which the licence is sought.
- (2) In this section—
- food transport vehicle***, for a food business that involves off-site catering, means a vehicle, other than mobile premises, used to transport food for the business.

54 When food safety program is to accompany application

- (1) If, under section 99, the applicant must have an accredited food safety program for the food business, the application must be accompanied by the proposed food safety program for the business.
- (2) If the applicant is not an applicant mentioned in subsection (1), the application may be accompanied by a proposed food safety program for the food business.

55 Consideration of application

The local government must consider the application and decide to grant, or refuse to grant, the application.

56 Criteria for granting application

- (1) The local government may grant the application only if satisfied of all of the following—
 - (a) the applicant is a suitable person to hold a licence;
 - (b) the premises from which the food business is to be carried on are suitable for carrying on the business;
 - (c) if the application is accompanied by a proposed food safety program for the food business—
 - (i) the proposed food safety program complies with section 98; and
 - (ii) implementation of the program is reasonably likely to effectively control the food safety hazards of the business.
- (2) To decide if it is satisfied about the matters mentioned in subsection (1)(c), the local government must obtain and consider the written advice of an auditor about whether or not the auditor considers the food safety program complies with section 98.

57 Suitability of person to hold licence

In deciding whether the applicant is a suitable person to hold a licence, the local government may have regard to the following matters—

- (a) whether the applicant has appropriate skills and knowledge to sell safe and suitable food under the licence;
- (b) whether the applicant has obtained, or can obtain, the services of other persons with appropriate skills and

- knowledge to sell safe and suitable food under the licence;
- (c) whether the applicant (or, if the applicant is a corporation or an incorporated association, an executive officer of the corporation or a member of the association's management committee) has a conviction for a relevant offence, other than a spent conviction;
 - (d) whether the applicant (or, if the applicant is a corporation or an incorporated association, an executive officer of the corporation or a member of the association's management committee)—
 - (i) held a licence under this Act, the *Food Act 1981* or a corresponding law that was suspended or cancelled; or
 - (ii) has been refused a licence under this Act, the *Food Act 1981* or a corresponding law;
 - (e) anything else relevant to the applicant's ability to handle or sell safe and suitable food.

58 Suitability of premises

In deciding whether premises are suitable for carrying on a licensable food business, the local government—

- (a) may have regard to whether the premises comply with the food standards code, standard 3.2.3; and
- (b) must obtain and consider the written advice of an authorised person about whether or not the authorised person considers the premises are suitable for carrying on the business.

59 Inquiry about application

- (1) Before deciding the application, the local government—
 - (a) may make inquiries to decide the suitability of—
 - (i) the applicant to hold a licence; and

- (ii) the premises for carrying on a licensable food business; and
 - (b) may, by notice given to the applicant, require the applicant to give the local government within the reasonable period of at least 30 days stated in the notice, further information or a document the local government reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with a requirement under subsection (1)(b).
 - (3) A notice under subsection (1)(b) must be given to the applicant within 30 days after the local government receives the application.
 - (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by statutory declaration.

Division 2 Decisions on applications for licence

60 Decision on application

- (1) If the local government decides to grant the application, the local government must issue the licence to the applicant.
- (2) If the local government decides to refuse to grant the application, or impose conditions on the licence, the local government must as soon as practicable give the applicant an information notice for the decision.
- (3) This section does not apply to a decision to issue a provisional licence under section 64.

61 Failure to decide application

- (1) Subject to subsections (2) and (3), if the local government fails to decide the application within 30 days after its receipt,

the failure is taken to be a decision by the local government to refuse to grant the application.

- (2) Subsection (3) applies if—
 - (a) a person has made an application for a licence; and
 - (b) the local government has, under section 59(1)(b), required the applicant to give the local government further information or a document.
- (3) The local government is taken to have refused to grant the application if the local government does not decide the application within 30 days after the local government receives the further information or document verified, if required, by statutory declaration.
- (4) If the application is refused under this section, the applicant is entitled to be given an information notice by the local government for the decision.
- (5) This section is subject to sections 62 and 66.

Note—

Under section 66, the period for consideration of the application may be extended to the end of the term of a provisional licence issued for the food business to which the application relates.

62 Further consideration of application

- (1) This section applies if the local government considers more time is needed to make a decision about the application because of the complexity of the matters that need to be considered in deciding the application.
- (2) The local government may at any time before the final consideration day give notice to the applicant that—
 - (a) because of the complexity of the matters that need to be considered in deciding the application, the local government needs more time to decide the application; and

Example—

A local government might need more time to consider a proposed food safety program that accompanies the application.

- (b) the period within which the local government must decide the application is extended to a day (the ***extended day***) that is 30 days after the final consideration day.
- (3) Also, the applicant and local government may at any time before the final consideration day agree in writing on a day (the ***agreed extended day***) by which the application must be decided.
- (4) The local government is taken to have refused to grant the application if the local government does not decide the application by the latest of the following days—
 - (a) if the local government has given a notice to the applicant under subsection (2)—the extended day;
 - (b) if there is an agreement between the applicant and the local government under subsection (3)—the agreed extended day;
 - (c) if both subsections (2) and (3) apply—the later of the extended day and the agreed extended day.
- (5) This section is subject to section 66.
- (6) In this section—

final consideration day means the latest of the following days—

- (a) the day that is 30 days after receipt of the application;
- (b) if the local government has, under section 59(1)(b), required the applicant to give the local government further information or a document—the day that is 30 days after the local government receives the further information or document verified, if required, by statutory declaration.

63 Accreditation of food safety program on grant of application

- (1) This section applies if—
- (a) the application is accompanied by a proposed food safety program for the food business under the licence; and
 - (b) the local government decides to grant the application.
- (2) The local government—
- (a) is taken to have accredited the food safety program when it decides to grant the application; and
 - (b) must—
 - (i) record on the program that it is accredited; and
 - (ii) give the accredited program to the applicant; and
 - (iii) keep a copy of the accredited program.

Note—

A food safety program is not taken to be accredited under this section on the issue of a provisional licence.

Division 3 Provisional licences

64 Issue of provisional licence

Before finally deciding an application for a licence, a local government may issue a provisional licence to the applicant if the local government—

- (a) is not fully satisfied about all the matters mentioned in section 56(1); and
- (b) reasonably believes it will grant the application, having regard to the application and any information or documents given to the local government for deciding the application.

Example—

A local government might decide to issue a provisional licence to an applicant if the local government considers—

- (a) the applicant is temporarily unable to comply with the applicant's proposed food safety program; or
- (b) the premises from which the food business under the proposed licence is to be carried on needs only minor alterations or repairs to equipment or fittings to make the premises suitable for carrying on the business.

65 When provisional licence ends

The provisional licence ends when the earliest of the following happens—

- (a) the term of the provisional licence ends;
- (b) the local government—
 - (i) grants the application for a licence under section 60(1); or
 - (ii) gives the applicant an information notice under section 60(2) for a decision to refuse to grant the application.

66 Extension of period for consideration of application if provisional licence issued

- (1) This section applies if the local government would, apart from this section, be taken to have refused to grant the application for a licence under section 61 or 62 during the term of the provisional licence.
- (2) Despite section 61 or 62, the period for consideration of the application before it is taken to have been refused by the local government is extended to the end of the term of the provisional licence.

Part 4 **Term and conditions of licences**

67 Term of licence other than provisional licence

A licence other than a provisional licence remains in force, unless sooner cancelled or suspended, for the term of not more than 3 years decided by the local government that issues it.

Examples of terms—

- 1 week for a licence to sell unpackaged food at a music festival
- 1 year for a licence for a new restaurant

68 Term of provisional licence

- (1) A provisional licence remains in force for the term of not more than 3 months decided by the local government that issues it.
- (2) If the initial term of a provisional licence is less than 3 months, the local government may, by notice given to the applicant, extend or further extend its term.
- (3) Subsection (2) does not allow the local government to extend or further extend the term of a provisional licence beyond the end of 3 months after it is issued.

69 Conditions of licence

- (1) A licence is subject to all of the following conditions—
 - (a) the licensee must comply with this Act;
 - (b) if, under section 99, the licensee must have an accredited food safety program for the food business under the licence—
 - (i) the licensee must comply with the accredited program; and

- (ii) the licensee must allow an auditor to have reasonable access to the licensee's premises under the licence to conduct audits under this Act;

Note—

Under section 99, the holder of a provisional licence is not required to have an accredited food safety program.

- (c) the licensee must—
- (i) if the premises under the licence are fixed or temporary premises—display the licence, or a copy of the licence, in a prominent position at the premises so it is easily visible to persons at the premises; and

Examples of displaying a licence in a prominent position—

- displaying it at the customer counter of a restaurant
- displaying it in a publicly accessible reception area of premises where food is manufactured

- (ii) if the premises under the licence are mobile premises—display details of the licence prescribed under a regulation in a prominent position on the premises so the details are easily visible to persons at the premises; and
- (iii) ensure the licensee's premises under the licence comply with the food standards code, standard 3.2.3;
- (d) the licensee must allow an authorised person to have reasonable access to the licensee's premises under the licence during normal business hours for the food business under the licence;
- (e) other reasonable conditions the local government considers appropriate for the food business under the licence and that are stated in the licence or of which the licensee is notified under subsection (3).
- (2) A condition may be imposed under subsection (1)(e)—
- (a) when the licence is issued, renewed, restored or amended; or

- (b) at another time if the local government considers it necessary to impose the condition to ensure food for sale is safe and suitable for human consumption.
- (3) If the local government decides to impose conditions on a licence, other than a provisional licence, under subsection (2)(b), the local government must as soon as practicable give the licensee an information notice for the decision.
- (4) Subsection (1)(c)(iii) applies to a provisional licence only to the extent the premises under the licence can reasonably comply with the food standards code, standard 3.2.3, having regard to the basis on which the provisional licence is issued.

Part 5 Renewal, restoration or amendment of licences

Division 1 Preliminary

70 Application of pt 5

This part does not apply to a provisional licence.

71 Notice of imminent expiry of licence

The local government that issued a licence must give the licensee notice of its imminent expiry at least 60 days before the expiry.

Division 2 Renewal, restoration and amendment

Subdivision 1 Applications

72 Application for renewal

- (1) A licensee may apply to the local government that issued a licence for renewal of the licence.
- (2) The application must—
 - (a) be made within 60 days before the licence ends; and
 - (b) comply with section 85.
- (3) The local government must consider the application and decide to renew, or refuse to renew, the licence.
- (4) In deciding the application, the local government may have regard to—
 - (a) the matters to which the local government may have regard in deciding whether an applicant for a licence is a suitable person to hold the licence and whether the premises under a licence are suitable for carrying on a licensable food business; and
 - (b) the results of audits of an accredited food safety program for the food business under the licence; and
 - (c) the results of inspections to monitor compliance with this Act during the current term of the licence.
- (5) If the local government decides to refuse to renew the licence, or impose conditions on the licence, the local government must as soon as practicable give the licensee an information notice for the decision.
- (6) A licence may be renewed by issuing another licence to replace it.

73 Application for restoration

- (1) A person who was a licensee may apply to the local government that issued a licence for restoration of the licence.
- (2) The application must—
 - (a) be made within 30 days after the licence ends; and
 - (b) comply with section 85.
- (3) The local government must consider the application and decide to restore, or refuse to restore, the licence.
- (4) In deciding the application, the local government may have regard to—
 - (a) the matters to which the local government may have regard in deciding whether an applicant for a licence is a suitable person to hold the licence and whether premises under a licence are suitable for carrying on a licensable food business; and
 - (b) the results of audits of an accredited food safety program for the food business under the licence; and
 - (c) the results of inspections to monitor compliance with this Act during the last term of the licence.
- (5) If the local government decides to refuse to restore the licence, or impose conditions on the licence, the local government must as soon as practicable give the person an information notice for the decision.
- (6) An expired licence may be restored by issuing another licence to replace it.
- (7) Subsection (1) does not apply to a licence cancelled under section 82.

74 Application for amendment

- (1) A licensee may apply to the local government that issued a licence for an amendment of the licence.
- (2) The application must—

- (a) be accompanied by the licence; and
 - (b) comply with section 85.
- (3) The local government must consider the application and decide to amend, or refuse to amend, the licence.
- (4) Without limiting subsection (1), the local government may amend a licence by changing the location of the premises from which the licensee proposes to carry on a licensable food business.
- (5) If the amendment relates to the premises covered by the licence, the local government may amend the licence only if satisfied on reasonable grounds that the premises are suitable for carrying on a licensable food business.
- (6) If the local government decides to refuse to amend the licence, the local government must as soon as practicable give the licensee—
- (a) the licence; and
 - (b) an information notice for the decision.
- (7) If the local government decides to impose conditions on the licence, the local government must as soon as practicable give the licensee an information notice for the decision.
- (8) A licence may be amended by—
- (a) endorsing the existing licence with details of the amendment; or
 - (b) cancelling the existing licence and issuing another licence containing the amendment.

Subdivision 2 Inquiries about applications and continuation of licences

75 Inquiry about application

- (1) Before deciding an application under subdivision 1, the local government may, by notice given to the applicant, require the

applicant to give the local government within the reasonable period of at least 30 days stated in the notice, further information or a document the local government reasonably requires to decide the application.

- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.
- (3) The information or document under subsection (1) must, if the notice requires, be verified by statutory declaration.

76 Licence continues pending decision about renewal or restoration

- (1) If a licensee applies for renewal of a licence under section 72, the licence is taken to continue in force from the day it would, apart from this section, have ended until the application is decided under section 72 or taken to have been withdrawn under section 75(2).
- (2) If a person applies for restoration of a licence under section 73, the licence is taken to continue in force from the day it ended until the application is decided under section 73 or taken to have been withdrawn under section 75(2).
- (3) Despite subsections (1) and (2), if a local government decides to refuse to renew or restore the licence under section 72(3) or 73(3), the licence continues in force until the information notice for the decision is given to the applicant.
- (4) Subsections (1) and (2) do not apply if the licence is earlier suspended or cancelled.

77 Failure to decide application

- (1) Subject to subsections (2) and (3), if the local government fails to decide an application under subdivision 1 within 30 days after its receipt, the failure is taken to be a decision by the local government to refuse to renew, restore or amend the licence.
- (2) Subsection (3) applies if—

- (a) a person has made an application under subdivision 1; and
 - (b) the local government has, under section 75(1), required the person to give the local government further information or a document.
- (3) The local government is taken to have refused to renew, restore or amend the licence if the local government does not decide the application within 30 days after the local government receives the further information or document verified, if required, by statutory declaration.
- (4) If the application is refused under this section, the applicant is entitled to be given an information notice by the local government for the decision.

Part 6 Suspension or cancellation of licences

78 Grounds for suspension or cancellation

- (1) Each of the following is a ground for suspending or cancelling a licence—
- (a) the licensee is not, or is no longer, a suitable person to hold the licence;
 - (b) if, under section 99, the licensee must have an accredited food safety program—the licensee has not complied with the program and the noncompliance is likely to result in a significant risk to public health or safety;
 - (c) the licensee has contravened a condition of the licence, other than a condition mentioned in section 69(1)(b);
 - (d) the licence was issued because of a materially false or misleading representation or declaration.

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- (2) For forming a belief that the ground mentioned in subsection (1)(a) exists, a local government may have regard to the matters to which the local government may have regard in deciding whether a proposed licensee is a suitable person to hold a licence.

79 Show cause notice

- (1) This section applies if—
- (a) the local government that issued a licence believes a ground exists to suspend or cancel the licence; and
 - (b) either the licensee—
 - (i) has not been given, and it is not intended to give the licensee, an improvement notice about a matter to which the ground relates; or
 - (ii) has been given an improvement notice about a matter to which the ground relates and the licensee has failed, without a reasonable excuse, to comply with the notice.

Note—

Under section 209, an authorised person may give a person an improvement notice requiring the person to remedy, or have remedied, a contravention of a provision of this Act.

- (2) The local government must give the licensee a notice under this section (a ***show cause notice***).
- (3) The show cause notice must state the following—
- (a) the action the local government proposes taking under this part (the ***proposed action***);
 - (b) the grounds for the proposed action;
 - (c) an outline of the facts and circumstances forming the basis for the grounds;
 - (d) if the proposed action is suspension of the licence—the proposed suspension period;

- (e) that the licensee may, within a stated period (the *show cause period*), make written representations to the local government to show why the proposed action should not be taken.
- (4) The show cause period must end at least 21 days after the licensee is given the show cause notice.

80 Representations about show cause notice

- (1) The licensee may make written representations about the show cause notice to the local government in the show cause period.
- (2) The local government must consider all representations (the *accepted representations*) made under subsection (1).

81 Ending show cause process without further action

If, after considering the accepted representations for the show cause notice, the local government no longer believes a ground exists to suspend or cancel the licence, the local government—

- (a) must not take any further action about the show cause notice; and
- (b) must give the licensee a notice that no further action is to be taken about the show cause notice.

82 Suspension or cancellation

- (1) This section applies if—
 - (a) there are no accepted representations for the show cause notice; or
 - (b) after considering the accepted representations for the show cause notice, the local government—
 - (i) still believes a ground exists to suspend or cancel the licence; and

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- (ii) believes suspension or cancellation of the licence is warranted.
- (2) The local government may—
 - (a) if the proposed action was to suspend the licence—suspend the licence for not longer than the proposed suspension period; or
 - (b) if the proposed action was to cancel the licence—cancel the licence or suspend it for a period.
 - (3) If the local government decides to take action under subsection (2), the local government must as soon as practicable give the licensee an information notice for the decision.
 - (4) The decision takes effect on the later of the following—
 - (a) the day the information notice is given to the licensee;
 - (b) the day stated in the information notice for that purpose.

83 Immediate suspension of licence

- (1) The local government that issued a licence may suspend the licence immediately if the local government believes—
 - (a) a ground exists to suspend or cancel the licence; and
 - (b) it is necessary to suspend the licence immediately because there is an immediate and serious risk to public health or safety.
- (2) The suspension—
 - (a) can be effected only by the local government giving an information notice to the licensee about the decision to suspend the licence, together with a show cause notice; and
 - (b) operates immediately the notices are given to the licensee; and
 - (c) continues to operate until the earliest of the following happens—

- (i) the local government cancels the remaining period of the suspension;
 - (ii) the show cause notice is finally dealt with;
 - (iii) 30 days have passed since the notices were given to the licensee.
- (3) Subsection (4) applies if—
 - (a) a suspension under this section stops because—
 - (i) the local government cancels the remaining period of the suspension; or
 - (ii) the show cause notice is finally dealt with by a decision being made not to cancel or suspend the licence; or
 - (iii) 30 days have passed since the notices mentioned in subsection (2)(a) were given to the licensee; and
 - (b) the licensee has returned the licence to the local government under section 84.
- (4) The local government must, as soon as practicable, give the licence to the licensee.

84 Return of cancelled or suspended licence to local government

- (1) This section applies if the local government has cancelled or suspended a licence and given an information notice for the decision to the licensee.
- (2) The licensee must return the licence to the local government within 7 days after receiving the information notice, unless the licensee has a reasonable excuse.

Maximum penalty—20 penalty units.

Part 7 Other provisions about licences and licensees

Division 1 Requirements for applications

85 General requirements for applications under ch 3

- (1) This section applies to an application for—
 - (a) a licence under section 52; or
 - (b) the renewal of a licence under section 72; or
 - (c) the restoration of a licence under section 73; or
 - (d) an amendment of a licence under section 74.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be signed by or for the applicant; and
 - (c) be accompanied by the fee, if any, for the application.
- (3) The approved form for the application must provide for the inclusion of the applicant's contact details.

Division 2 Food safety supervisors

86 Licensee to have food safety supervisor

- (1) A licensee must, within 30 days after the licence is issued under section 60(1), have a food safety supervisor for the food business under the licence.

Maximum penalty—50 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

- (2) The licensee must at all times continue to have a food safety supervisor for the food business under the licence.

Maximum penalty—50 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

- (3) The licensee—
- (a) may be the food safety supervisor for the food business; and
 - (b) may have more than 1 food safety supervisor for the food business.

87 Availability of food safety supervisor

- (1) The licensee must ensure a food safety supervisor for the food business under the licence is reasonably available to be contacted by the local government that issued the licence while the food business is being carried on.

Maximum penalty—50 penalty units.

- (2) The licensee must ensure a food safety supervisor for the food business under the licence is reasonably available to be contacted by persons who handle food in the food business while the food business is being carried on.

Maximum penalty—50 penalty units.

88 Licensee to advise local government about food safety supervisor

- (1) A licensee must, within 30 days after the licence is issued under section 60(1), advise the local government that issued the licence of the name and contact details of each food safety supervisor for the food business under the licence.

Maximum penalty—50 penalty units.

- (2) Subject to subsection (1), the licensee must, within 14 days after a person becomes a food safety supervisor for the food business, advise the local government of the person's name and contact details.

Maximum penalty—50 penalty units.

- (3) The licensee must, within 14 days after a person stops being a food safety supervisor for the food business, advise the local government of the fact.

Maximum penalty—50 penalty units.

- (4) The licensee must, within 14 days after the contact details of a food safety supervisor for the food business changes, advise the local government of the change.

Maximum penalty—50 penalty units.

Division 3 Carrying on licensable food business from mobile premises

89 Obligations of licensee while in second local government's area

- (1) This section applies if a licensee carries on a licensable food business from mobile premises to which the licence relates in a second local government's area.
- (2) For the period the licensee carries on the food business from the mobile premises in the second local government's area, the licensee has the obligations under the licensee's licence.

90 Action that may be taken by second local government

- (1) This section applies for the period the licensee carries on the food business from mobile premises in a second local government's area.
- (2) The second local government has the same powers as the first local government would have had if the food business were being carried on in the first local government's area.

- (3) However, the second local government may not cancel, suspend, impose conditions on, or take any other similar action in relation to the licence.

91 Notification to first local government

- (1) This section applies if—
 - (a) a licensee has carried on a licensable food business from mobile premises in a second local government's area; and
 - (b) the second local government considers that the licensee has done or omitted to do something that, if done or omitted to be done in the first local government's area, would be a contravention of the conditions of the licence.
- (2) The second local government may advise the first local government of the thing done or omitted to be done.

92 Action that may be taken by first local government

- (1) This section applies if the second local government has advised the first local government of a thing done or omitted to be done by the licensee while in the second local government's area.
- (2) The first local government may take action in relation to the thing done or omitted to be done by the licensee as if the thing had been done or omitted to be done in the first local government's area.

Division 4 General provisions

93 Licence issued to more than 1 person

If a licence is issued jointly to more than 1 person, a reference in this Act to the licensee is a reference to each of the persons.

94 Form of licence

A licence must—

- (a) be in the approved form; and
- (b) state the following particulars—
 - (i) the licensee's name and address;
 - (ii) for fixed premises, the address of the premises;
 - (iii) for mobile premises, a description of the premises that includes—
 - (A) if the premises are a vehicle that is required to be registered—the registration number of the vehicle; or
 - (B) if the premises are a food vending machine—the serial number or other unique identifying number or mark of the food vending machine;
 - (iv) for temporary premises, the proposed location of the premises;
 - (v) the term of the licence, including the day it becomes effective and the day it ends;
 - (vi) a description of the food business under the licence;
 - (vii) the licence number;
 - (viii) the licence conditions.

95 Surrender of licence

- (1) A licensee may surrender the licence by notice given to the local government that issued it.
- (2) The licence must accompany the notice.
- (3) The surrender takes effect on the later of the following—
 - (a) the day the notice is given to the local government;
 - (b) the day stated in the notice for that purpose.

96 Application for replacement of licence

- (1) A licensee may apply for replacement of the licence if the licence has been damaged, destroyed, lost or stolen.
- (2) The application must—
 - (a) be made to the local government that issued the licence; and
 - (b) include information about the circumstances in which the licence was damaged, destroyed, lost or stolen; and
 - (c) be accompanied by the fee, if any, for the application.

97 Decision about application for replacement of licence

- (1) The local government must consider the application and decide to grant, or refuse to grant, the application.
- (2) The local government must grant the application if the local government is satisfied the licence has been destroyed, lost or stolen, or damaged in a way to require its replacement.
- (3) If the local government decides to grant the application, the local government must, as soon as practicable, issue another licence to the applicant to replace the damaged, destroyed, lost or stolen licence.
- (4) If a licence is issued under subsection (3) to replace the damaged, destroyed, lost or stolen licence, the licence is taken not to have been subject to a condition mentioned in section 69(1)(c)(i) for the period—
 - (a) starting on the day the licensee applied for replacement of the licence; and
 - (b) ending when the replacement licence is issued to the licensee.
- (5) If the local government decides to refuse to grant the application, the local government must as soon as practicable give the applicant an information notice for the decision.

Chapter 4 Food safety programs

Part 1 Preliminary

98 Content of food safety program

A food safety program for a food business must—

- (a) systematically identify food safety hazards that are reasonably likely to occur in food handling operations of the food business; and
- (b) identify where, in a food handling operation of the food business, each hazard identified under paragraph (a) can be controlled and the means of control; and
- (c) provide for the systematic monitoring of the means of control; and
- (d) provide for appropriate corrective action to be taken when a hazard identified under paragraph (a) is not under control; and
- (e) provide for regular review of the program to ensure it is appropriate for the food business; and
- (f) provide for the keeping of appropriate records for the food business, including records about action taken to ensure the business is carried on in compliance with the program; and
- (g) contain other information, relating to the control of food safety hazards, prescribed under a regulation.

99 Who must have accredited food safety program

- (1) A licensee, other than the holder of a provisional licence, must have an accredited food safety program for the food business under the licence if—
 - (a) the food business involves off-site catering; or

- (b) the primary activity of the food business is on-site catering at the premises stated in the licence; or
- (c) the primary activity of the food business is on-site catering at part of the premises stated in the licence; or
Example of part of premises stated in a licence—
 - a function room used for on-site catering and situated on the premises of a large hotel
- (d) the food business is carried on as part of the operations of a private hospital under the *Private Health Facilities Act 1999*; or
- (e) the food business—
 - (i) involves the handling of potentially hazardous food or other food that is reasonably likely to pose a risk to public health or safety; and
 - (ii) is a food business prescribed under a regulation.

Maximum penalty—1000 penalty units.

Note—

This provision is an executive liability provision—see section 260.

- (2) However, for subsection (1)(c), a regulation may exempt a licensee from subsection (1) if the scope of the on-site catering is not more than the limits prescribed in the regulation, including, for example, limits about—
 - (a) the size of the area where the on-site catering is carried out; or
 - (b) the seating capacity of the area; or
 - (c) the number of persons for whom on-site catering is provided; or
 - (d) the frequency of provision of on-site catering; or
 - (e) the proportion of the licensee's revenue derived from on-site catering.

100 Other persons may have accredited food safety program

A person who is not required under section 99 to have an accredited food safety program may apply under part 2 for accreditation of a food safety program for the person's food business.

101 Particular persons taken to have applied for accreditation of food safety program

- (1) This section applies to a person if, under chapter 3, part 3 the person—
 - (a) applies for a licence; and
 - (b) the application is accompanied by a proposed food safety program for the food business under the licence.
- (2) The person—
 - (a) is taken to have applied for accreditation of the proposed food safety program when the person applies for the licence; and
 - (b) need not apply for accreditation of the proposed program under section 102.

Part 2 Applications for accreditation of food safety programs

102 Application for accreditation

- (1) A person may apply for accreditation of a food safety program for a food business carried on by the person.
- (2) The application must be made to—
 - (a) for an applicant who holds a licence for the food business—the local government that issued the licence; or

- (b) otherwise—the local government to which the applicant would apply for a licence for the food business under section 52(2).
- (3) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by—
 - (i) the food safety program; and
 - (ii) the fee, if any, for the application.

103 Consideration of application

- (1) The local government must consider the application and decide to accredit, or refuse to accredit, the food safety program.
- (2) To decide the application, the local government must obtain and consider the written advice of an auditor about whether or not the auditor considers the food safety program complies with the criteria in section 104.

104 Criteria for accrediting food safety program

The local government may accredit the food safety program only if satisfied—

- (a) the program complies with section 98; and
- (b) implementation of the program is reasonably likely to effectively control the food safety hazards of the food business to which the program relates.

105 Inquiry about application

- (1) Before deciding the application, the local government may, by notice given to the applicant, require the applicant to give the local government within the reasonable period of at least 30 days stated in the notice, further information or a document

the local government reasonably requires to decide the application.

- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.
- (3) The information or document under subsection (1) must, if the notice requires, be verified by statutory declaration.

106 Decision on application

- (1) If the local government decides to accredit the food safety program, the local government must—
 - (a) record on the program that it is accredited; and
 - (b) give the accredited program to the applicant; and
 - (c) keep a copy of the accredited program.
- (2) If the local government decides to refuse to accredit the food safety program, the local government must as soon as practicable give the applicant an information notice for the decision.

107 Failure to decide application

- (1) Subject to subsections (2) and (3), if the local government fails to decide the application within 30 days after its receipt, the failure is taken to be a decision by the local government to refuse to accredit the food safety program.
- (2) Subsection (3) applies if—
 - (a) a person has made an application for accreditation of a food safety program; and
 - (b) the local government has, under section 105(1), required the applicant to give the local government further information or a document.
- (3) The local government is taken to have refused to accredit the food safety program if the local government does not decide

the application within 30 days after the local government receives the further information or document.

- (4) If the application is refused under this section, the applicant is entitled to be given an information notice by the local government for the decision.

108 Further consideration of application

- (1) This section applies if the local government considers more time is needed to make a decision about the application because of the complexity of the matters that need to be considered in deciding the application.
- (2) The local government may at any time before the final consideration day give notice to the applicant that—
 - (a) because of the complexity of the matters that need to be considered in deciding the application, the local government needs more time to decide the application; and
 - (b) the period within which the local government must decide the application is extended to a day (the *extended day*) that is 30 days after the final consideration day.
- (3) Also, the applicant and local government may at any time before the final consideration day agree in writing on a day (the *agreed extended day*) by which the application must be decided.
- (4) The local government is taken to have refused to accredit the food safety program if the local government does not decide the application by the latest of the following days—
 - (a) if the local government has given a notice to the applicant under subsection (2)—the extended day;
 - (b) if there is an agreement between the applicant and the local government under subsection (3)—the agreed extended day;
 - (c) if both subsections (2) and (3) apply—the later of the extended day and the agreed extended day.

(5) In this section—

final consideration day means the latest of the following days—

- (a) the day that is 30 days after receipt of the application;
- (b) if the local government has, under section 105(1), required the applicant to give the local government further information or a document—the day that is 30 days after the local government receives the further information or document.

Part 3

Matters about compliance audits for accredited food safety programs

109 Frequency of compliance audits

- (1) This section applies if a local government accredits a food safety program under section 63(2)(a) or part 2.
- (2) The local government must, as soon as practicable after accrediting the food safety program—
 - (a) decide how often the holder of the program must have compliance audits of the program conducted under this Act; and
 - (b) give the holder an information notice for the decision.
- (3) To decide the frequency of compliance audits for subsection (2)(a), the local government must have regard to—
 - (a) the nature of the food handled in the food business to which the program relates; and
 - (b) the nature and extent of food handling carried on in the food business.
- (4) This section is subject to section 157.

110 Changing frequency of compliance audits

- (1) A local government may change the frequency of compliance audits for a food safety program accredited by the local government if, having regard to the matters mentioned in section 109(3), the local government considers it necessary to make the change in the interests of public health or safety.
- (2) In deciding whether to change the frequency of compliance audits for the food safety program, the local government also may have regard to the results of a compliance or nonconformance audit of the program.
- (3) If the local government decides to change the frequency of compliance audits for the food safety program by increasing the frequency of the audits, the local government must as soon as practicable give the holder of the program an information notice for the decision.
- (4) If the local government decides to change the frequency of compliance audits for the food safety program by decreasing the frequency of the audits, the local government must as soon as practicable give the holder of the program notice of the change.

111 Limitation on frequency of compliance audits

The frequency of compliance audits for a food safety program decided by a local government under this part must not be more than the frequency prescribed under a regulation for the food business to which the program relates.

Part 4 Amendment of accredited food safety programs

Division 1 Amendment by holder of accredited food safety program

112 Application for approval of amendment

- (1) This section applies to the holder of an accredited food safety program if—
 - (a) the holder proposes to change the way food is handled in the carrying on of the food business to which the program relates; and
 - (b) because of the proposed change—
 - (i) the program will no longer identify the food safety hazards of the food business; and
 - (ii) implementation of the program will no longer effectively control the food safety hazards.
- (2) Before changing the way food is handled in the carrying on of the food business, the holder must—
 - (a) amend the food safety program to ensure—
 - (i) the program identifies the food safety hazards of the food business as proposed to be changed; and
 - (ii) implementation of the program will effectively control the food safety hazards of the food business as proposed to be changed; and
 - (b) apply under this section for approval of the amendment.
- (3) The application must—
 - (a) be made to the local government that accredited the food safety program; and
 - (b) be accompanied by—
 - (i) the amended program; and

- (ii) the fee, if any, for the application.
- (4) The local government must consider the application and decide to approve, or refuse to approve, the amendment.
- (5) The local government may approve the amendment only if satisfied—
 - (a) the amended program complies with section 98; and
 - (b) implementation of the amended program is reasonably likely to effectively control the food safety hazards of the food business to which the program relates.
- (6) If the local government decides to refuse to approve the amendment, the local government must as soon as practicable give the applicant an information notice for the decision.
- (7) If the local government decides to approve the amendment, the local government must—
 - (a) record on the food safety program that the amendment is approved; and
 - (b) give the program to the applicant; and
 - (c) keep a copy of the program.
- (8) For this Act, the amended food safety program is taken to comply with section 98 from the day the holder of the program amends it until the local government decides the application.

113 Inquiry about application

- (1) Before deciding the application, the local government may, by notice given to the applicant, require the applicant to give the local government within the reasonable period of at least 30 days stated in the notice, further information or a document the local government reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

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- (3) The information or document under subsection (1) must, if the notice requires, be verified by statutory declaration.

Division 2 Amendment of accredited food safety program—local government’s initiative

114 Local government may direct holder to amend accredited food safety program

- (1) A local government may direct the holder of a food safety program accredited by the local government to amend the program if the local government considers it necessary or desirable to make the amendment, having regard to the matters about which it must be satisfied under section 104.
- (2) A direction under subsection (1) must be by notice given to the holder of the program.
- (3) The notice must—
- (a) include information about the nature of the amendment required to be made by the holder; and
 - (b) state the day by which the holder must make the amendment; and
 - (c) be accompanied by an information notice for the decision to give the direction.
- (4) The stated day must be at least 30 days after the notice is given to the holder.
- (5) The holder must comply with the direction, unless the holder has a reasonable excuse.

Maximum penalty—200 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

115 Amending accredited food safety program

- (1) As soon as practicable after amending a food safety program to comply with a direction under section 114, the holder of the program must give to the local government—
 - (a) the amended program; and
 - (b) the fee, if any, for the local government’s consideration of the amended program.
- (2) If the local government is satisfied the amendment complies with the direction, the local government must—
 - (a) record on the food safety program that the amendment complies with the direction; and
 - (b) give the program to the applicant; and
 - (c) keep a copy of the program.

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

116 Application of pt 5

This part applies only to an accredited food safety program held by a person who is not required under section 99 to have the accredited program for the person’s food business.

117 Grounds for cancellation

- (1) Each of the following is a ground for cancelling the accreditation of the food safety program—
 - (a) the holder of the program has not complied with the program and the noncompliance is likely to result in a significant risk to public health or safety;

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- (b) the holder has not had compliance audits of the program conducted as required, under part 3, by the local government that accredited the program;
 - (c) the holder has contravened a relevant provision;
 - (d) the program was accredited because of a materially false or misleading representation or declaration.
- (2) In this section—
- relevant provision* means section 112(2), 114(5), 115(1), 157(1), 163(1), 267(2) or 268(2) of this Act.

118 Show cause notice

- (1) If the local government that accredited the food safety program believes a ground exists to cancel its accreditation, the local government must give the holder of the program a notice under this section (a *show cause notice*).
- (2) The show cause notice must state the following—
 - (a) the action the local government proposes taking under this part (the *proposed action*);
 - (b) the grounds for the proposed action;
 - (c) an outline of the facts and circumstances forming the basis for the grounds;
 - (d) that the holder may, within a stated period (the *show cause period*), make written representations to the local government to show why the proposed action should not be taken.
- (3) The show cause period must end at least 21 days after the holder is given the show cause notice.

119 Representations about show cause notice

- (1) The holder may make written representations about the show cause notice to the local government in the show cause period.

- (2) The local government must consider all representations (the *accepted representations*) made under subsection (1).

120 Ending show cause process without further action

If, after considering the accepted representations for the show cause notice, the local government no longer believes a ground exists to cancel the accreditation, the local government—

- (a) must not take any further action about the show cause notice; and
- (b) must give the holder a notice that no further action is to be taken about the show cause notice.

121 Cancellation

- (1) This section applies if—
- (a) there are no accepted representations for the show cause notice; or
 - (b) after considering the accepted representations for the show cause notice, the local government—
 - (i) still believes a ground exists to cancel the accreditation; and
 - (ii) believes cancellation of the accreditation is warranted.
- (2) The local government may cancel the accreditation.
- (3) If the local government decides to take action under subsection (2), the local government must as soon as practicable give the holder an information notice for the decision.
- (4) The decision takes effect on the later of the following—
- (a) the day the information notice is given to the holder;
 - (b) the day stated in the information notice for that purpose.

122 Surrender of accredited food safety program

- (1) The holder of an accredited food safety program to which this part applies may surrender the program by notice given to the local government that accredited it.
- (2) The accredited food safety program must accompany the notice.
- (3) The surrender takes effect on the later of the following—
 - (a) the day the notice is given to the local government;
 - (b) the day stated in the notice for that purpose.

Part 6 Other provisions about accredited food safety programs

123 Obligation to comply with accredited food safety program

A licensee who, under section 99, must have an accredited food safety program for a food business must comply with the program in carrying on the business.

Maximum penalty—500 penalty units.

Note—

This provision is an executive liability provision—see section 260.

124 Keeping copy of accredited food safety program

A licensee who, under section 99, must have an accredited food safety program for a food business must keep a copy of the program at each fixed premises and mobile premises from which the business is carried on.

Maximum penalty—50 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

125 Inspection of accredited food safety program

A licensee who, under section 99, must have an accredited food safety program for a food business must keep the program available for inspection by the licensee's employees in the food business.

Maximum penalty—50 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

126 Offence about advertising

A licensee who is not the holder of an accredited food safety program for a food business must not advertise that the licensee has an accredited food safety program for the business.

Maximum penalty—200 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

Chapter 5 Auditors

Part 1 Functions and approval of auditors

Division 1 Functions

127 Auditor's functions

The functions of an auditor are as follows—

- (a) to advise local governments about the accreditation of food safety programs;
- (b) to conduct audits of accredited food safety programs under chapter 6;
- (c) to prepare, under section 161, reports of audits conducted by the auditor;
- (d) to give the chief executive information requested by the chief executive about audits conducted by the auditor;
- (e) any other function about accreditation or auditing of food safety programs prescribed under a regulation.

Division 2 Obtaining approval as auditor

128 Application for approval as auditor

- (1) An individual may apply to the chief executive for an approval as an auditor.
- (2) The application must comply with section 151.

129 Consideration of application

The chief executive must consider the application and decide to grant, or refuse to grant, the application.

130 Criteria for granting application

The chief executive may grant the application only if satisfied the applicant—

- (a) has the necessary expertise or experience to perform the functions of an auditor; and
- (b) is a suitable person to be an auditor.

131 Suitability of person to be an auditor

In deciding whether the applicant is a suitable person to be an auditor, the chief executive may have regard to—

- (a) whether the applicant has been refused an approval or an accreditation as an auditor under this Act or a corresponding law; or
- (b) whether the applicant held an approval or an accreditation as an auditor under this Act or a corresponding law that was suspended or cancelled; or
- (c) another matter the chief executive considers relevant to the person's ability to perform the functions of an auditor.

132 Inquiry about application

- (1) Before deciding the application, the chief executive—
 - (a) may make inquiries to decide the suitability of the applicant to be an auditor; and
 - (b) may, by notice given to the applicant, require the applicant to give the chief executive within the reasonable period of at least 30 days stated in the notice,

further information or a document the chief executive reasonably requires to decide the application.

- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with a requirement under subsection (1)(b).
- (3) A notice under subsection (1)(b) must be given to the applicant within 30 days after the chief executive receives the application.
- (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by statutory declaration.

133 Decision on application

- (1) If the chief executive decides to grant the application, the chief executive must issue the approval to the applicant.
- (2) If the chief executive decides to refuse to grant the application, or to impose conditions on the approval under section 136(1)(b), the chief executive must as soon as practicable give the applicant an information notice for the decision.

134 Failure to decide application

- (1) Subject to subsections (2) and (3) and section 134A, if the chief executive fails to decide the application within 30 days after its receipt, the failure is taken to be a decision by the chief executive to refuse to grant the application.
- (2) Subsection (3) applies if—
 - (a) a person has made an application for an approval; and
 - (b) the chief executive has, under section 132(1)(b), required the applicant to give the chief executive further information or a document.
- (3) The chief executive is taken to have refused to grant the application if the chief executive does not decide the application within 30 days after the chief executive receives the further information or document.

- (4) If the application is refused under this section, the applicant is entitled to be given an information notice by the chief executive for the decision.

134A Further consideration of application

- (1) This section applies if the chief executive considers more time is needed to make a decision about the application because of the complexity of the matters that need to be considered in deciding the application.

Example of an application likely to raise complex matters—

an application requiring the chief executive to obtain and consider further information about the applicant from an entity administering a corresponding law

- (2) The chief executive may at any time before the final consideration day give notice to the applicant that—
 - (a) because of the complexity of the matters that need to be considered in deciding the application, the chief executive needs more time to decide the application; and
 - (b) the period within which the chief executive must decide the application is extended to a day (the *extended day*) that is 30 days after the final consideration day.
- (3) Also, the applicant and chief executive may at any time before the final consideration day agree in writing on a day (the *agreed extended day*) by which the application must be decided.
- (4) The chief executive is taken to have refused to grant the application if the chief executive does not decide the application by—
 - (a) if the chief executive has given a notice to the applicant under subsection (2)—the extended day; or
 - (b) if there is an agreement between the applicant and the chief executive under subsection (3)—the agreed extended day; or
 - (c) if both subsections (2) and (3) apply—the later of the extended day and the agreed extended day.

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- (5) If the application is refused under subsection (4), the applicant is entitled to be given an information notice by the chief executive for the decision.
- (6) In this section—
- final consideration day* means the later of the following days—
- (a) the day that is 30 days after receipt of the application;
 - (b) if the chief executive has, under section 132(1)(b), required the applicant to give the chief executive further information or a document—the day that is 30 days after the chief executive receives the further information or document verified, if required, by statutory declaration.

Part 2

Term and conditions of approval

135 Term of approval

An approval remains in force, unless sooner cancelled or suspended, for the term of not more than 3 years decided by the chief executive and stated in the approval.

136 Conditions of approval

- (1) An auditor's approval is subject to the following conditions—
- (a) the auditor must notify the chief executive of any direct or indirect financial or other interest the auditor has in a food business that could conflict with the proper performance of the auditor's functions;
 - (b) other reasonable conditions the chief executive considers appropriate for the proper conduct of an audit and that are stated in the approval or of which the auditor is notified under subsection (5).

- (2) For subsection (1)(a), the auditor must, unless the auditor has a reasonable excuse, after becoming aware of the interest—
 - (a) orally notify the chief executive about the interest immediately; and
 - (b) give the chief executive notice about the interest in the approved form within 24 hours after becoming aware of the interest.
- (3) A condition may be imposed under subsection (1)(b)—
 - (a) when the approval is issued or renewed; or
 - (b) at another time if the chief executive considers it necessary to impose the condition to ensure an audit under this Act is conducted appropriately.
- (4) Without limiting subsection (1)(b), the chief executive may impose a condition under the subsection stating the type of food business in relation to which the auditor is approved to conduct audits.
- (5) If the chief executive decides to impose conditions on the approval under subsection (3)(b), the chief executive must as soon as practicable give the auditor an information notice for the decision.

137 Auditor to comply with conditions of approval

- (1) An auditor must not contravene a condition of the auditor's approval.
Maximum penalty—100 penalty units.
- (2) The penalty under subsection (1) may be imposed whether or not the approval is suspended or cancelled because of the contravention.

Part 3 Renewal of approvals

138 Application for renewal

- (1) An auditor may apply to the chief executive for renewal of the auditor's approval.
- (2) The application must—
 - (a) be made within 30 days before the term of the approval ends; and
 - (b) comply with section 151.
- (3) The chief executive must consider the application and decide to renew, or refuse to renew, the approval.
- (4) In deciding the application, the chief executive may have regard to the matters to which the chief executive may have regard in deciding whether an applicant for an approval is a suitable person to be an auditor.
- (5) If the chief executive decides to refuse to renew the approval, or to impose conditions on the approval under section 136(1)(b), the chief executive must as soon as practicable give the auditor an information notice for the decision.
- (6) An approval may be renewed by issuing another approval to replace it.

139 Inquiry about application

- (1) Before deciding an application under section 138, the chief executive may, by notice given to the applicant, require the applicant to give the chief executive within the reasonable period of at least 30 days stated in the notice, further information or a document the chief executive reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

- (3) The information or document under subsection (1) must, if the notice requires, be verified by statutory declaration.

140 Approval continues pending decision about renewal

- (1) If an auditor applies for renewal of an approval under section 138, the approval is taken to continue in force from the day it would, apart from this section, have ended until the application is decided under section 138 or taken to have been withdrawn under section 139(2).
- (2) However, if an application mentioned in subsection (1) is refused, the approval continues in force until the information notice for the decision is given to the auditor.
- (3) Subsection (1) does not apply if the approval is earlier suspended or cancelled.

Part 4 Amending conditions of approvals—application by auditor

141 Application by auditor to amend conditions of approval

- (1) An auditor may apply to the chief executive to amend the conditions of the auditor's approval imposed under section 136(1)(b).
- (2) The application must—
 - (a) be accompanied by the approval; and
 - (b) comply with section 151.
- (3) The chief executive must consider the application and decide to amend, or refuse to amend, the conditions of the approval.
- (4) The chief executive may amend the conditions of the approval only if satisfied the applicant has the necessary expertise or

experience relevant to the auditing activity the applicant intends to carry out under the approval.

- (5) If the chief executive decides to refuse to amend the conditions of the approval, the chief executive must as soon as practicable give the applicant—
 - (a) the approval; and
 - (b) an information notice for the decision.
- (6) If the chief executive decides to amend the conditions of the approval, the chief executive must as soon as practicable issue to the applicant another approval showing the amendment.

142 Inquiry about application

- (1) Before deciding the application, the chief executive may, by notice given to the auditor, require the auditor to give the chief executive within the reasonable period of at least 30 days stated in the notice, further information or a document the chief executive reasonably requires to decide the application.
- (2) The auditor is taken to have withdrawn the application if, within the stated period, the auditor does not comply with the requirement.
- (3) The information or document under subsection (1) must, if the notice requires, be verified by statutory declaration.

143 Failure to decide application

- (1) Subject to subsections (2) and (3), if the chief executive fails to decide the application within 30 days after its receipt, the failure is taken to be a decision by the chief executive to refuse to amend the approval.
- (2) Subsection (3) applies if—
 - (a) an auditor has made an application to amend the conditions of the auditor's approval; and

- (b) the chief executive has, under section 142(1), required the auditor to give the chief executive further information or a document.
- (3) The chief executive is taken to have refused to amend the approval if the chief executive does not decide the application within 30 days after the chief executive receives the further information or document verified, if required, by statutory declaration.
- (4) If the application is refused under this section, the applicant is entitled to be given an information notice by the chief executive for the decision.

Part 5

Suspension or cancellation of approvals

144 Grounds for suspension or cancellation

- (1) Each of the following is a ground for suspending or cancelling an auditor's approval—
 - (a) the auditor is not, or is no longer, a suitable person to be an auditor;
 - (b) the auditor does not have the necessary expertise or experience to perform the auditor's functions;
 - (c) the auditor has contravened a condition of the approval;
 - (d) the audits conducted by the auditor have not been conducted honestly, fairly or diligently;
 - (e) the approval was issued because of a materially false or misleading representation or declaration.
- (2) For forming a belief that the ground mentioned in subsection (1)(a) exists, the chief executive may have regard to the matters to which the chief executive may have regard in deciding whether a person is a suitable person to be an auditor.

145 Show cause notice

- (1) If the chief executive believes a ground exists to suspend or cancel the approval, the chief executive must give the auditor a notice under this section (a *show cause notice*).
- (2) The show cause notice must state the following—
 - (a) the action the chief executive proposes taking under this part (the *proposed action*);
 - (b) the grounds for the proposed action;
 - (c) an outline of the facts and circumstances forming the basis for the grounds;
 - (d) if the proposed action is suspension of the approval—the proposed suspension period;
 - (e) that the auditor may, within a stated period (the *show cause period*), make written representations to the chief executive to show why the proposed action should not be taken.
- (3) The show cause period must end at least 21 days after the auditor is given the show cause notice.

146 Representations about show cause notice

- (1) The auditor may make written representations about the show cause notice to the chief executive in the show cause period.
- (2) The chief executive must consider all representations (the *accepted representations*) made under subsection (1).

147 Ending show cause process without further action

If, after considering the accepted representations for the show cause notice, the chief executive no longer believes a ground exists to suspend or cancel the approval, the chief executive—

- (a) must not take any further action about the show cause notice; and

- (b) must give the auditor a notice that no further action is to be taken about the show cause notice.

148 Suspension or cancellation

- (1) This section applies if—
 - (a) there are no accepted representations for the show cause notice; or
 - (b) after considering the accepted representations for the show cause notice, the chief executive—
 - (i) still believes a ground exists to suspend or cancel the approval; and
 - (ii) believes suspension or cancellation of the approval is warranted.
- (2) The chief executive may—
 - (a) if the proposed action was to suspend the approval—suspend the approval for not longer than the proposed suspension period; or
 - (b) if the proposed action was to cancel the approval—cancel the approval or suspend it for a period.
- (3) If the chief executive decides to take action under subsection (2), the chief executive must as soon as practicable give an information notice for the decision to the auditor.
- (4) The decision takes effect on the later of the following—
 - (a) the day the information notice is given to the auditor;
 - (b) the day stated in the information notice for that purpose.

149 Immediate suspension of approval

- (1) The chief executive may suspend an auditor's approval immediately if the chief executive believes—
 - (a) a ground exists to suspend or cancel the approval; and

- (b) it is necessary to suspend the approval immediately because of an immediate and serious risk to public health or safety if the auditor were to continue to conduct audits.
- (2) The suspension—
- (a) can be effected only by the chief executive giving an information notice to the auditor about the decision to suspend the approval, together with a show cause notice; and
 - (b) operates immediately the notices are given to the auditor; and
 - (c) continues to operate until the earliest of the following happens—
 - (i) the chief executive cancels the remaining period of the suspension;
 - (ii) the show cause notice is finally dealt with;
 - (iii) 30 days have passed since the notices were given to the auditor.
- (3) Subsection (4) applies if—
- (a) a suspension under this section stops because—
 - (i) the chief executive cancels the remaining period of the suspension; or
 - (ii) the show cause notice is finally dealt with by a decision being made not to cancel or suspend the approval; or
 - (iii) 30 days have passed since the notices mentioned in subsection (2)(a) were given to the auditor; and
 - (b) the auditor has returned the approval to the chief executive under section 150.
- (4) The chief executive must, as soon as practicable, give the approval to the auditor.

150 Return of cancelled or suspended approval to chief executive

- (1) This section applies if the chief executive has cancelled or suspended an approval and given an information notice for the decision to the auditor.
- (2) The auditor must return the approval to the chief executive within 7 days after receiving the information notice, unless the auditor has a reasonable excuse.

Maximum penalty—20 penalty units.

Part 6 General provisions

151 Applications—general

- (1) This section applies to an application for—
 - (a) an approval as an auditor under section 128; or
 - (b) the renewal of an approval under section 138; or
 - (c) an amendment of the conditions of an approval under section 141.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be signed by the applicant; and
 - (c) be accompanied by the fee prescribed under a regulation.
- (3) The approved form of an application mentioned in subsection (1)(a) must make provision for stating details of—
 - (a) the type of food business for which the approval is sought; and
 - (b) the applicant's direct or indirect financial or other interests, if any, in a food business that could conflict with the proper performance of an auditor's functions.

152 Form of approval

An approval must—

- (a) be in the approved form; and
- (b) state the following particulars—
 - (i) the auditor's name and contact details;
 - (ii) the conditions of the approval imposed under section 136(1)(b);
 - (iii) the term of the approval.

153 Surrender of approval

- (1) An auditor may surrender the auditor's approval by notice given to the chief executive.
- (2) The approval must accompany the notice.
- (3) The surrender takes effect on the later of the following—
 - (a) the day the notice is given to the chief executive;
 - (b) the day stated in the notice for that purpose.

154 Application for replacement of approval

- (1) An auditor may apply for replacement of the auditor's approval if the approval has been damaged, destroyed, lost or stolen.
- (2) The application must—
 - (a) be made to the chief executive; and
 - (b) include information about the circumstances in which the approval was damaged, destroyed, lost or stolen; and
 - (c) be accompanied by the fee prescribed under a regulation.

155 Decision about application for replacement of approval

- (1) The chief executive must consider the application and decide to grant, or refuse to grant, the application.
- (2) The chief executive must grant the application if satisfied the approval has been destroyed, lost or stolen, or damaged in a way to require its replacement.
- (3) If the chief executive decides to grant the application, the chief executive must, as soon as practicable, issue another approval to the applicant to replace the damaged, destroyed, lost or stolen approval.
- (4) If the chief executive decides to refuse to grant the application, the chief executive must as soon as practicable give the applicant an information notice for the decision.

Chapter 6 Audits of accredited food safety programs

Part 1 Preliminary

156 Purpose of ch 6

The purpose of this chapter is to provide for—

- (a) auditing accredited food safety programs; and
- (b) monitoring the conduct of compliance audits; and
- (c) reporting the results of audits.

Part 2 Audits

Division 1 Compliance audits

157 **First compliance audit of accredited food safety program**

- (1) The holder of an accredited food safety program for a food business must, within 6 months after the program is accredited, have the first compliance audit of the program conducted by an appropriate auditor for the food business.

Maximum penalty—100 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

- (2) Subsection (1) applies to the holder despite any decision, under chapter 4, part 3, of the local government that accredited the program about the frequency of compliance audits for the program.

158 **Particular licensee to have compliance audits conducted**

- (1) This section applies to a licensee who, under section 99, must have an accredited food safety program for the food business under the licence.
- (2) The licensee must have compliance audits of the program conducted, as required under chapter 4, part 3, by an appropriate auditor for the food business.

Maximum penalty—100 penalty units.

Notes—

- 1 Under chapter 4, part 3, the local government that accredits a food safety program decides the frequency of compliance audits for the program.
- 2 If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

- (3) This section is subject to section 157.

Division 2 Check audits and nonconformance audits

159 Check audit

The chief executive may conduct a check audit of an accredited food safety program if the chief executive considers it appropriate to conduct the audit.

160 Nonconformance audit

- (1) This section applies if—
- (a) a local government receives under section 161, in a period of 12 months, at least 3 audit reports in relation to audits of a particular accredited food safety program; and
 - (b) each report shows the holder of the program has not remedied a particular noncompliance with the program.
- (2) The local government may conduct a nonconformance audit of the food safety program.
- (3) The nonconformance audit may be conducted by an auditor who is also an authorised person appointed by the chief executive officer of the local government.

Division 3 Auditors' reports and responsibilities

161 Report about audit for compliance or nonconformance audit

- (1) An auditor must, within 14 days after completing a compliance or nonconformance audit of an accredited food safety program, give a report about the audit to—

- (a) the holder of the program; and
- (b) the local government that accredited it.

Maximum penalty—100 penalty units.

(2) The report must include all of the following information—

- (a) the auditor's name;
- (b) the days the audit started and ended, and the time spent conducting the audit;
- (c) the address of, or other information sufficient to identify, the place at which the audit was conducted;
- (d) details of the activities audited, and the food safety program relevant to the audit;
- (e) whether, in the auditor's opinion, the activities comply or do not comply with the food safety program or the food standards code, standards 3.2.2 and 3.2.3;
- (f) the reasons that the auditor considers the activities comply or do not comply with the food safety program or the food standards code, standards 3.2.2 and 3.2.3;
- (g) if the activities do not comply with the food safety program or the food standards code, standards 3.2.2 and 3.2.3—details of action taken, or proposed to be taken, to remedy the noncompliance;
- (h) whether, in the auditor's opinion and having regard to the matters mentioned in section 104, the food safety program needs to be amended, and if so, the reasons that the auditor considers the program should be amended;
- (i) whether, in the auditor's opinion—
 - (i) an auditor needs to conduct a nonconformance audit of the food safety program in relation to any noncompliance identified in the audit; or
 - (ii) the frequency of compliance audits for the food safety program should be changed, and if so, the reasons that the auditor considers the frequency should be changed;

- (j) other information prescribed under a regulation.

162 Auditor's responsibility to inform local governments

- (1) This section applies if, in conducting a compliance or nonconformance audit of an accredited food safety program, an auditor forms a reasonable belief that—
 - (a) a person has contravened, or is contravening, this Act or the food standards code, standards 3.2.2 and 3.2.3; and
 - (b) the contravention poses an imminent and serious risk to the safety of food intended for sale.
- (2) The auditor must give details of the facts and circumstances giving rise to the belief to the local government that accredited the food safety program.
- (3) The auditor must give the details to the local government as soon as practicable, and in any case not more than 24 hours, after forming the belief.

Maximum penalty—500 penalty units.

- (4) If the auditor complies with subsection (3) by giving the local government the details orally, the auditor must, within 24 hours after giving the details orally, give the local government notice of the details.

Maximum penalty—500 penalty units.

Part 3 Other matters

163 Obstructing auditor

- (1) A person must not obstruct an auditor in the conduct of an audit, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

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- (2) If a person has obstructed an auditor and the auditor decides to proceed with the conduct of the audit, the auditor must warn the person that—
- (a) it is an offence to obstruct the auditor unless the person has a reasonable excuse; and
 - (b) the auditor considers the person's conduct an obstruction.
- (3) In this section—
obstruct includes hinder and attempt to obstruct or hinder.

164 Impersonating auditor

A person must not pretend to be an auditor.

Maximum penalty—100 penalty units.

Chapter 6A Display of nutritional information for food

164A Application of ch 6A

This chapter applies to the sale of food by retail.

164B Definitions

In this chapter—

menu means a menu, in printed or electronic form, that—

- (a) lists or otherwise shows 1 or more items of food; and
- (b) is either—
 - (i) on a board, poster, leaflet or similar thing at the premises from which the items of food shown on the menu are sold; or

- (ii) distributed or available outside of the premises from which the items of food shown on the menu are sold.

ready-to-eat food means food in a state in which it is ordinarily consumed, but does not include nuts in the shell or raw fruit or vegetables that are intended to be hulled, peeled or washed by the consumer.

standard food item see section 164C.

standard food outlet see section 164D.

164C Meaning of *standard food item*

- (1) A *standard food item* is an item of ready-to-eat food that—
 - (a) is sold in servings that are standardised for portion and content; and
 - (b) is either—
 - (i) listed or otherwise shown on a menu; or
 - (ii) displayed for sale with a price tag or label or an identifying tag or label.
- (2) Also, a *standard food item* includes any item of ready-to-eat food prescribed by regulation.
- (3) If a number of standard food items are shown or displayed for sale as a combination, the combination is to be treated as a single standard food item.
- (4) If an item of food mentioned in subsection (1) or (2) is shown or displayed for sale in different standard sizes or portions, each standard size or portion of the item of food is to be treated as a separate standard food item.

Examples of different standard sizes or portions—

small, medium, large

- (5) Despite subsection (1), a *standard food item* does not include an item of ready-to-eat food that is prepackaged in a way prescribed by regulation.

164D Meaning of *standard food outlet*

- (1) A *standard food outlet*, of a food business, is premises at which standard food items are sold by the food business if—
 - (a) the business sells standard food items at other premises or while operating in a chain of food businesses that sell standard food items; and
 - (b) at least 1 of the standard food items sold at the premises has been standardised for portion and content so as to be substantially the same as standard food items of that type sold at the other premises or by the other businesses in the chain.
- (2) For subsection (1)(a), a food business is operating in a chain of food businesses that sell standard food items if—
 - (a) the business is operating as one of a group of food businesses that sell standard food items under franchise arrangements with a parent business or under common ownership or control; or
 - (b) the business sells standard food items under the same trading name as a group of other food businesses that sell standard food items.

164E Requirement to display nutritional information

- (1) This section applies to a standard food outlet of a prescribed licensable food business.
- (2) The proprietor of the standard food outlet must ensure that—
 - (a) the following nutritional information is displayed for standard food items sold at the outlet—
 - (i) the average energy content of the standard food items, expressed in kilojoules, and an average energy intake statement;
 - (ii) other nutritional information prescribed by regulation; and
 - (b) the nutritional information is worked out in the way prescribed by regulation; and

- (c) the nutritional information is displayed in the way and at the places prescribed by regulation.
- (3) A person must not intentionally contravene subsection (2).
Maximum penalty—500 penalty units.
- (4) A person must not contravene subsection (2).
Maximum penalty—100 penalty units.
- (5) For subsection (2)(b), a regulation may prescribe the way in which nutritional information is worked out by applying, adopting or incorporating a provision of the food standards code.
- (6) In this section—
average energy intake statement means a statement about the average adult daily energy intake prescribed by regulation.
prescribed licensable food business means a licensable food business prescribed by regulation.

164F Voluntary display of nutritional information to meet certain requirements

- (1) This section applies to a standard food outlet of a food business, other than a standard food outlet to which section 164E applies.
- (2) The proprietor of the standard food outlet must not display nutritional information mentioned in section 164E(2)(a) for standard food items sold at the outlet unless the nutritional information—
 - (a) is worked out in the way prescribed by regulation; and
 - (b) is displayed in the way and at the places prescribed by regulation.Maximum penalty—100 penalty units.

164G Explanatory material about nutritional information

A regulation may make provision about the display or distribution by a standard food outlet of explanatory material or any other material about nutritional information for food.

Chapter 7 Monitoring and enforcement

Part 1 Authorised persons

Division 1 Preliminary

165 Powers generally

- (1) An authorised person has the powers given under this Act.
- (2) In exercising the powers, the authorised person is subject to the directions of the administering executive.
- (3) If the authorised person is appointed by 2 or more chief executive officers, the authorised person is subject to the directions of the chief executive officer of the local government for the area in which the authorised person is exercising his or her powers under this Act.

166 Powers of particular authorised persons limited to local government area

- (1) An authorised person appointed by the chief executive officer of a local government under section 168(2) may exercise a power under this Act only in relation to the local government and its area.
- (2) An authorised person appointed by the chief executive officers of 2 or more local governments under section 168(3) may

exercise a power under this Act only in relation to the local governments and their areas.

167 Functions of authorised person

An authorised person has the following functions relating to the carrying on of a food business—

- (a) to enforce this Act;
- (b) to monitor compliance with this Act by inspecting places where a food business is carried on;
- (c) to help achieve the purposes of this Act by providing advice and information on how the purposes may be achieved.

Division 2 Appointment of authorised persons

168 Appointment and qualifications

- (1) The chief executive may appoint any of the following persons as an authorised person—
 - (a) a public service officer or employee;
 - (b) a health service employee;
 - (c) a person prescribed under a regulation.
- (2) The chief executive officer of a local government may appoint any of the following persons as an authorised person for the local government and its area—
 - (a) an employee of the local government;
 - (b) if another local government consents—an employee of the other local government;
 - (c) another person under contract to the local government.
- (3) The chief executive officers of 2 or more local governments may appoint an employee of, or another person under contract

to, one of the local governments to be an authorised person for the local governments' areas.

- (4) However, the chief executive or a chief executive officer may appoint a person as an authorised person only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

169 Appointment conditions and limit on powers

- (1) An authorised person holds office on any conditions stated in—
- (a) the authorised person's instrument of appointment; or
 - (b) a signed notice given to the authorised person; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised person or a regulation may limit the authorised person's powers under this Act.
- (3) In this section—

signed notice means a notice signed by the administering executive.

170 Issue of identity card

- (1) The administering executive must issue an identity card to each authorised person.
- (2) The identity card must—
- (a) contain a recent photo of the authorised person; and
 - (b) contain a copy of the authorised person's signature; and
 - (c) identify the person as an authorised person under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

171 Production or display of identity card

- (1) In exercising a power under this Act in relation to another person, an authorised person must—
 - (a) produce the authorised person's identity card for the other person's inspection before exercising the power;
or
 - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to another person only because the authorised person has entered a place as mentioned in section 175(1)(b) or (2).

172 When authorised person ceases to hold office

- (1) An authorised person ceases to hold office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the authorised person ceases to hold office;
 - (c) the authorised person's resignation under section 173 takes effect.
- (2) Subsection (1) does not limit the ways an authorised person may cease to hold office.
- (3) In this section—

condition of office means a condition on which the authorised person holds office.

173 Resignation

- (1) An authorised person may resign by signed notice given to the administering executive.
- (2) For subsection (1), for a person appointed under this Act as an authorised person by 2 or more chief executive officers, the person may resign by signed notice given to one of the chief executives.

174 Return of identity card

- (1) A person who ceases to be an authorised person must return the person's identity card to the administering executive within 21 days after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (2) For subsection (1), for a person appointed under this Act as an authorised person by 2 or more chief executive officers, the identity card must be returned to one of the chief executive officers.

Part 2 Powers of authorised persons

Division 1 Entry of places

175 Power to enter places

- (1) An authorised person may enter a place if—
 - (a) an occupier of the place consents to the entry; or
 - (b) it is a public place and the entry is made when it is open to the public; or
 - (c) the entry is authorised by a warrant; or

- (d) it is premises at which a person carries on a food business and is—
 - (i) open for carrying on the food business; or
 - (ii) otherwise open for entry.
- (2) For the purpose of asking an occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—
 - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) For subsection (1)(d), premises does not include a part of the premises where a person resides.

Division 2 Procedure for entry

176 Entry with consent

- (1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 175(1)(a).
- (2) Before asking for the consent, the authorised person must tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
 - (a) the occupier has been told—
 - (i) the purpose of the entry; and

- (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the authorised person consent to enter the place and exercise powers under this part; and
 - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (6) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

177 Application for warrant

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The authorised person must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

178 Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
 - (b) the evidence is at the place or, within the next 7 days, will be at the place.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated authorised person may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the authorised person's powers under this part; and
 - (c) particulars of the offence that the magistrate considers appropriate in the circumstances; and
 - (d) the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (e) the evidence that may be seized under the warrant; and
 - (f) the hours of the day or night when the place may be entered; and
 - (g) the magistrate's name; and
 - (h) the date and time of the warrant's issue; and
 - (i) the date, within 14 days after the warrant's issue, the warrant ends.

179 Application by electronic communication and duplicate warrant

- (1) An application under section 177 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the authorised person’s remote location.
- (2) The application—
 - (a) may not be made before the authorised person prepares the written application under section 177(2); but
 - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under subsection (1); and
 - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or
 - (b) otherwise—
 - (i) the magistrate must tell the authorised person the date and time the warrant is issued and the other terms of the warrant; and
 - (ii) the authorised person must complete a form of warrant including by writing on it—
 - (A) the magistrate’s name; and

- (B) the date and time the magistrate issued the warrant; and
 - (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- (6) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 177(2) and (3); and
 - (b) if the authorised person completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
- (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This section does not limit section 177.
- (10) In this section—
- relevant magistrates court***, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

180 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 177, 178 or 179, unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
warrant includes a duplicate warrant mentioned in section 179(5).

181 Warrants—procedure before entry

- (1) This section applies if an authorised person named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
 - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised person's identity card or other document evidencing the appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the authorised person is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) In this section—
warrant includes a duplicate warrant mentioned in section 179(5).

Division 3 General powers

182 General powers after entering places

- (1) This section applies to an authorised person who enters a place.
- (2) However, if an authorised person enters a place to get an occupier's consent to enter a place, this section applies to the authorised person only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring and enforcing compliance with this Act, the authorised person may—
 - (a) search any part of the place; or
 - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
 - (c) take a thing, or a sample of or from a thing, at the place for analysis; or
 - (d) copy a document at the place or take the document to another place to copy it; or
 - (e) take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this part; or
 - (f) require an occupier of the place, or a person at the place, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e); or
 - (g) require an occupier of the place, or a person at the place, to give the authorised person information to help the authorised person find out whether this Act is being complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

- (5) If an authorised person takes a document from a place to copy it, the document must be copied as soon as practicable and returned to the place.

183 Failure to help authorised person

- (1) A person required to give reasonable help under section 182(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If an individual is required under section 182(3)(f) to give information, or produce a document, it is a reasonable excuse for the individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual.

184 Failure to give information

- (1) A person of whom a requirement is made under section 182(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

Note—

Also, under section 267(3) it is an offence for a person to state anything to an authorised person the person knows to be false or misleading in a material particular.

- (2) It is a reasonable excuse for an individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual.

Division 4 Stopping or moving motor vehicles

185 Stopping or moving motor vehicle

- (1) This section applies if an authorised person reasonably suspects, or is aware, that a thing in or on a motor vehicle may

provide evidence of the commission of an offence against this Act.

- (2) For the purpose of exercising the powers of an authorised person under this part, an authorised person may—
 - (a) if the motor vehicle is moving—ask or signal the person in control of the vehicle to stop the vehicle; and
 - (b) whether or not the motor vehicle is moving—ask or signal the person in control of the vehicle to bring the vehicle to a convenient place within a reasonable distance to allow the authorised person to exercise the authorised person’s powers under this part.
- (3) When asking or signalling the person in control of a moving motor vehicle to stop the vehicle or bring it to a convenient place, the authorised person must clearly identify himself or herself as an authorised person exercising the authorised person’s powers under this Act.

Examples—

- 1 If the authorised person is in a moving motor vehicle, he or she may use a loud hailer to identify himself or herself as an authorised person exercising powers under this Act.
 - 2 If the authorised person is standing at the side of the road, he or she may use a sign to identify himself or herself as an authorised person exercising powers under this Act.
- (4) Despite section 171, for the purpose of exercising a power under subsection (2)(a), the authorised person must—
 - (a) have with him or her the authorised person’s identity card; and
 - (b) produce the identity card for the person’s inspection immediately after the motor vehicle is stopped.
 - (5) The person must comply with the authorised person’s request or signal, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (6) It is a reasonable excuse for the person not to obey the request or signal if—

-
- (a) in a case to which subsection (3) applies, the authorised person has not complied with the subsection; or
 - (b) to immediately obey the request or signal would have endangered the person or someone else or caused loss or damage to property, and the person obeys the request or signal as soon as it is practicable to obey it.
- (7) If the motor vehicle is stopped, the authorised person may direct the person—
- (a) not to move the vehicle until the authorised person has exercised the authorised person’s powers under this part; or
 - (b) to move the vehicle to, and keep it at, a stated reasonable place to allow the authorised person to exercise the authorised person’s powers under this part.
- (8) When giving the direction, the authorised person must warn the person it is an offence not to comply with the direction, unless the person has a reasonable excuse.
- (9) The person must comply with the authorised person’s direction, unless the person has a reasonable excuse.

Maximum penalty for subsection (9)—50 penalty units.

Division 5 Power to seize evidence

186 Seizing evidence at a place that may be entered without consent or warrant

An authorised person who enters a place under this part without the consent of the occupier and without a warrant, may seize a thing at the place only if the authorised person reasonably believes the thing is evidence of an offence against this Act.

187 Seizing evidence at a place that may only be entered with consent or warrant

- (1) This section applies if—
 - (a) an authorised person is authorised to enter a place under this part only with the consent of an occupier of the place or a warrant; and
 - (b) the authorised person enters the place after obtaining the necessary consent or warrant.
- (2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place only if—
 - (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the authorised person enters the place with a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person also may seize anything else at the place if the authorised person reasonably believes—
 - (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being—
 - (i) hidden, lost or destroyed; or
 - (ii) used to continue, or repeat, the offence.
- (5) Also, the authorised person may seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act.

Division 6 Dealing with seized things

188 Securing seized things

Having seized a thing, an authorised person may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

- sealing a thing and marking it to show access to it is restricted
- sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

189 Tampering with seized things

- (1) If an authorised person restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, without an authorised person's approval.

Maximum penalty—100 penalty units.

- (2) In this section—

tamper includes attempt to tamper.

190 Powers to support seizure

- (1) To enable a thing to be seized, an authorised person may require the person in control of it—
 - (a) to take it to a stated reasonable place by a stated reasonable time; and
 - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) The requirement—

- (a) must be made by notice; or
 - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice as soon as practicable.
- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.
- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (5) Subject to section 213, the cost of complying with subsection (4) must be borne by the person.

191 Authorised person may require thing's return

- (1) If an authorised person has required a person to take a thing to a stated place by a stated reasonable time under section 190 the authorised person may require the person to return the thing to the place from which it was taken.
- (2) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) Subject to section 213, the cost of complying with subsection (2) must be borne by the person.

192 Receipts for seized things

- (1) As soon as practicable after an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at

the place of seizure in a conspicuous position and in a reasonably secure way.

- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

193 Forfeiture of seized things

- (1) A seized thing is forfeited to the relevant entity if the authorised person who seized the thing—
 - (a) can not find its owner, after making reasonable inquiries; or
 - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
 - (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
 - (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
 - (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) On the forfeiture of a thing to the relevant entity, the thing becomes the entity's property.
- (5) If the thing is forfeited to the State, it may be dealt with by the chief executive as the chief executive considers appropriate.

- (6) If the thing is forfeited to a local government, it may be dealt with by the chief executive officer as the chief executive officer considers appropriate.
- (7) Without limiting subsections (5) and (6), the chief executive or chief executive officer may destroy or dispose of the thing.
- (8) Despite subsection (7), the chief executive or chief executive officer must not deal with the thing in a way that could prejudice the outcome of a review under this Act or an appeal of which the chief executive or chief executive officer is aware.
- (9) In this section—
relevant entity, for a seized thing, means—
 - (a) if the thing was seized by an authorised person appointed by the chief executive—the State; or
 - (b) if the thing was seized by an authorised person appointed by a chief executive officer—the local government; or
 - (c) if the thing was seized by an authorised person appointed by 2 or more chief executive officers—the local government for whom the authorised person was performing his or her functions at the time the thing was seized.

194 Return of seized things

- (1) If a thing has been seized but not forfeited or destroyed under this part, the authorised person must return it to its owner—
 - (a) at the end of 6 months; or
 - (b) if a proceeding for an offence involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.
- (2) However, unless the thing has been forfeited or destroyed under this part, the authorised person must immediately return a thing seized as evidence to its owner if the authorised person

stops being satisfied its continued retention as evidence is necessary.

195 Access to seized things

- (1) Until a thing that has been seized is forfeited, destroyed or returned under this part, an authorised person must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

196 Power of destruction

An authorised person may destroy a thing seized under this part if—

- (a) the thing consists wholly or partly of contaminated or decomposed matter; or
- (b) the authorised person reasonably believes the thing poses an immediate risk to public health or safety.

Division 7 Power to obtain information

197 Power to require name and address

- (1) This section applies if—
 - (a) an authorised person finds a person committing an offence against this Act; or
 - (b) an authorised person finds a person in circumstances that lead, or has information that leads, the authorised person reasonably to suspect the person has just committed an offence against this Act.
- (2) The authorised person may require the person to state the person's name and residential address.
- (3) When making the requirement, the authorised person must warn the person it is an offence to fail to state the person's

name or residential address, unless the person has a reasonable excuse.

- (4) The authorised person may require the person to give the authorised person evidence of the correctness of the stated name or residential address if the authorised person reasonably suspects the stated name or address to be false.
- (5) A requirement under subsection (2) or (4) is a *personal details requirement*.

198 Failure to give name or address

- (1) A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
 - (a) the person was required to state the person's name and residential address by an authorised person who suspected the person had committed an offence against this Act; and
 - (b) the person is not proved to have committed the offence against this Act.

199 Power to require production of documents

- (1) An authorised person may require a person to make available for inspection by an authorised person, or produce to the authorised person for inspection, at a reasonable time and place nominated by the authorised person—
 - (a) a document issued to the person under this Act; or
 - (b) a document required to be kept by the person under this Act.
- (2) The authorised person may keep the document to copy it.

- (3) If the authorised person copies the document, or an entry in the document, the authorised person may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The authorised person must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (a *document certification requirement*) is made of a person under subsection (3), the authorised person may keep the document until the person complies with the requirement.
- (6) A requirement under subsection (1) is a *document production requirement*.

200 Failure to produce document

- (1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person not to comply with a document production requirement that complying with the requirement might tend to incriminate the person.

201 Failure to certify copy of document

A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

202 Power to require information

- (1) This section applies if an authorised person reasonably believes—
 - (a) an offence against this Act has been committed; and

- (b) a person may be able to give information about the offence.
- (2) The authorised person may, by notice given to the person, require the person to give information about the offence to the authorised person at a stated reasonable time and place.
- (3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.
- (4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

Division 8 Emergency powers of authorised persons

203 Application of div 8

This division applies if an authorised person is satisfied on reasonable grounds—

- (a) a food business is being carried out at a place, other than a place, or part of a place, used for residential purposes; and
- (b) it is necessary to exercise powers under this division to avoid an imminent risk of death or serious illness of any person from food being handled or sold in connection with the food business.

204 Power and procedure for entry

- (1) The authorised person may, without a warrant or the consent of the occupier of the place, enter the place.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
 - (a) comply with section 171(1);

- (b) tell the occupier the authorised person is permitted under this Act to enter the place;
 - (c) give the occupier an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person reasonably believes that immediate entry to the place is required to avoid an imminent risk of death or serious illness of any person.

205 Power in relation to food

- (1) The authorised person may in relation to the food mentioned in section 203(b)—
- (a) direct a person at the place to take stated reasonable steps within a stated reasonable period; or
 - (b) take the reasonable steps; or
 - (c) authorise another person to take the reasonable steps.
- (2) The direction may be given orally or by notice.
- (3) However, if the direction is given orally, the authorised person must as soon as practicable confirm the direction by notice given to the person.
- (4) When giving the direction under subsection (1)(a), the authorised person must warn the person it is an offence not to comply with the direction unless the person has a reasonable excuse.
- (5) If the authorised person takes the steps, the authorised person also may exercise any of the powers of an authorised person under this part.

206 How power may be exercised

- (1) The authorised person may exercise the powers mentioned in sections 204(1) and 205(1)(b) and (5) (the *emergency powers*) with the help, and using the force, that is necessary and reasonable in the circumstances.

- (2) In exercising or attempting to exercise emergency powers, an authorised person must take all reasonable steps to ensure the authorised person causes as little inconvenience to any person at the place, and does as little damage, as is practicable in the circumstances.
- (3) If an authorised person authorises a person to take steps under section 205(1)(c)—
 - (a) the person may exercise the powers mentioned in section 205(5); and
 - (b) the authorised person must inform the person—
 - (i) of the steps the person is authorised to take; and
 - (ii) of the person's powers under this division.

207 Failure to comply with authorised person's directions in emergency

A person to whom a direction is given under section 205(1)(a) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

208 Authorised person's powers not affected

This division does not limit any power an authorised person has apart from the division.

Division 9 Improvement notices

209 Improvement notice

- (1) This section applies if an authorised person reasonably believes—
 - (a) a person carrying on a food business—
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated; and
 - (b) a matter relating to the contravention can be remedied; and
 - (c) it is appropriate to give the person an opportunity to remedy the matter; and
 - (d) if the person is a licensee—a local government has not given a show cause notice to the person under section 79 relating to the contravention.
- (2) The authorised person may give the person a notice (an *improvement notice*) requiring the person to remedy the contravention or have the contravention remedied.
- (3) The improvement notice must state the following—
 - (a) that the authorised person reasonably believes the person—
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated;
 - (b) the provision the authorised person believes is being, or has been, contravened (the *relevant provision*);
 - (c) briefly, how it is believed the relevant provision is being, or has been, contravened;

- (d) the period in which the person must remedy the contravention or have the contravention remedied;
 - (e) that it is an offence to fail to comply with the improvement notice unless the person has a reasonable excuse.
- (4) The period stated under subsection (3)(d) must be reasonable having regard to the risk to public health or safety posed by the contravention.
- (5) The improvement notice may also state the reasonable steps that the authorised person considers necessary to remedy the contravention, or avoid further contravention, of the relevant provision.

Example of reasonable steps—

implementation of a cleaning or pest control schedule at premises where a food business is carried on

- (6) The authorised person must keep a copy of the improvement notice.
- (7) The person must comply with the improvement notice unless the person has a reasonable excuse.

Maximum penalty—

- (a) if a contravention of the relevant provision is an offence—the maximum penalty for contravening the relevant provision; or
- (b) otherwise—200 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

- (8) If it is an offence to contravene the relevant provision for which the improvement notice is given, the person can not be prosecuted for that offence unless the person fails to comply with the improvement notice and does not have a reasonable excuse for the noncompliance.

- (9) A person may be prosecuted for the contravention of a relevant provision without an authorised person first giving an improvement notice for the contravention.

210 Approval for particular improvement notice

- (1) This section applies to an improvement notice given to a person by an authorised person appointed by a chief executive officer.
- (2) If remedying the contravention, or having it remedied, within the reasonable time stated in the notice would be likely to stop the person's food business from operating, the notice must be approved by the local government before it is given to the person.

211 Record of compliance with improvement notice

- (1) If a person who is given an improvement notice by an authorised person under this division reasonably believes he or she has complied with the notice, the person may inform the authorised person of the belief.
- (2) If the authorised person is satisfied the person has complied with the improvement notice, the authorised person must—
- (a) record the date of the compliance on the authorised person's copy of the notice; and
 - (b) if asked, give a copy of the notice to the person.

Part 3 General enforcement matters

Division 1 Notice of damage and compensation

212 Notice of damage

- (1) This section applies if—
 - (a) an authorised person damages property when exercising or purporting to exercise a power; or
 - (b) a person (the *other person*) acting under the direction or authority of an authorised person damages property.
- (2) The authorised person must immediately give notice of particulars of the damage to a person who appears to the authorised person to be an owner of the property.
- (3) If the authorised person believes the damage was caused by a latent defect in the property or circumstances beyond the authorised person's or other person's control, the authorised person may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way at the place where the damage happened.
- (5) This section does not apply to damage the authorised person reasonably believes is trivial.
- (6) In this section—

owner, of property, includes a person in possession or control of it.

213 Compensation

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under part 2, other than the exercise or purported exercise of a power under section 196 to

destroy a thing seized under part 2, the person may claim compensation—

- (a) for the exercise or purported exercise of a power by or for the State—from the State; or
 - (b) for the exercise or purported exercise of a power by or for a local government—from the local government.
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under part 2.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

Division 2 Other matters

214 Obstructing authorised person

- (1) A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

- (2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

- (a) it is an offence to obstruct the authorised person unless the person has a reasonable excuse; and
 - (b) the authorised person considers the person's conduct an obstruction.
- (3) In this section—
obstruct includes hinder and attempt to obstruct or hinder.

215 Impersonating authorised person

A person must not pretend to be an authorised person.

Maximum penalty—100 penalty units.

Part 4 Emergency powers of chief executive

216 Making of order

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

217 Nature of order

- (1) An order under this part may do any 1 or more of the following—
- (a) require the publication of warnings, in a form approved by the chief executive, that a particular food or type of food is unsafe;
 - (b) prohibit the cultivation, taking, harvesting or obtaining, from a stated area, of a particular food or type of food or

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- other primary produce intended to be used for human consumption;
- (c) prohibit a particular food or type of food from being advertised or sold;
 - (d) direct that a particular food or type of food consigned or distributed for sale or sold be recalled and state the way in which, and the period within which, the recall must be conducted;
 - (e) direct that a particular food or type of food intended to be used for human consumption be impounded, isolated, destroyed or otherwise disposed of and state the way in which the impounding, isolation, destruction or disposal must be conducted;
 - (f) prohibit absolutely the carrying on of an activity in relation to a particular food or type of food, or permit the carrying on of the activity only under conditions stated in the order;
 - (g) without limiting paragraph (f), impose conditions relating to the taking and analysis of samples of the food or of water or soil or another thing that is part of the environment in which that activity is carried on in relation to the food;
 - (h) state methods of analysis (not inconsistent with any methods prescribed by the food standards code) of any samples required to be taken under the order.
- (2) An order under this part may be varied or revoked by the chief executive in the same way as the order was made.

218 Special provisions relating to recall orders

- (1) A recall order may require the person, or the persons of a class, that is bound by the order to disclose to the public or to a class of persons stated in the order, in a way so stated, any 1 or more of the following—
- (a) the particular food or type of food to be recalled or disposed of;

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

219 Way of making orders

- (1) An order under this part—
- (a) must be made in writing addressed to the person or persons intended to be bound by it, and served on that person or each of those persons, as the case requires; or
 - (b) must be addressed to several persons, to a class of persons, or to all persons.
- (2) Notice of an order addressed as mentioned in subsection (1)(b) setting out the order and the persons to be bound by the order must, as soon as practicable after the order is made, be published in a newspaper that, in the opinion of the chief executive, will be most likely to bring the order to the attention of the persons to be bound by it.
- (3) An order under this part, when it takes effect, is binding on the person or persons to whom it is addressed.
- (4) An order that is served on a person takes effect when it is served.

- (5) An order, notice of which is published under subsection (2), takes effect at the beginning of the first day on which the notice was published.
- (6) An order ceases to have effect at the expiration of 90 days after the day on which it takes effect unless it is sooner revoked.
- (7) Subsection (6) does not prevent a further order being made in the same terms as an order that has ceased to have effect.

220 Compensation

- (1) A person bound by an order under this part who suffers loss because of the making of the order may apply to the chief executive for compensation if the person considers that there were insufficient grounds for the making of the order.
- (2) If there were insufficient grounds for the making of the order, the chief executive must pay the compensation to the applicant that is just and reasonable.
- (3) The chief executive must give notice about his or her decision about the payment of compensation under this section to each applicant for the payment of the compensation.
- (4) If the chief executive has not decided an application for compensation under this section within 28 days after receiving the application, the chief executive is taken to have decided to refuse to pay any compensation.
- (5) If the chief executive refuses an application for compensation or decides an amount of compensation less than that sought by the applicant, the notice must be a QCAT information notice.

221 Failure to comply with order

A person must not, without reasonable excuse—

- (a) contravene a prohibition imposed on the person by an order under this part; or
- (b) contravene a direction given by an order under this part;
or

(c) contravene a condition stated in an order under this part.

Maximum penalty—500 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

Part 5 Injunctions

222 Application of pt 5

This part applies if—

- (a) a person has engaged, is engaging or is proposing to engage, in conduct that constitutes or would constitute a contravention of section 32, 33 or 34; and
- (b) the chief executive or a chief executive officer has reasonable grounds to believe that an injunction under the part is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

223 Who may apply for an injunction

The chief executive or chief executive officer may apply to the District Court for an injunction in relation to the conduct.

224 District Court's powers

- (1) On considering the application for an injunction, the District Court may grant an injunction—
 - (a) restraining the person from engaging in the conduct concerned; and

- (b) if in the court's opinion it is desirable to do so, requiring the person to do anything.
- (2) The power of the court to grant an injunction restraining a person from engaging in conduct may be exercised—
 - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in the conduct; and
 - (b) whether or not the person has previously engaged in the conduct.
- (3) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and
 - (b) whether or not the person has previously failed to do the act or thing.
- (4) An interim injunction may be granted under this part until the application is finally decided.
- (5) The District Court may rescind or vary an injunction at any time.
- (6) The powers conferred on the District Court under this part are in addition to, and do not limit, any other powers of the court.

225 Terms of injunction

- (1) The District Court may grant an injunction in the terms the court considers appropriate.
- (2) Without limiting subsection (1), an injunction may be granted restraining a person from carrying on a food business, whether or not the food business is carried on as part of, or incidental to, the carrying on of another business—
 - (a) for a stated period; or
 - (b) except on stated terms and conditions.

- (3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's conduct.

226 Undertakings as to damages or costs

If the chief executive or a chief executive officer applies for an injunction under this part, no undertaking as to damages or costs may be required to be made.

Chapter 8 Analysis of things

Part 1 State analysts and approval of laboratories

227 Appointment and qualifications

- (1) The chief executive may appoint any of the following persons as a State analyst—
 - (a) a public service officer or employee of the department;
 - (b) a health service employee;
 - (c) a person prescribed under a regulation.
- (2) A person may be appointed as a State analyst under subsection (1) to carry out any type, or only particular types, of analysis.
- (3) However, the chief executive may appoint a person as a State analyst only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

228 Appointment conditions

- (1) A State analyst holds office on any conditions stated in—
 - (a) the State analyst's instrument of appointment; or
 - (b) a signed notice given to the State analyst; or
 - (c) a regulation.
- (2) In this section—

signed notice means a notice signed by the chief executive.

229 When State analyst ceases to hold office

- (1) A State analyst ceases to hold office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the State analyst ceases to hold office;
 - (c) the State analyst's resignation under section 230 takes effect.
- (2) Subsection (1) does not limit the ways a State analyst may cease to hold office.
- (3) In this section—

condition of office means a condition on which the State analyst holds office.

230 Resignation

A State analyst may resign by signed notice given to the chief executive.

231 Chief executive may approve laboratory

The chief executive may approve a laboratory to analyse things taken under this Act if the chief executive is satisfied the laboratory has the resources and expertise to conduct the analysis.

Part 2 **Other matters about analysis of things**

232 Analysis

- (1) If an authorised person takes a thing for analysis under this Act, the authorised person must as soon as practicable give it to a State analyst appointed to carry out the particular type of analysis required.
- (2) If a State analyst receives a thing for analysis under subsection (1), the State analyst must as soon as practicable—
 - (a) analyse the thing; or
 - (b) give the thing to an approved laboratory for analysis.
- (3) If the State analyst analyses the thing, the State analyst must, as soon as practicable after analysing it—
 - (a) complete a certificate of analysis for it; and
 - (b) give the certificate to the authorised person who took the thing for analysis.
- (4) If an approved laboratory analyses the thing, the State analyst must, as soon as practicable after it is analysed—
 - (a) obtain a certificate of analysis for it from the approved laboratory; and
 - (b) give the certificate to the authorised person who took the thing for analysis.

233 Certificate must indicate methodology used

The certificate of analysis must include information about the methodology used to conduct the analysis.

234 Giving results of analysis

- (1) The chief executive must, if asked by a relevant person for a thing analysed under this Act, give to the person a copy of the certificate of analysis for the thing.
- (2) In this section—
relevant person, for a thing analysed under this Act, means—
 - (a) the person from whom the thing was taken for analysis or otherwise obtained; or
 - (b) the manufacturer or importer of the thing.

235 Prohibition about use of results of analysis

A person must not use any information on a certificate of analysis for a thing to advertise or otherwise promote the thing.

Maximum penalty—50 penalty units.

Chapter 9 Reviews

Part 1 Internal review of decisions

236 Review process starts with internal review

- (1) Subject to this part, a person who is given, or is entitled to be given, an information notice for a decision under chapter 3, 4 or 5 (an *original decision*) may apply for review of the decision under this chapter.
- (2) The review must be, in the first instance, by way of an application for internal review under section 237.

237 Application for review

- (1) The person may apply to the local government that gave, or should have given, the person the information notice for a review of an original decision under chapter 3 or 4.
- (2) The person may apply to the chief executive for a review of an original decision under chapter 5.
- (3) The person to whom the application may be made is the *reviewer*.

238 Applying for review

- (1) The application must be made within 28 days after—
 - (a) if the person is given an information notice for the decision—the day the person is given the notice; or
 - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the original decision.
- (2) The reviewer may, at any time, extend the time for applying for the review.
- (3) The application must be in writing and state fully the grounds of the application.

239 Review decision

- (1) After reviewing the original decision, the reviewer must make a further decision (the *review decision*) to—
 - (a) confirm the original decision; or
 - (b) amend the original decision; or
 - (c) substitute another decision for the original decision.
- (2) The reviewer must immediately give the applicant notice of the review decision.
- (3) If the review decision is not the decision sought by the applicant, the notice must be a QCAT information notice.

- (4) If the reviewer does not give the notice mentioned in subsection (2) within 30 days after the application is made, the reviewer is taken to have made a review decision confirming the original decision on the 30th day after the application is made.
- (5) If the review decision confirms the original decision, for the purpose of a review of the review decision by QCAT, the original decision is taken to be the review decision.
- (6) If the review decision amends the original decision, for the purpose of a review of the review decision by QCAT, the original decision as amended is taken to be the review decision.

240 Stay of operation of original decision

- (1) If an application is made for a review of an original decision, the applicant may immediately apply, as provided under the QCAT Act, to QCAT for a stay of the decision.
- (2) QCAT may stay the decision to secure the effectiveness of the review and any later review.
- (3) The stay—
 - (a) may be given on conditions QCAT considers appropriate; and
 - (b) operates for the period fixed by QCAT; and
 - (c) may be revoked or amended by QCAT.
- (4) The period of the stay must not extend past the time when the reviewer makes a review decision about the original decision and any later period QCAT allows the applicant to enable the applicant to apply for a review of the review decision.
- (5) An application under subsection (1) affects the original decision, or carrying out of the original decision, only if the original decision is stayed.

Part 2 External review of decisions

241 Who may apply for external review

- (1) A person who has applied for the review of an original decision under part 1 and is dissatisfied with the review decision may apply, as provided under the QCAT Act, to QCAT for a review of the review decision.
- (2) An owner of a thing forfeited to a relevant entity under section 193(1), and not destroyed or disposed of under section 193, who is dissatisfied with the decision resulting in the forfeiture (the *forfeiture decision*) may apply, as provided under the QCAT Act, to QCAT for a review of the decision.
- (3) A person who has applied for the payment of compensation under section 220 and is dissatisfied with the chief executive's decision to refuse to pay compensation or about the amount of compensation (the *compensation decision*) may apply, as provided under the QCAT Act, to QCAT for a review of the decision.
- (4) In this section—
relevant entity see section 193(9).

Chapter 10 Legal proceedings

Part 1 Application

247 Application of ch 10

This chapter applies to a proceeding under this Act.

Part 2 Evidence

248 Appointments and authority

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of—
 - (i) the chief executive; or
 - (ii) a chief executive officer; or
 - (iii) an authorised person; or
 - (iv) a State analyst;
- (b) the approval, under section 133(1), of a person as an auditor;
- (c) the authority of a person mentioned in paragraph (a) or (b), or a local government, to do anything under this Act.

249 Signatures

A signature purporting to be the signature of the chief executive, a chief executive officer, an authorised person, a State analyst or an auditor is evidence of the signature it purports to be.

250 Evidentiary provisions

- (1) A certificate purporting to be signed by the chief executive or a chief executive officer and stating any of the following matters is evidence of the matter—
 - (a) a stated document is one of the following things made, given, issued or kept under this Act—
 - (i) an appointment, approval or decision;
 - (ii) a notice or requirement;
 - (iii) a licence;

- (iv) an order;
 - (v) a record, or an extract from a record;
 - (b) a stated document is another document kept under this Act;
 - (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
 - (d) on a stated day, or during a stated period, a stated person was or was not a licensee;
 - (e) on a stated day, or during a stated period, a licence —
 - (i) was or was not in force; or
 - (ii) was or was not subject to a stated condition;
 - (f) on a stated day, a licence was suspended or cancelled;
 - (g) on a stated day, or during a stated period, an approval as an auditor was, or was not, in force for a stated person;
 - (h) on a stated day, or during a stated period, an appointment as an authorised person or a State analyst was, or was not, in force for a stated person;
 - (i) on a stated day, or during a stated period, an approval as an approved laboratory was, or was not, in force for a stated entity;
 - (j) on a stated day, a stated person was given a stated notice or order under this Act;
 - (k) on a stated day, a stated requirement was made of a stated person;
 - (l) a stated amount is payable under this Act by a stated person and has not been paid.
- (2) A certificate of analysis for a thing taken for analysis under this Act stating any of the following matters is evidence of the matters—
- (a) the qualifications of the person (the *analyst*) who conducted the analysis;
 - (b) the analyst received the thing from a stated person;

- (c) the thing was analysed at a stated place on a stated day or during a stated period;
 - (d) the methodology used to analyse the thing;
 - (e) the results of the analysis.
- (3) In a complaint starting a proceeding, a statement that the matter of complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.
- (4) In a proceeding in which the State or a local government applies under section 255 to recover costs incurred by the State or local government, a certificate by the chief executive for the State or the chief executive officer of the local government stating that the costs were incurred and the way in which, and the purpose for which, they were incurred is evidence of the matters stated.

Part 3 Proceedings

251 Summary offences

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start within the later of the following periods to end—
- (a) 1 year after the commission of the offence;
 - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

252 Alternative verdicts for particular offences

- (1) If, on the trial of a person charged with an offence against section 32, the trier of fact is not satisfied the person

committed the offence but is satisfied the person committed an offence against section 35(1)—

- (a) the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 35(1); and
 - (b) the person is liable to be punished for that offence.
- (2) If, on the trial of a person charged with an offence against section 33, the trier of fact is not satisfied the person committed the offence but is satisfied the person committed an offence against section 35(2)—
- (a) the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 35(2); and
 - (b) the person is liable to be punished for that offence.
- (3) If, on the trial of a person charged with an offence against section 164E(3), the trier of fact is not satisfied the person committed the offence but is satisfied the person committed an offence against section 164E(4)—
- (a) the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 164E(4); and
 - (b) the person is liable to be punished for that offence.

253 Independent analysis

- (1) This section applies if, in a proceeding for an offence against this Act in relation to food, of which a sample has been taken or otherwise obtained under this Act—
- (a) there is disagreement between the evidence of the analyst for the prosecution and that of the analyst for the defence; and
 - (b) the sample or a part of the sample is in a suitable condition to be analysed again.

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- (2) On the application of a party to the proceeding, the court must order the authorised person who took the sample of food to give the sample or part of the sample to—
 - (a) an independent analyst for analysis; or
 - (b) the analyst for the prosecution and the analyst for the defence for joint analysis.
 - (3) The court may make an order mentioned in subsection (2) if it is satisfied it is just to make the order in the circumstances of the particular case even if a party to the proceeding has not applied for the order.
 - (4) The order may state how the sample of food is to be given to an analyst mentioned in subsection (2).

254 Allegations of false or misleading information or document

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, ‘false or misleading’.

255 Recovery of costs of investigation

- (1) This section applies if—
 - (a) a court convicts a person of an offence against this Act; and
 - (b) the State or a local government applies to the court for an order against the person for the payment of the costs the State or local government has incurred in taking a thing or doing something else during the investigation of the offence; and
 - (c) the court finds the State or local government has reasonably incurred the costs.
- (2) The court may order the person to pay the State or local government an amount equal to the costs if it is satisfied it

would be just to make the order in the circumstances of the particular case.

- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

256 Application for order for payment of costs under s 255

- (1) An application to a court under section 255 is, and any order made by the court on the application is a judgment, in the court's civil jurisdiction.
- (2) Any issue on the application is to be decided on the balance of probabilities.

257 Forfeiture on conviction

- (1) On conviction of a person for an offence against this Act, a court may order the forfeiture to the State or a local government of—
 - (a) anything used to commit the offence; or
 - (b) anything else the subject of the offence.
- (2) The court may make the order—
 - (a) whether or not the thing has been seized; and
 - (b) if the thing has been seized, whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

258 Dealing with forfeited thing

- (1) On the forfeiture of a thing to the State or a local government under section 257, the thing becomes the State's or local government's property and may be dealt with by the chief executive or chief executive officer of the local government as

the chief executive or chief executive officer considers appropriate.

- (2) Without limiting subsection (1), the chief executive or chief executive officer may destroy or dispose of the thing.
- (3) However, the chief executive or chief executive officer must not deal with the thing in a way that could prejudice the outcome of a review under this Act of which the chief executive or chief executive officer is aware.

259 Responsibility for acts or omissions of representative

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

representative means—

 - (a) for a corporation—an executive officer, employee or agent of the corporation; or
 - (b) for an individual—an employee or agent of the individual.

state of mind of a person includes—

 - (a) the person's knowledge, intention, opinion, belief or purpose; and

- (b) the person's reasons for the intention, opinion, belief or purpose.

260 Liability of executive officer—offence committed by corporation against executive liability provision

- (1) An executive officer of a corporation commits an offence if—
 - (a) the corporation commits an offence against an executive liability provision; and
 - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of the executive liability provision by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
 - (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
 - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
 - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect—
 - (a) the liability of the corporation for the offence against the executive liability provision; or
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the executive liability provision.

(5) In this section—

executive liability provision means any of the following provisions—

- section 32
- section 33
- section 34(1)
- section 34(2)
- section 35(1)
- section 35(2)
- section 36(1)
- section 36(2)
- section 37(1)
- section 37(2)
- section 37(3)
- section 38(1)
- section 38(2)
- section 39(1)
- section 39(2)
- section 39(3)
- section 39(4)
- section 49
- section 99(1)
- section 123
- section 271B(2)
- section 271C(2)
- section 271D(6).

260A Executive officer may be taken to have committed offence

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
 - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
 - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following—
 - (a) the liability of the corporation for the offence against the deemed executive liability provision;
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—

deemed executive liability provision means any of the following provisions—

 - section 50(1)
 - section 51(1)
 - section 86(1)
 - section 86(2)
 - section 114(5)
 - section 124
 - section 125
 - section 126
 - section 157(1)

- section 158(2)
- section 207
- section 209(7)
- section 214(1)
- section 221
- section 270(2)
- section 271(6).

261 Fines payable to local government

- (1) Subsection (2) applies if—
 - (a) a proceeding for an offence about a matter is taken by a local government; and
 - (b) a court imposes a fine for the offence.
- (2) The fine must be paid to the local government.

Chapter 11 Miscellaneous

Part 1 Guidelines and registers of auditors and food businesses

Division 1 Guidelines

262 Chief executive may make guidelines

- (1) The chief executive may make guidelines to provide guidance to local governments, persons who carry on a food business and members of the public about matters relating to the administration of this Act.

- (2) Without limiting subsection (1), a guideline may be about the following matters—
 - (a) food safety in non-profit or other food businesses;
 - (b) the assessment of applications for a licence;
 - (c) monitoring and enforcement of the Act;
 - (d) the expertise and experience required for a person to be an authorised person;
 - (e) the appointment of authorised persons;
 - (f) the skills and knowledge required for a person to be a food safety supervisor;
 - (g) the exchange of information and reports between local governments and the chief executive about the administration of this Act;
 - (h) the conduct and frequency of audits;
 - (i) fees charged by local governments under this Act.
- (3) The chief executive may—
 - (a) make a guideline by adopting another entity's guideline with or without changes; and
 - (b) amend a guideline when the chief executive considers it appropriate.
- (4) Before making or amending a guideline, the chief executive must take reasonable steps to allow entities the chief executive considers may have an interest in the proposed guideline or amendment to give the chief executive written submissions about it.

Example—

The chief executive might publish a notice in a newspaper seeking submissions about a proposed guideline.

263 Availability of guideline

- (1) The chief executive must keep a copy of each guideline, as in force from time to time, available for inspection, free of charge, by local governments and members of the public at—
 - (a) the department's head office; and
 - (b) other places the chief executive considers appropriate.
- (2) Also, the chief executive must publish each guideline, as in force from time to time, on the department's website on the internet.

Division 2 Registers

264 Chief executive to keep registers

- (1) The chief executive must keep—
 - (a) a register of auditors; and
 - (b) a register of food businesses carried on from mobile premises under a licence.
- (2) The registers may be kept in the way the chief executive considers appropriate, including, for example, in electronic form.

265 Content of registers

- (1) The register of auditors must contain the following particulars for each auditor—
 - (a) the auditor's name and contact details;
 - (b) the conditions of the auditor's approval imposed under section 136(1)(b);
 - (c) the term of the approval.
- (2) The register of food businesses must contain the following particulars for each food business carried on from mobile premises under a licence—

- (a) the name of the local government that issued the licence;
 - (b) the licensee's name and contact details;
 - (c) the licence number;
 - (d) the expiry date of the licence;
 - (e) a description of the premises that includes—
 - (i) if the premises are a vehicle that is required to be registered—the registration number of the vehicle;
or
 - (ii) if the premises are a food vending machine—the serial number or other unique identifying number or mark of the food vending machine;
 - (f) a description of the food business.
- (3) The registers also may contain other information the chief executive considers appropriate.

266 Availability of registers

The chief executive must keep the register of auditors and the register of food businesses reasonably available for inspection, free of charge, by local governments and members of the public.

Part 2 Offences about false or misleading statements or documents

267 False or misleading statements

- (1) A person must not, for an application made under chapter 3, 4 or 5, state anything the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) A person must not state anything to an auditor the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (3) A person must not state anything to an authorised person the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

268 False or misleading documents

- (1) A person must not, for an application made under chapter 3, 4 or 5, give to the chief executive or a local government a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) A person must not give an auditor a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (3) A person must not give an authorised person a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (4) Subsections (1) to (3) do not apply to a person if the person, when giving the document—

(a) tells the chief executive or local government, auditor or authorised person, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the chief executive, local government, auditor or authorised person.

Part 3 **Prescribed contaminants in food**

269 **Definition for pt 3**

In this part—

prescribed contaminant means any of the following prescribed under a regulation—

- (a) an antibiotic;
- (b) a pathogen;
- (c) another thing that may contaminate food.

270 **Notice of isolation of prescribed contaminant**

- (1) This section applies to—
 - (a) a person who carries on a food business if the person—
 - (i) tests a prescribed food and isolates a prescribed contaminant in the food; or
 - (ii) sends a prescribed food to a place outside the State for testing and is notified that a prescribed contaminant has been isolated in the food as a result of the testing; or
 - (b) a person who tests a prescribed food for a person mentioned in paragraph (a) and isolates a prescribed contaminant in the food.
- (2) The person must, unless the person has a reasonable excuse, after isolating the prescribed contaminant or being notified that the contaminant has been isolated—
 - (a) orally notify the chief executive about the isolation immediately; and
 - (b) give the chief executive notice about the isolation in the approved form within 24 hours after isolating the contaminant or being notified that the contaminant has been isolated.

Maximum penalty—100 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

- (3) It is not a reasonable excuse for the person not to comply with a requirement under subsection (2) that complying with the requirement might tend to incriminate the person.
- (4) However, subject to subsection (5), the following is not admissible in evidence against an individual in any civil or criminal proceeding—
 - (a) information given to the chief executive about the isolation of the prescribed contaminant (*primary evidence*);
 - (b) any information, or document or other thing, obtained as a direct or indirect result of primary evidence (*derived evidence*).
- (5) Subsection (4) does not prevent primary evidence or derived evidence being admitted in evidence—
 - (a) in criminal proceedings about the falsity or misleading nature of the primary evidence; or
 - (b) if a person to whom a direction is given under section 271(2) fails, without a reasonable excuse, to comply with the direction—in a proceeding against the person for an offence, under this Act.
- (6) In this section—

prescribed food means food prescribed under a regulation for this section.

271 Chief executive may give direction

- (1) This section applies if, in relation to a food business, a person notifies the chief executive under section 270(2) that a prescribed contaminant has been isolated in food (the *contaminated food*).

- (2) The chief executive may give the person who carries on the food business a reasonable direction about identifying the source of, and preventing or minimising the risk to public health or safety caused by, the prescribed contaminant.
- (3) The direction may be given orally or by notice.
- (4) If the direction is given orally, the chief executive must as soon as practicable confirm the direction by notice.
- (5) Without limiting subsection (1), a direction may be about—
 - (a) the handling of—
 - (i) the contaminated food; or
 - (ii) food that may have been handled with or near the contaminated food, or at a place or using equipment that may have come into contact with the contaminated food; or
 - (b) the isolation or disposal of food mentioned in paragraph (a); or
 - (c) procedures to be performed to complete identification of the prescribed contaminant.
- (6) A person who is given a direction under subsection (2) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Note—

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 260A, to have also committed the offence.

Part 3A Suspected intentional contamination of food

271A Definitions for pt 3A

In this part—

intentional contamination, of food, means contamination of the food by a person who intends to contaminate the food, including by adding, mixing or putting a deleterious or poisonous substance or thing into the food.

potentially contaminated food see section 271C(1)(a).

responsible person, for a food business, means—

- (a) if the food business is carried on by a licensee—the licensee; or
- (b) otherwise—
 - (i) if the food business is carried on by an entity that is not a non-profit organisation—the proprietor of the food business; or
 - (ii) if the food business is carried on by a non-profit organisation that is a corporation—the corporation; or
 - (iii) if the food business is carried on by a non-profit organisation that is an unincorporated entity—the chairperson, manager or other governing officer of the entity.

271B Reporting suspected intentional contamination of food

- (1) This section applies if the responsible person for a food business reasonably suspects food sold, or intended for sale, in the course of carrying on the food business has been intentionally contaminated.
- (2) The responsible person must, unless the person has a reasonable excuse, orally notify the chief executive of the

suspected intentional contamination immediately after first forming the reasonable suspicion.

Maximum penalty—200 penalty units.

Note—

This provision is an executive liability provision—see section 260.

- (3) It is not a reasonable excuse for the person not to comply with subsection (2) that complying with the subsection might tend to incriminate the person.
- (4) However, subject to subsection (5), if the person is an individual, the following is not admissible in evidence against the person in any civil or criminal proceeding—
 - (a) information given to the chief executive by the person under subsection (2) about the suspected intentional contamination (*primary evidence*);
 - (b) any information, or document or other thing, obtained as a direct or indirect result of primary evidence (*derived evidence*).
- (5) Subsection (4) does not prevent primary evidence or derived evidence being admitted in evidence against the person—
 - (a) in criminal proceedings about the falsity or misleading nature of the primary evidence; or
 - (b) in a proceeding against the person for an offence against section 271C(2) or 271D(6).

271C Potentially contaminated food must not be disposed of

- (1) This section applies if—
 - (a) the responsible person for a food business reasonably suspects food sold, or intended for sale, in the course of carrying on the food business has been intentionally contaminated (the *potentially contaminated food*); and
 - (b) when the responsible person first forms the reasonable suspicion, not all of the potentially contaminated food has been sold or otherwise disposed of.

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- (2) The responsible person must, unless the person has a reasonable excuse, ensure all of the potentially contaminated food not already sold or otherwise disposed of when the person first forms the reasonable suspicion is not disposed of.

Maximum penalty—200 penalty units.

Note—

This provision is an executive liability provision—see section 260.

- (3) The requirement under subsection (2) stops applying if the responsible person is given a direction under section 271D(2) about disposal of the potentially contaminated food.

271D Chief executive may give direction

- (1) This section applies if the responsible person for a food business gives the chief executive notice under section 271B.
- (2) The chief executive may give the responsible person a reasonable direction about identifying the source of the contamination of, and preventing or minimising the risk to public health or safety caused by, the potentially contaminated food.
- (3) Without limiting subsection (2), the direction may be about—
- (a) the handling of—
 - (i) the potentially contaminated food; or
 - (ii) food that may have been handled with or near the potentially contaminated food, or at a place or using equipment that may have come into contact with the potentially contaminated food; or
 - (iii) food to prevent a recurrence of contamination of food; or
 - (b) the isolation or disposal of food mentioned in paragraph (a)(i) or (ii); or
 - (c) procedures to be performed in relation to testing of the potentially contaminated food.
- (4) The direction may be given orally or by notice.

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- (5) If the direction is given orally, the chief executive must as soon as practicable confirm the direction by notice.
- (6) A responsible person who is given a direction under subsection (2) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

Note—

This provision is an executive liability provision—see section 260.

Part 4 Other matters

272 Confidentiality of information

- (1) This section applies to a person who is, or was—
 - (a) the chief executive; or
 - (b) a chief executive officer; or
 - (c) an auditor; or
 - (d) an authorised person; or
 - (e) another person involved in administering this Act or the repealed Act, including, for example, an officer or employee of the department or an employee of a local government.

- (2) The person must not disclose confidential information gained by the person in administering or performing a function under this Act or the repealed Act.

Maximum penalty—50 penalty units.

- (3) However, the person may disclose confidential information if—
 - (a) the disclosure is for a purpose under this Act; or

-
- (b) the disclosure is for the purpose of ensuring public health or safety and the disclosure is to any of the following—
 - (i) the State;
 - (ii) a department;
 - (iii) an entity, established under an Act, that deals with matters relating to public health or safety;
 - (iv) a local government;
 - (v) the Commonwealth or another State, or an entity of the Commonwealth or another State;
 - (vi) an entity of New Zealand responsible for the administration of a corresponding law of New Zealand; or
 - (c) the disclosure is with the consent of the person to whom the information relates; or
 - (d) the disclosure is otherwise required or permitted by law.

272A Disclosure of information

- (1) The chief executive may, in writing, authorise a relevant person to disclose information relating to a food business, including confidential information, gained by a person in administering or performing a function under this Act.
- (2) The chief executive may act under subsection (1) only if the chief executive has reasonable grounds to believe disclosing the information is necessary—
 - (a) to prevent or reduce the possibility of a serious danger to public health; or
 - (b) to mitigate the adverse consequences of a serious danger to public health.
- (3) Without limiting subsection (1), the chief executive may authorise a relevant person to disclose—

- (a) information identifying food sold in connection with the food business, including, for example, its brand or pack size; and
 - (b) details of action a consumer of the food may take; and
 - (c) information identifying the food business and its location; and
 - (d) details of the nature of the serious danger to public health.
- (4) In this section—
- relevant person*** means the following—
- (a) the chief health officer;
 - (b) an appropriately qualified—
 - (i) public service officer or employee of the department; or
 - (ii) health service employee.

273 Service of documents

- (1) If a document is required or permitted under this Act to be given to a person, the document may be given to the person by facsimile transmission directed and sent to—
- (a) the last transmission number given to the giver of the document by the person as the facsimile transmission number for service of documents on the person; or
 - (b) the facsimile transmission number operated—
 - (i) at the address of the person last known to the giver of the document; or
 - (ii) if the person is a corporation, at the corporation's registered office under the Corporations Act; or
 - (iii) if the person is an incorporated association, at the association's registered office under the *Associations Incorporation Act 1981*.

- (2) A document given under subsection (1) is taken to have been given on the day the document is transmitted.

274 Protecting officials from liability

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to—
- (a) if the official is the chief executive officer of a local government, an auditor who is an employee of a local government, an authorised person appointed by the chief executive officer of a local government or a person acting under the direction of that authorised person—the local government; or
 - (b) if paragraph (a) does not apply—the State.
- (3) In this section—
- official*** means—
- (a) the chief executive; or
 - (b) a chief executive officer; or
 - (c) an authorised person; or
 - (d) a State analyst; or
 - (e) an auditor who is—
 - (i) an officer or employee of the department; or
 - (ii) a health service employee; or
 - (iii) an employee of a local government; or
 - (f) a person acting under the direction of an authorised person.

275 Particular premises taken to be within local government area

- (1) For this Act, premises that are on the foreshore, or a river, harbour or other waters, and not within a local government area are taken to be within the area of the local government whose area is nearest to the premises.
- (2) Subsection (1) does not apply to premises of the Australian Defence Force or another country.

276 Delegation by chief executive

- (1) The chief executive may delegate the chief executive's powers under this Act, other than a power under chapter 7, part 4 or section 272A, to an appropriately qualified person who is—
 - (a) a public service officer or employee of the department;
or
 - (b) a health service employee.
- (2) The chief executive may delegate the chief executive's powers under section 272A to the chief health officer.

277 Approval of forms

- (1) The chief executive may approve forms for use under this Act.
- (2) The chief executive officer of a local government may approve forms for use by the local government under this Act.

278 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) prescribe that the food standards code applies with the changes stated in the regulation; and
 - (b) be about matters relating to audits of accredited food safety programs; and

- (c) prescribe that a food safety program prepared and maintained under the *Food Production (Safety) Act 2000* for a type of food business is taken to be an accredited food safety program under this Act for the same or a similar type of food business; and
 - (d) prescribe fees payable under this Act and the matters for which the fees are payable; and
 - (e) impose a penalty of no more than 50 penalty units for contravention of a regulation.
- (3) A regulation under subsection (2)(a) may state that, for the purpose of applying the food standards code for this Act, a provision or part of a provision of the code does not apply or applies with the changes stated in the regulation.
- (4) Also, a regulation under subsection (2)(a)—
- (a) expires 1 year after it is made; and
 - (b) is of no effect to the extent it conflicts with—
 - (i) section 14(2)(b); or
 - (ii) the changes to the food standards code stated in schedule 2.
- (5) If a regulation under subsection (2)(a) prescribes a change in relation to the application of the food standards code for this Act, the Minister may not recommend to the Governor in Council the making of another regulation about the same matter.

Chapter 12 Repeal and transitional provisions

Part 1 Repeal provision

279 Repeal of Food Act 1981

The Food Act 1981 No. 44 is repealed.

Part 2 Transitional provisions for Act No. 3 of 2006

Division 1 Preliminary

280 Definitions for pt 2

In this part—

commencement means the day on which the provision in which the term is used commences.

former regulation means the *Food Hygiene Regulation 1989*.

Division 2 Transitional references

281 References to repealed Act

A reference in an Act or other document to the repealed Act may, if the context permits, be taken as a reference to this Act.

Division 3 Other transitional provisions

282 Continuation of order under repealed Act, s 8

- (1) This section applies to an order made under section 8 of the repealed Act and directed to a local government if, immediately before the commencement, the local government has not complied with the order.
- (2) The local government must comply, or continue to comply, with the order as if the Act had not been repealed.

283 Continuation of order under repealed Act, pt 3

- (1) Subsection (2) applies to an order made by the chief executive under part 3 of the repealed Act if—
 - (a) the order took effect under section 19B(4) or (5) of the repealed Act before the commencement; and
 - (b) on the commencement, has not ceased to have effect.
- (2) The order—
 - (a) is taken to be an order made by the chief executive under chapter 7, part 4 of this Act; and
 - (b) continues to have effect for the period it would have had effect under section 19B(6) of the repealed Act.
- (3) Subsection (4) applies to an order made by the chief executive under part 3 of the repealed Act before the commencement if—
 - (a) the order was required to be served on a person or persons under section 19B(1)(a) of the repealed Act; and
 - (b) on the commencement, the order is not in effect because it has not been served as mentioned in paragraph (a).
- (4) The order—
 - (a) is taken to be an order made by the chief executive under chapter 7, part 4 of this Act; and

- (b) may be served under section 219(1)(a) on the person or persons intended to be bound by it.
- (5) Subsections (6) and (7) apply to an order made by the chief executive under part 3 of the repealed Act before the commencement if—
 - (a) notice of the order was required to be published under section 19B(2) of the repealed Act; and
 - (b) on the commencement, the order is not in effect because notice of the order has not been published as mentioned in paragraph (a).
- (6) The order is taken to be an order made by the chief executive under chapter 7, part 4 of this Act.
- (7) Notice of the order may be published under section 219(2).

284 Application for compensation under repealed Act

- (1) Subsections (2) and (3) apply to an application for compensation made to the chief executive under section 19C of the repealed Act and not decided before the commencement.
- (2) The application is taken to be an application for compensation made under section 220.
- (3) The chief executive may deal with, or continue to deal with, and decide the application under this Act.
- (4) Subsection (5) applies if—
 - (a) immediately before the commencement, a person could have applied to the chief executive for compensation under section 19C of the repealed Act; and
 - (b) the person has not applied before the commencement.
- (5) The person may apply for compensation under section 220 of this Act as if the order in relation to which the person could have applied for compensation under the repealed Act were an order under chapter 7, part 4 of this Act.

285 Continuation of orders under repealed Act, s 21

- (1) This section applies to an order made under section 21 of the repealed Act before the commencement if, at the commencement—
 - (a) the order has not been complied with; or
 - (b) anything remains to be done under section 21 in relation to the order.
- (2) The repealed Act continues to apply to the order or thing, and any person affected by the order or thing, as if this Act had not commenced.

286 Appeals

- (1) Subsection (2) applies if—
 - (a) a person has appealed to a Magistrates Court under the repealed Act before the commencement against a following decision—
 - (i) a decision of the chief executive refusing an application for compensation, or deciding an amount of compensation less than the amount sought by the applicant, under section 19C of the repealed Act;
 - (ii) a decision of an authorised officer under section 21(6) of the repealed Act refusing to give the person a certificate under section 21(2) of the repealed Act; and
 - (b) the appeal has not been decided before the commencement.
- (2) The Magistrates Court may hear, or continue to hear, and decide the appeal under the repealed Act as if this Act had not commenced.
- (3) Subsection (4) applies if—
 - (a) immediately before the commencement a person could have appealed to a Magistrates Court under the repealed

- Act against a decision mentioned in subsection (1)(a);
and
- (b) the person has not appealed before the commencement.
- (4) The person may appeal, and the Magistrates Court may hear and decide the appeal, under the repealed Act as if this Act had not commenced.
 - (5) For giving effect to its decision under subsection (2) or (4), the Magistrates Court may make the orders it considers necessary having regard to the provisions of this Act.

287 Dealing with articles seized under repealed Act

- (1) Subsection (2) applies if—
 - (a) a person has applied to a Magistrates Court under section 33(1) of the repealed Act for an order directing an authorised officer to release an article seized by the officer; and
 - (b) the application has not been decided before the commencement.
- (2) The Magistrates Court may hear, or continue to hear, and decide the application under the repealed Act as if this Act had not commenced.
- (3) Subsection (4) applies if—
 - (a) immediately before the commencement a person could have applied to a Magistrates Court under section 33(1) of the repealed Act for an order mentioned in subsection (1)(a); and
 - (b) the person has not applied before the commencement.
- (4) The person may apply, and the Magistrates Court may hear and decide the application, under the repealed Act as if this Act had not commenced.
- (5) In deciding the application, the Magistrates Court may make any decision the court could have made in relation to the application before the commencement.

- (6) In dealing with an article in relation to which an application under section 33(1) of the repealed Act was or could have been made before the commencement, section 33(7) to (9) of the repealed Act continues to apply to the article.

288 Direction about isolation of prescribed pathogen

- (1) This section applies if, before the commencement, the chief executive—
- (a) was notified under the *Food Standards Regulation 1994*, section 15(3)(a) or (b), that a prescribed pathogen has been isolated in food; and
 - (b) has not given a direction to a person under section 16 of the regulation about the isolation of the pathogen.
- (2) The chief executive may give the person who carries on the food business in relation to which the prescribed pathogen was isolated a direction under section 271 about the pathogen.
- (3) For giving a direction mentioned in subsection (2)—
- (a) the food in relation to which the prescribed pathogen was isolated is taken to be contaminated food; and
 - (b) the prescribed pathogen is taken to be a prescribed contaminant; and
 - (c) the chief executive is taken to have been notified under section 270(2) that a prescribed contaminant has been isolated in contaminated food.

289 Continuation of particular licences under former regulation

- (1) This section applies to a licence issued under section 7 of the former regulation if the licence—
- (a) is for a business that is a licensable food business; and
 - (b) immediately before the commencement, is in force or is suspended under the former regulation.

- (2) The licence is taken to be a licence to carry on the licensable food business under this Act.
- (3) If, immediately before the commencement, the licence is in force, it remains in force unless sooner cancelled or suspended for the period it would have been in force under the former regulation.
- (4) If, immediately before the commencement, the licence is suspended—
 - (a) the period of the suspension under the former regulation continues; and
 - (b) the licence remains in force after the suspension ends, unless sooner cancelled or again suspended, only for the period it would have remained in force under the regulation.
- (5) For this Act—
 - (a) a condition endorsed on or attached to the licence under section 7(9)(c)(i) of the former regulation immediately before the commencement is taken to be a condition stated in the licence; and
 - (b) the premises, other place or vehicle registered under section 9 of the former regulation immediately before the commencement and relating to the licence is taken to be—
 - (i) stated in the licence; and
 - (ii) premises from which the licensee may carry on the licensable food business.

290 Lapsing of licences under former regulation

- (1) This section applies to a licence issued under section 7 of the former regulation, other than a licence to which section 289 applies, if the licence is in force or suspended under the regulation immediately before the commencement.
- (2) The licence lapses on the commencement.

291 Application for particular licence under former regulation

- (1) This section applies to an application for a licence made to a local government under section 7 of the former regulation if—
 - (a) the licence is for a business that is a licensable food business; and
 - (b) the application has not been decided immediately before the commencement.
- (2) Despite sections 52, 53 and 85, the application is taken to be an application for a licence to carry on the licensable food business under this Act.
- (3) For dealing with the application under this Act, the application is taken to have been received by the local government on the commencement.

292 Application for renewal of particular licence under former regulation

- (1) This section applies to an application for renewal of a licence made to a local government under section 7 of the former regulation if—
 - (a) the licence is for a business that is a licensable food business; and
 - (b) the application has not been decided immediately before the commencement.
- (2) Despite section 85, the application is taken to be an application for renewal of a licence to carry on the licensable food business under this Act.
- (3) For dealing with the application under this Act, the application is taken to have been received by the local government on the commencement.

293 Lapsing of other applications relating to licences under former regulation

- (1) This section applies to each of the following applications made to a local government under section 7 of the former regulation if the application has not been decided before the commencement—
 - (a) an application for a licence, other than an application to which section 291 applies;
 - (b) an application for renewal of a licence, other than an application to which section 292 applies.
- (2) The application lapses and the following fees paid by the applicant to the local government for the application must be refunded in full to the applicant by the local government—
 - (a) the application fee;
 - (b) the licence fee;
 - (c) the renewal fee.

294 Lapsing of registration under former regulation

- (1) This section applies to a certificate of registration, renewal of registration or provisional registration in force, or suspended, under the former regulation immediately before the commencement.
- (2) The certificate of registration, renewal of registration or provisional registration lapses on the commencement.

295 Lapsing of applications relating to registration under former regulation

- (1) This section applies to each of the following applications made to a local government under section 9 or 10 of the former regulation if the application has not been decided before the commencement—
 - (a) an application for registration of any premises, other place or vehicle;

-
- (b) an application for renewal of a registration;
 - (c) an application for transfer of a registration.
- (2) The application lapses and the following fees paid by the applicant to the local government for the application must be refunded in full to the applicant by the local government—
- (a) the application fee;
 - (b) the registration fee;
 - (c) the renewal fee.

296 Offences

- (1) A proceeding for an offence against a provision of the former legislation may be started or continued, and the provisions of the legislation that are necessary or convenient to be used in relation to the proceeding continue to apply as if this Act had not commenced.
- (2) For subsection (1), the *Acts Interpretation Act 1954*, section 20 applies, but does not limit the subsection.
- (3) In this section—
former legislation means the repealed Act, the former regulation or the *Food Standards Regulation 1994*.

297 Application of requirements about food safety supervisor and food safety program to existing licensees

- (1) This section applies to a person who is a licensee immediately before the commencement.
- (2) Sections 86(1) and 88(1) apply to the person as if the requirement to comply with the sections within 30 days after the licence is issued under section 60(1) were a requirement for the person to comply with the sections by 1 July 2008.
- (3) The person is not liable for an offence against section 99(1) committed before 1 July 2008.

298 No offence committed against food safety supervisor or food safety program provisions before 1 July 2008

- (1) This section applies to a licensee to whom section 297 does not apply.
- (2) The licensee is not liable for an offence against a provision of chapter 3, part 7, division 2 or chapter 4 committed before 1 July 2008.

Part 3 Transitional provisions for Health Legislation Amendment Act 2011

299 Definitions for pt 3

In this part—

commencement means the commencement of this part.

relevant licence means a licence for a food business carried on from fixed premises or temporary premises that are a food vending machine within the meaning of this Act as in force on the commencement.

300 Existing relevant licence

- (1) This section applies to a relevant licence that was in force immediately before the commencement.
- (2) On and from the commencement—
 - (a) the licence is taken to be a licence for a food business carried on from mobile premises that are the food vending machine, subject to the conditions to which the licence was subject immediately before the commencement; and
 - (b) the licence is taken to comply with section 94(b)(iii)(B); and

- (c) the register of food businesses need not contain the particulars mentioned in section 265(2)(e)(ii) for the food business.
- (3) Subsection (2) stops applying when the licence is first renewed after the commencement.

301 Pending applications for relevant licence

- (1) This section applies to an application for a relevant licence that was made under chapter 3, part 3, but not decided, before the commencement.
- (2) On and from the commencement, the application is taken to be an application for a licence for a food business carried on from mobile premises that are the food vending machine.
- (3) An application to which this section applies is not invalid only because it does not comply with section 53(1)(e) as in force on the commencement.

Note—

The local government may, under section 59, require the applicant to give the local government the serial number or other identifying mark of the food vending machine.

302 Pending applications for renewal, restoration or amendment of relevant licence

- (1) This section applies to an application for the renewal, restoration or amendment of a relevant licence made under chapter 3, part 5, but not decided, before the commencement.
- (2) On and from the commencement, the application is taken to be an application for the renewal, restoration or amendment of a licence for a food business carried on from mobile premises that are the food vending machine.

Note—

The local government may, under section 75, require the applicant to give the local government the serial number or other identifying mark of the food vending machine.

Part 4

Transitional provision for Health Legislation Amendment Act 2016

303 Application of ch 6A

Chapter 6A does not apply to the proprietor of a food business until 12 months after the commencement.

Schedule 2 Changes to food standards code

section 14(2)(a)(i)

- 1 The editorial notes in the code do not apply.
- 2 The definition *appropriate enforcement agency* in clause 1 of standard 3.1.1 is replaced with the following definition—
‘appropriate enforcement agency means—
 - (a) in relation to a food business—the local government in whose area the food premises of the business are situated; or
 - (b) in relation to food premises—the local government in whose area the premises are situated.’.

Note—

See section 23 for provisions that are administered only by local governments.

- 3 In the definition *food premises* in clause 1 of standard 3.1.1, the words ‘any other place declared by the relevant authority to be premises under the Food Act’ are replaced with the words ‘food vending machines’, and the words ‘food vending machines or’ are omitted.
- 4 The following definitions are included in clause 1 of standard 3.1.1—
‘local government means a local government as defined in schedule 1 of the *Acts Interpretation Act 1954* of Queensland.
‘relevant authority means the chief executive of the Queensland department of government in which the Act is administered.’.
- 5 The definition *primary food production* in clause 1 of standard 3.1.1 is replaced with the following definition—

‘primary food production means production of primary produce within the meaning of section 11 of the *Food Production (Safety) Act 2000* of Queensland.’.

- 6 The definition *sell* in clause 1 of standard 3.1.1 is replaced with the following definition—
‘sell has the same meaning as it has in the Act.’.
- 7 In clause 2(4)(c) of standard 3.1.1, the words ‘another Act’ are replaced with the words ‘an Act’.

Schedule 3 Dictionary

section 10

accepted representations—

- (a) for chapter 3, part 6—see section 80(2); and
- (b) for chapter 4, part 5—see section 119(2); and
- (c) for chapter 5, part 5—see section 146(2).

accreditation, of a food safety program, means accreditation of the program under this Act.

accredited, in relation to a food safety program, means accredited under this Act.

administering executive means—

- (a) for a person appointed as an authorised person by the chief executive—the chief executive; or
- (b) for a person appointed as an authorised person by a chief executive officer—the chief executive officer; or
- (c) for a person appointed as an authorised person by 2 or more chief executive officers—the chief executive officers jointly.

advertisement means any of the following things used or apparently used to promote, directly or indirectly, the sale of food—

- (a) words, whether written or spoken;
- (b) a pictorial representation or design;
- (c) any other type of representation.

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

appropriate auditor, for a food business, means an auditor approved under this Act to conduct audits of food safety programs for that type of food business.

approval, in relation to an auditor, means an approval issued under chapter 5.

approved form means—

- (a) for chapters 3 and 4—a form approved by a chief executive officer under section 277(2); or
- (b) for chapters 5 and 11—a form approved by the chief executive under section 277(1).

approved laboratory means a laboratory approved by the chief executive under section 231.

audit means a compliance audit, check audit or nonconformance audit.

auditor means a person approved as an auditor under chapter 5.

authorised person means a person appointed as an authorised person under section 168.

certificate of analysis, for a thing, means a certificate of analysis completed for the thing under chapter 8, part 2.

check audit, of an accredited food safety program, means an audit of the program, other than a compliance or nonconformance audit, conducted—

- (a) by an auditor who is an employee of the department after a compliance or nonconformance audit of the program has been conducted by another auditor; and
- (b) to ensure the other auditor is conducting compliance or nonconformance audits appropriately.

chief executive officer means the chief executive officer of a local government.

chief health officer means the chief health officer under the *Hospital and Health Boards Act 2011*, section 52.

commencement—

- (a) for chapter 12, part 2, see section 280; or
- (b) for chapter 12, part 3, see section 299.

compensation decision see section 241(3).

compliance audit, of an accredited food safety program, means an audit of the program by an auditor to ensure the carrying on of the food business to which the program relates complies with the program and the food standards code, standards 3.2.2 and 3.2.3.

confidential information means information, other than information that is publicly available—

- (a) about a person's personal affairs or reputation; or
- (b) that would be likely to damage the commercial activities of a person to whom the information relates.

contact details, of a person, means the person's telephone number or facsimile number.

conviction means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

corresponding law means a law applying, or that applied, in the Commonwealth, another State, a Territory or a foreign country that provides, or provided, for the same matter as this Act or a provision of this Act.

decision maker see section 244(1)(a).

document certification requirement see section 199(5).

document production requirement see section 199(6).

equipment means the whole or part of—

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

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

exercised all due diligence includes took all reasonable precautions.

first local government, in relation to the carrying on of a licensable food business by a licensee from mobile premises, means the local government that issued the licence to carry on the business.

fixed premises, for a food business, means a building or other structure, or part of a building or other structure, that has a permanent address.

food see section 12.

food business see section 13.

food safety hazard, in relation to a food business, means a thing or a situation that has the potential to cause food handled or sold in connection with the food business to be unsafe or unsuitable.

food safety program means a documented program that identifies and controls food safety hazards in the handling of food in a food business.

food safety supervisor, for a food business, means a person who—

- (a) knows how to recognise, prevent and alleviate food safety hazards of the food business; and
- (b) has skills and knowledge in matters relating to food safety relevant to the food business; and
- (c) has the authority to supervise and give directions about matters relating to food safety to persons who handle food in the food business.

food standards code see section 14.

food vending machine means a machine or device operated by money, token, debit card or credit card and used, or intended for use, for the sale of food.

forfeiture decision see section 241(2).

former regulation, for chapter 12, part 2, see section 280.

handling, of food, see section 15.

health service employee see the *Hospital and Health Boards Act 2011*, schedule 2.

holder—

- (a) of an accredited food safety program—means the person to whom the accredited program is given under this Act; or
- (b) of a licence—means the person to whom the licence is issued under this Act.

improvement notice see section 209(2).

incorporated association means an incorporated association under the *Associations Incorporation Act 1981*.

information notice, for a decision of the chief executive, a local government or chief executive officer of a local government, means a notice stating all of the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may have the decision reviewed within 28 days after the person receives the notice;
- (d) how the person may have the decision reviewed;
- (e) if the decision is a decision of a local government that a licence be cancelled or suspended—a direction to the person to return the licence to the local government within 7 days after receiving the notice.

intentional contamination, for chapter 11, part 3A, see section 271A.

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

licence means a licence under this Act to carry on a licensable food business, and includes a provisional licence.

licensable food business see section 48.

licensee means the holder of a licence.

management committee, of an incorporated association, means the association's management committee formed under the *Associations Incorporation Act 1981*.

manufacture, in relation to food, see section 16.

meal means food that—

- (a) 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
- (b) is of adequate substance as to be ordinarily accepted as a meal.

menu, for chapter 6A, see section 164B.

mobile premises, for a food business, means—

- (a) premises that are a vehicle from which a person sells unpackaged food by retail; or
- (b) premises that are a food vending machine.

motor vehicle means a vehicle propelled by a motor that forms a part of the vehicle, and includes a trailer or caravan attached to the vehicle.

nonconformance audit, of an accredited food safety program, means an audit of the program by an auditor to check that any noncompliance with the program or the food standards code, standards 3.2.2 and 3.2.3, identified in an audit has been remedied.

non-profit organisation means an organisation that—

- (a) is not carried on for the profit or gain of its individual members; and
- (b) is engaged in activities for a charitable, cultural, educational, political, social welfare, sporting or recreational purpose.

notice means a written notice.

off-site catering see section 17.

on-site catering see section 18.

original decision see section 236(1).

package includes a container and wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packed and, if food is carried or sold or intended to be carried or sold in more than 1 package, includes each of the packages.

personal details requirement see section 197(5).

place includes premises and vacant land.

place of seizure see section 188.

potentially contaminated food, for chapter 11, part 3A, see section 271C(1)(a).

potentially hazardous food means food that must be kept at a particular temperature—

- (a) to minimise the growth of pathogenic micro-organisms that may be in the food; or
- (b) to stop the formation of toxins in the food.

premises includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) land where a building or other structure is situated; and
- (d) a vehicle; and
- (e) a food vending machine.

prescribed contaminant, for chapter 11, part 3, see section 269.

proposed action—

- (a) for chapter 3, part 6—see section 79(3)(a); and
- (b) for chapter 4, part 5—see section 118(2)(a); and
- (c) for chapter 5, part 5—see section 145(2)(a).

proprietor, of a food business, means—

- (a) the person carrying on the food business; or

- (b) if the person mentioned in paragraph (a) can not be identified, the person in charge of the food business.

provisional licence means a provisional licence issued under section 64.

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

ready-to-eat food, for chapter 6A, see section 164B.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

recall order means an order under chapter 7, part 4, requiring the recall or disposal, or both, of food.

relevant licence, for chapter 12, part 3, see section 299.

relevant offence means—

- (a) an indictable offence relating to the sale of unsafe or unsuitable food, other than an indictable offence that is taken to be a simple offence under the Criminal Code, section 659; or
- (b) an offence against this Act or the *Food Act 1981*; or
- (c) an offence against a corresponding law.

repealed Act means the *Food Act 1981*.

responsible person, for chapter 11, part 3A, see section 271A.

review decision see section 239(1).

reviewer see section 237(3).

second local government, in relation to the carrying on of a licensable food business by a licensee from mobile premises, means a local government other than the local government that issued the licence to carry on the business.

sell see section 19.

serve, in relation to food, means set the food out or present the food for consumption.

ship means any kind of vessel or boat used to carry anything or any person by water.

show cause notice—

- (a) for chapter 3, part 6—see section 79(2); and
- (b) for chapter 4, part 5—see section 118(1); and
- (c) for chapter 5, part 5—see section 145(1).

show cause period—

- (a) for chapter 3, part 6—see section 79(3)(e); and
- (b) for chapter 4, part 5—see section 118(2)(d); and
- (c) for chapter 5, part 5—see section 145(2)(e).

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

standard food item, for chapter 6A, see section 164C.

standard food outlet, for chapter 6A, see section 164D.

State analyst means a person appointed as a State analyst under section 227.

temporary premises, for a food business, means premises other than fixed premises or mobile premises, and includes, for example, a stall or a tent.

unpacked food means all food, other than food that is sealed in a package at a place other than the food business that sells it by retail in that package.

unsafe see section 20.

unsuitable see section 21.

vehicle means anything, whether operational or not, used to carry anything or any person by land, water or air.