



# **Food Production (Safety) Act 2000**

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Queensland

# Food Production (Safety) Act 2000

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# Food Production (Safety) Act 2000

**An Act to establish Safe Food Production QLD and provide for food safety matters relating to the production of primary produce, and for other purposes**

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Short title

This Act may be cited as the *Food Production (Safety) Act 2000*.

#### 2 Commencement

- (1) The following provisions commence on a day to be fixed by proclamation—
  - (a) parts 5 to 8;
  - (b) part 11, divisions 2 and 3;
  - (c) part 12.
- (2) However, if no day has been fixed by 1 January 2004, the provisions commence on that day.
- (3) The *Acts Interpretation Act 1954*, section 15DA does not apply to this Act.

## **Division 2                      Objects and application**

### **3                      Main objects of Act**

The main objects of this Act are—

- (a) to establish Safe Food Production QLD; and
- (b) to ensure the production of primary produce is carried out in a way that—
  - (i) makes the primary produce fit for human or animal consumption; and
  - (ii) maintains food quality; and
- (c) to provide for food safety measures for the production of primary produce consistent with other State laws relating to food safety.

### **4                      Act binds all persons**

This Act binds all persons, including the State and, so far as the legislative authority of the Parliament permits, the Commonwealth and the other States.

### **5                      Food Act 2006 not affected**

This Act is in addition to, and does not limit, the *Food Act 2006*.

### **6                      Exemption from application of Act**

- (1) This Act does not apply to primary produce or the production of primary produce—
  - (a) at premises on or from which primary produce is sold by retail, other than—
    - (i) meat retail premises; or

- (ii) other premises on which the production of primary produce is the predominant activity carried out on the premises; or

*Example for subparagraph (ii)—*

a packing shed, situated on an apple orchard, that is used to wash and pack apples but from which a person may occasionally sell apples by retail

- (b) in vehicles on or from which primary produce is sold by retail, other than—
  - (i) meat retail vehicles; or
  - (ii) other vehicles in which the production of primary produce is the predominant activity carried out in the vehicle.

(2) Also, this Act does not apply to—

- (a) primary produce possessed by an individual for the individual's own use, unless the produce is moved from the place at which it was produced; or
- (b) the production of primary produce carried out by an individual, unless the produce is—
  - (i) supplied, or intended for supply; or
  - (ii) used, or intended for use, as food for paying guests; or
  - (iii) moved from the place at which it was produced.

(3) Despite subsection (2), this Act does not apply to primary produce moved from the place at which it was produced if—

- (a) the primary produce is harvested in the wild by an individual for the individual's own use; or
- (b) the following apply—
  - (i) Safe Food has advised the Minister that it is satisfied the primary produce is unlikely to expose members of the public to a food safety hazard;
  - (ii) the primary produce is prescribed under a regulation for this subsection.

(4) In this section—

***meat retail premises*** means retail premises, or part of a retail premises, on or from which meat processing is carried out, or meat is sold, other than retail premises on or from which all meat sold on the premises is sold ready for immediate consumption.

*Example of part of retail premises—*

a meat section in a supermarket

***meat retail vehicle*** means a vehicle on or from which meat is sold, other than meat ready for immediate consumption.

## Division 3 Interpretation

### 7 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### 8 Meaning of *dairy produce*

***Dairy produce*** means—

- (a) milk of a bovine animal, camel, goat or sheep, or other milk prescribed under a regulation; or
- (b) a product consisting substantially of milk or milk solids and prescribed under a regulation to be dairy produce.

*Examples of a product for paragraph (b)—*

butter, cheese, yoghurt and flavoured milk

### 9 Meaning of *meat*

- (1) ***Meat*** is raw food that is the whole or part of a killed animal.
- (2) ***Meat*** does not stop being meat merely because its nature is changed, otherwise than by cooking, or it is mixed with another substance.

- (3) However, *meat* does not include smallgoods.

*Examples of meat—*

marinated meat, meat rissoles, meat sausages and stir-fry lamb mix

## 10 Meaning of *primary produce*

- (1) *Primary produce* means—

- (a) food produced by the production of primary produce; or
- (b) an animal, plant or other organism intended for human or animal consumption; or
- (c) raw material taken from an animal, plant or other organism for food; or
- (d) a substance, other than food—
  - (i) that is labelled as not intended for consumption by humans or animals; and
  - (ii) that the Minister is satisfied—
    - (A) is likely to be consumed by humans or animals; and
    - (B) if consumed by humans or animals—poses a food safety hazard to the humans or animals; and
  - (iii) that is prescribed under a regulation to be primary produce.

- (2) However, *primary produce* does not include a raw material mentioned in subsection (1)(c) unless the raw material is in substantially the same condition as when it was taken from the animal, plant or other organism.

*Example of a raw material in substantially the same condition as when it was taken from a plant—*

a whole apple

## 11 Meaning of *production of primary produce*

- (1) The *production of primary produce* includes the following—

[s 11]

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- (a) the growing, cultivation, picking, harvesting, collection or catching of animals, plants or other organisms;
  - (b) the transportation or delivery of primary produce;
  - (c) the freezing, packaging, refrigeration, storage, treating or washing of primary produce;
  - (d) the dismembering, filleting, peeling or shucking of seafood, or adding brine to seafood;
  - (e) the boiling of crustaceans;
  - (f) the pasteurisation or homogenisation of milk, or manufacturing of other dairy produce;
  - (g) the making of smallgoods;
  - (h) meat processing or rendering;
  - (i) the processing of primary produce—
    - (i) intended for consumption by a domestic animal; or
    - (ii) intended for consumption by another animal if the animal, or any part or product of the animal, is intended for human consumption.
- (2) Subject to subsection (1), ***production of primary produce*** does not include a process, including, for example, manufacturing or canning, in which the nature of the primary produce is substantially changed.
- (3) In this section—  
***treating***, of primary produce, means—
- (a) enhancing the appearance of the primary produce, including, for example, by waxing or oiling it; or
  - (b) dealing with the primary produce solely to kill bacteria or germs in the primary produce, or to ripen it.
- Examples for paragraph (b)—*
- 1 using ultraviolet light to kill bacteria or germs
  - 2 using gas to ripen bananas



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**12 Meaning of *substantially changed***

The nature of primary produce is *substantially changed* if—

- (a) any thing done to the primary produce markedly increases its shelf life; or
- (b) any food is added to it.

**Part 2 Safe Food Production QLD**

**Division 1 Establishment, functions and powers of Safe Food**

**13 Establishment**

- (1) Safe Food Production QLD (*Safe Food*) is established.
- (2) Safe Food—
  - (a) is a body corporate; and
  - (b) has a seal; and
  - (c) may sue and be sued in its corporate name.
- (3) Safe Food does not represent the State.

**14 Functions**

The functions of Safe Food are as follows—

- (a) to regulate, under food safety schemes, the production of primary produce to ensure primary produce is safe for human and animal consumption;
- (b) to advise, or make recommendations to, the Minister about—
  - (i) food safety matters relating to the production of primary produce; and

- (ii) the development or implementation of food safety schemes;
- (c) to monitor the hygiene and operating procedures of premises, vehicles, plant and equipment used for production of primary produce;
- (d) to encourage businesses engaged in the production of primary produce—
  - (i) to minimise food safety risks by developing and maintaining food safety programs; and
  - (ii) to develop and adopt quality assurance measures for the primary produce;
- (e) to approve or audit quality assurance measures mentioned in paragraph (d)(ii);
- (f) to approve food safety programs;
- (g) to grant accreditations;
- (h) to approve and train individuals to conduct audits to monitor compliance with food safety schemes;
- (i) to review audits mentioned in paragraph (h);
- (j) to commission research relating to food safety matters for primary produce.

## **15 General powers**

- (1) Safe Food has all the powers of an individual and may, for example, do the following—
  - (a) enter into contracts;
  - (b) acquire, hold, deal with, and dispose of, property;
  - (c) appoint and act through agents and attorneys;
  - (d) employ staff and engage consultants;
  - (e) charge for services and facilities it supplies;
  - (f) join and participate in industry associations;

- (g) do anything else necessary or convenient to be done for, or in connection with, the performance of its functions.
- (2) Without limiting subsection (1), Safe Food has the powers given to it under this or another Act.
- (3) However, Safe Food may not acquire shares or another interest in an entity holding an accreditation under this Act.
- (4) Safe Food may exercise its powers inside or outside Queensland, including outside Australia.

## 16 Ministerial direction

- (1) The Minister may give Safe Food a written direction about the performance of Safe Food's functions or exercise of its powers, or written notice of a public sector policy, if satisfied it is necessary to give the direction or notice in the public interest.
- (2) Safe Food must ensure the direction or policy is complied with.
- (3) However, before giving the direction or notice the Minister must—
  - (a) consult with Safe Food; and
  - (b) ask Safe Food to advise whether, in its opinion, complying with the direction or notice would not be in its financial interest.
- (4) The Minister must gazette a copy of the direction or notice within 21 days after the direction or notice is given.

## Division 2 Board of directors

### 16A The board

There is a board of directors of Safe Food (the *board*).

## **16B Role of board**

- (1) The board is responsible for the way in which Safe Food performs its functions and exercises its powers.
- (2) Without limiting subsection (1), it is the board's role—
  - (a) to decide the strategies and the operational, administrative and financial policies to be followed by Safe Food; and
  - (b) to receive advice or recommendations from an advisory committee, and make recommendations to the Minister, about the level and structure of fees proposed to be included in a food safety scheme; and
  - (c) to ensure Safe Food performs its functions in a proper, effective and efficient way; and
  - (d) to review annually the performance of its chief executive officer.

## **16C Composition of board**

- (1) The board consists of the following persons (*directors*)—
  - (a) the chief executive;
  - (b) the health chief executive;
  - (c) not more than 3 persons, appointed by the Governor in Council, who have qualifications or experience in at least 1 of the following areas—
    - (i) finance or financial administration;
    - (ii) food safety;
    - (iii) law;
    - (iv) public administration;
    - (v) representing the interests of consumers.
- (2) The Governor in Council must appoint 1 of the directors appointed under subsection (1)(c) as the chairperson.

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## **16D Chairperson to report to Minister**

- (1) The chairperson must report to the Minister on the performance of Safe Food's functions or the exercise of its powers.
- (2) A report must be given—
  - (a) within 1 month after the end of each quarter; and
  - (b) at any other time at the Minister's request.
- (3) Also, the chairperson must, immediately after becoming aware of a matter the chairperson is satisfied may adversely affect Safe Food's ability to perform its functions, report the matter to the Minister.
- (4) In subsection (2)—

*quarter* means the 3 month period ending on 31 March, 30 June, 30 September or 31 December.

## **16E Chairperson to give business plan to Minister**

- (1) The chairperson must give the Minister a copy of each business plan, prepared by the chief executive officer, by 30 April in the year for which the plan is prepared.
- (2) The chairperson must not give a copy of a business plan to the Minister unless the board has approved the business plan.

## **16EA Acting chairperson**

- (1) The Minister may appoint a director to act as the chairperson of the board during—
  - (a) any vacancy, or all vacancies, in the office of the chairperson; or
  - (b) any period, or all periods, when the chairperson is absent from duty, or cannot, for another reason, perform the duties of the office.

- (2) Subsection (1) does not affect the application of the *Acts Interpretation Act 1954*, section 24B or 25 for the appointment.

## **16F Additional provisions about board**

Additional provisions about the board are in schedule 1.

## **Division 3 Chief executive officer of Safe Food**

### **17 Appointment of chief executive officer**

- (1) Safe Food's chief executive officer is to be appointed by the Governor in Council on the recommendation of Safe Food's board.
- (2) The chief executive officer is to be appointed for a term of no more than 5 years.

### **18 Conditions of appointment**

The chief executive officer holds office on the conditions not provided for by this Act that are decided by the board.

### **19 Qualifications for appointment**

- (1) The board may, under section 17, recommend a person to be appointed as chief executive officer of Safe Food only if the board is satisfied the person has the necessary experience or expertise to be the chief executive officer.
- (2) A person is not qualified to be or to continue as the chief executive officer if the person—
- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
  - (b) is, or has been, convicted of an indictable offence; or

- (c) becomes incapable of performing the duties of the chief executive officer because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (e) is named in the register held by the Australian Securities and Investments Commission under the Corporations Act, section 1274AA.

## **20 Vacation of office**

The office of the chief executive officer becomes vacant if the chief executive officer—

- (a) dies; or
- (b) resigns office by notice given to the Minister; or
- (c) ceases to be qualified to be the chief executive officer.

## **20A Acting chief executive officer**

- (1) The board may appoint a person, who is eligible for appointment as chief executive officer, to act in the office of Safe Food's chief executive officer during—
  - (a) any vacancy, or all vacancies, in the office; or
  - (b) any period, or all periods, when the chief executive officer is absent from duty, or cannot, for another reason, perform the duties of the office.
- (2) Subsection (1) does not affect the application of the *Acts Interpretation Act 1954*, section 24B or 25 for the appointment.

## **Division 4                      Responsibilities of chief executive officer and other matters about Safe Food**

### **21            Responsibilities of chief executive officer**

- (1) The chief executive officer must—
  - (a) manage the affairs of Safe Food in accordance with the strategies and operational, administrative and financial policies decided by the board; and
  - (b) report to the board about the implementation of the strategies and policies; and
  - (c) advise the board about the activities of any advisory committee; and
  - (d) advise the board about progress in the development of food safety schemes and related food safety policies.
- (2) Without limiting subsection (1), the chief executive officer must—
  - (a) prepare a business plan for each year; and
  - (b) give the plan to the board by 31 March in the year for which the plan is prepared.
- (3) The business plan must cover Safe Food's operations for the year in which the plan is prepared and the 2 following years.
- (4) The business plan must include details of the following matters for the period covered by the plan—
  - (a) the food safety schemes under this Act, and any food safety schemes being developed, including, for example, projected cost structures and funding arrangements for each scheme;
  - (b) Safe Food's funding arrangements for food safety activities carried out by Safe Food other than in connection with a food safety scheme;
  - (c) Safe Food's administrative costs;



- (d) the projected funding required from the State to ensure compliance with this Act;
- (e) how Safe Food intends to ensure its activities in connection with food safety schemes are managed on a cost-recovery basis.

## **23 Application of other Acts**

- (1) Safe Food is—
  - (a) a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*; and
  - (b) a unit of public administration under the *Crime and Corruption Act 2001*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B states the way in which Safe Food's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## **23A Safe Food's seal**

- (1) Safe Food's seal must be kept in the custody of the chief executive officer or as directed by the board and may be used only as authorised by the board.
- (2) Judicial notice must be taken of the imprint of Safe Food's seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.

## **23B Judicial notice of certain signatures**

Judicial notice must be taken of—

- (a) the official signature of a person who is or has been the chairperson; and
- (b) the fact that the person holds or has held the office concerned.

### **23C Authentication of documents**

- (1) A document made by Safe Food, other than a document that is required to be sealed, is sufficiently made if it is signed by—
  - (a) the chairperson; or
  - (b) the chief executive officer; or
  - (c) another person authorised by Safe Food.
- (2) A document made by Safe Food under seal is sufficiently made under seal if it is sealed in the way authorised under section 23A(1) and signed by a person mentioned in subsection (1).

### **24 Delegation**

- (1) Safe Food may delegate its powers to a committee or employee of Safe Food if satisfied the committee members or employee are appropriately qualified.
- (2) The chief executive officer of Safe Food may delegate the chief executive officer's powers, other than a power under section 54(2) or 69(2), to a committee or employee of Safe Food if—
  - (a) the chief executive officer is satisfied the committee members are, or employee is, appropriately qualified; and
  - (b) the board approves the delegation.
- (3) In this section—

***appropriately qualified***, for a committee member or an employee, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

an employee's seniority level within the staff of Safe Food

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## **Part 4                      Food safety schemes and programs**

### **Division 1                Food safety schemes**

#### **39            Making food safety schemes**

- (1) The Governor in Council may make a food safety scheme.
- (2) A food safety scheme may be made about any of the following—
  - (a) how production of primary produce is to be carried out, including, for example, the temperatures at which primary produce must be kept;
  - (b) the premises, vehicles, plant or equipment used, or intended to be used, for the production of primary produce;
  - (c) prohibiting activities associated with the production of primary produce;
  - (d) the classification, marking or other identification of primary produce;
  - (e) the wholesomeness, testing or analysis of primary produce;
  - (f) sanitation, hygiene and the prevention of disease in primary produce;
  - (g) the blending or mixing of dairy produce or meat with any other thing;
  - (h) the persons who are to have accreditation for the production of primary produce;
  - (i) the preparation and implementation of food safety programs to ensure compliance with the food safety scheme;
  - (j) the auditing and approval of food safety programs mentioned in paragraph (i);

- (k) the recall of primary produce;
  - (l) the qualifications, skills or expertise required of a person to handle primary produce;
  - (m) the giving of information or returns relating to food safety matters to Safe Food;
  - (n) reviewing the operation of food safety schemes;
  - (o) fees payable to Safe Food;
  - (p) the adoption of standards about food safety;
  - (q) any other matter relevant to food safety issues relating to the production of primary produce.
- (3) A food safety scheme is subordinate legislation.
- (4) A food safety scheme may provide that contravention of the scheme is an offence and prescribe a maximum penalty, of not more than 50 penalty units, for the offence.

#### **40 Contents of food safety schemes**

- (1) A food safety scheme must state the following—
- (a) the primary produce to which the scheme applies;
  - (b) who must be accredited under the scheme and who must comply with the scheme;
  - (c) who must prepare and maintain a food safety program under the scheme;
  - (d) the aspects of the production of primary produce to which the scheme applies;
  - (e) the auditing requirements under the scheme.
- (2) Without limiting subsection (1), a food safety scheme may—
- (a) state whether a person may engage in the production of primary produce to which the scheme applies without an approved food safety program; and
  - (b) identify a standard about food safety applying to an industry to which the scheme relates, including, for

example, a standard about food hygiene practices, training for safe food handling and operating procedures for plant and equipment used in the industry.

## **Division 2                      Food safety programs**

### **41            Food safety programs**

- (1) This section applies to a person who must prepare and maintain a food safety program under a food safety scheme.
- (2) The food safety program must—
  - (a) identify significant food safety hazards associated with the production of primary produce carried out by the person; and
  - (b) state how the hazards are to be monitored and controlled; and
  - (c) state how hygienic and safe conditions for the primary produce are to be monitored and maintained; and
  - (d) state how often the program is to be reviewed by the person; and
  - (e) contain details about the provision of training for staff, if any, who deal with the primary produce; and
  - (f) contain any other information prescribed under the food safety scheme.
- (3) The person must keep a copy of the food safety program at each place to which the program relates.

Maximum penalty—50 penalty units.

## **Part 5                      Accreditation**

### **Division 1                Preliminary**

#### **42            Purpose of accreditation system**

The purpose of the accreditation system established under this part is to ensure the production of primary produce is carried out in a way that makes the primary produce safe for human and animal consumption.

#### **43            Authority given by accreditation**

- (1) An accreditation authorises the holder of the accreditation to produce primary produce—
  - (a) stated in the accreditation; and
  - (b) on the conditions stated in the accreditation and under this Act.
- (2) The accreditation does not authorise the holder of the accreditation to do anything prohibited under another Act.

### **Division 2                Obtaining accreditation**

#### **44            Application for grant or renewal of accreditations**

- (1) A person may apply to Safe Food for an accreditation or renewal of an accreditation.
- (2) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by the following—
    - (i) the prescribed fee;
    - (ii) a description of the activities carried out, or proposed to be carried out, by the applicant in

connection with the production of primary produce;

- (iii) a description of the premises, vehicles, plant or equipment used, or proposed to be used, by the applicant for the activities mentioned in subparagraph (ii);
- (iv) if the applicant is required under a food safety scheme to prepare and maintain a food safety program for the activities, a copy of the food safety program.

#### **45 Additional information for applications**

- (1) Safe Food may, by written notice, ask the applicant to—
  - (a) give it further reasonable information or documents about the application by the reasonable date stated in the notice; or
  - (b) allow an authorised officer to inspect premises, vehicles, plant or equipment used, or proposed to be used, by the applicant.
- (2) Safe Food may refuse the application if the applicant does not give it the further information or documents by the stated day, or allow the inspection, without reasonable excuse.
- (3) If Safe Food agrees, the applicant may amend the application before Safe Food has finished considering it.

#### **46 Deciding applications**

- (1) Safe Food must consider the application and either grant or renew the accreditation, with or without conditions, or refuse the application.
- (2) However, Safe Food may also grant a temporary accreditation under section 47.

#### **47 Temporary accreditations**

- (1) Before Safe Food grants an accreditation under section 46(1), it may grant to the applicant a temporary accreditation.
- (2) The temporary accreditation remains in force until the earlier of the following happens—
  - (a) the end of the period stated in the temporary accreditation;
  - (b) the accreditation applied for is granted, or the application is refused, under section 46(1).
- (3) The stated period must not be more than 2 months after the grant of the temporary accreditation.
- (4) A reference in this Act to an accreditation includes a reference to a temporary accreditation.

#### **48 Grant or renewal of accreditations**

- (1) If Safe Food decides to grant or renew the accreditation, it must, within 14 days after making the decision, give the applicant—
  - (a) the accreditation; and
  - (b) if Safe Food decides to impose conditions on the accreditation, an information notice for the decision.
- (2) The accreditation must state the place at which the applicant may produce the primary produce stated in the accreditation.
- (3) If the applicant must prepare and maintain a food safety program under a food safety scheme, Safe Food may grant or renew the accreditation only if satisfied the applicant's food safety program complies with the food safety scheme.
- (4) If Safe Food grants the accreditation, the applicant's food safety program becomes the approved food safety program for the accreditation.





for human or animal consumption and section 53 has been complied with.

## **52 Suspension or cancellation—grounds**

Safe Food may suspend or cancel an accreditation if the chief executive officer believes on reasonable grounds—

- (a) the accreditation was granted in error or because of a materially false or fraudulent document, statement or representation; or
- (b) the holder of the accreditation—
  - (i) has committed, or is committing, an offence against this Act; or
  - (ii) has not complied with a condition of the accreditation; or
  - (iii) has not paid a prescribed fee or other amount payable to Safe Food.

## **53 Amendment, suspension or cancellation—procedure**

- (1) Before amending, suspending or cancelling an accreditation, Safe Food must give the holder of the accreditation a written notice inviting the holder to show why the accreditation should not be amended, suspended or cancelled (the *proposed action*).
- (2) The notice must state the following—
  - (a) the proposed action;
  - (b) the grounds for the proposed action;
  - (c) the facts and circumstances forming the basis for the grounds;
  - (d) if the proposed action is suspension of the accreditation, the proposed suspension period;
  - (e) if the proposed action is to amend the accreditation, the proposed amendment;

- (f) that representations may be made about the notice;
  - (g) how the representations may be made;
  - (h) where the representations may be made or sent;
  - (i) a day and time for making the representations or a period within which the representations must be made.
- (3) The stated day or period must be, or must end, at least 28 days after the notice is given.
- (4) If, after considering all representations made within the stated period, the chief executive officer still considers the proposed action should be taken, Safe Food may—
- (a) if the proposed action is to amend the accreditation—amend the accreditation; and
  - (b) if the proposed action is to suspend the accreditation—suspend the accreditation for no longer than the proposed suspension period; and
  - (c) if the proposed action is to cancel the accreditation—cancel the accreditation or suspend it for a period.
- (5) This section does not apply if the accreditation is amended under section 51(a).

## **54 Immediate suspension**

- (1) This section applies if the chief executive officer believes on reasonable grounds the holder of an accreditation has committed, or is committing, a serious food safety offence.
- (2) The chief executive officer may immediately suspend the accreditation by written notice given to the holder.
- (3) The notice must state the reason for the decision.
- (4) Safe Food must, within 7 days after the chief executive officer gives the notice under subsection (2), give the holder a notice under section 53(2).
- (5) The accreditation is suspended under this section until the earlier of the following happens—

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- (a) Safe Food gives the holder a notice of Safe Food's decision under section 53(4);
- (b) the end of 60 days after the notice under subsection (2) was given to the holder.

## **55 Notice and effect of amendment, suspension or cancellation**

- (1) If Safe Food amends, suspends or cancels an accreditation under section 53, Safe Food must give the accreditation holder an information notice for the decision to amend, suspend or cancel the accreditation.
- (2) An amendment takes effect from the day stated in the information notice.
- (3) If Safe Food suspends the accreditation, it is ineffective during the period of suspension.
- (4) The suspension—
  - (a) may be for the period Safe Food decides; and
  - (b) has effect from—
    - (i) the day the information notice is given; or
    - (ii) if a later day is stated in the information notice—the stated day.
- (5) If Safe Food cancels the accreditation, it ceases to have effect from—
  - (a) the day the information notice is given; or
  - (b) if a later day is stated in the information notice—the stated day.

## **56 Return of amended, suspended or cancelled accreditations**

- (1) If Safe Food amends, suspends or cancels an accreditation, it may, by written notice, ask the holder of the accreditation to

give the accreditation to Safe Food by the reasonable day stated in the notice.

- (2) The holder must comply with the notice unless the holder has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

- (3) After amending an accreditation, Safe Food must return it to the holder.
- (4) If a suspended accreditation is returned to Safe Food, Safe Food must give the accreditation to the holder at the end of the suspension period.

## **Division 4                      Surrender**

### **57                      Surrender of accreditations**

- (1) The holder of an accreditation may surrender the accreditation by written notice given to Safe Food.
- (2) The accreditation must accompany the notice.

## **Part 6                                      Auditing**

### **Division 1                                      Preliminary**

#### **58                      Purpose of auditing system**

The purpose of the auditing system established under this part is to ensure places and activities associated with the production of primary produce comply with this Act.

## **59 Auditors' authority**

An approval as an auditor under this part authorises the holder of the approval to conduct audits under this Act.

## **Division 2 Obtaining approval**

### **60 Applications for approval as auditor**

- (1) An individual may apply to Safe Food for an approval, or renewal of an approval, as an auditor.
- (2) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by the prescribed fee.

### **61 Additional information for applications**

- (1) Safe Food may, by written notice, ask the applicant to give it further reasonable information or documents about the application by the reasonable date stated in the request.
- (2) Safe Food may refuse the application if the applicant does not give it the further information or documents by the stated day, without reasonable excuse.
- (3) If Safe Food agrees, the applicant may amend the application before Safe Food has finished considering it.

### **62 Deciding applications**

- (1) Safe Food must consider the application and either grant or renew the approval, with or without conditions, or refuse the application.
- (2) However, Safe Food may grant or renew the approval only if satisfied—
  - (a) the applicant has the necessary expertise or experience to carry out the functions of an auditor; and

- (b) if the Minister has given Safe Food a written notice of a public sector policy relating to the approval of auditors under section 16(1), the policy has been complied with.
- (3) Without limiting subsection (2), in deciding whether the applicant has the necessary expertise or experience Safe Food may have regard to any guidelines about auditing practices approved by Safe Food.

### **63 Grant or renewal of approvals**

If Safe Food decides to grant or renew the approval, it must, within 14 days after making the decision, give the applicant—

- (a) the approval; and
- (b) if Safe Food imposes conditions on the approval, an information notice for the decision.

### **64 Refusal of applications**

If Safe Food decides to refuse the application, it must, within 14 days after making the decision, give the applicant an information notice for the decision.

### **65 Term of approvals**

An approval remains in force, unless sooner cancelled or suspended, for 1 year.

## **Division 3 Amendment, suspension or cancellation of approvals**

### **66 Amendment—grounds**

Safe Food may amend an approval or add a further condition to the approval—

- (a) with the written agreement of the approval holder; or

- (b) if Safe Food believes the amendment is necessary or desirable to ensure appropriate auditing of places or activities associated with the production of primary produce and section 68 has been complied with.

## **67 Suspension or cancellation—grounds**

Safe Food may suspend or cancel an approval if Safe Food believes on reasonable grounds that—

- (a) the approval was granted in error or because of a materially false or fraudulent document, statement or representation; or
- (b) the holder of the approval—
  - (i) has committed, or is committing, an offence against this Act; or
  - (ii) has, within 5 years, been convicted of an indictable offence; or
  - (iii) has not complied with a condition of the approval; or
  - (iv) has not paid a prescribed fee or other amount payable to Safe Food.

## **68 Amendment, suspension or cancellation—procedure**

- (1) Before amending, suspending or cancelling an approval, Safe Food must give the holder of the approval a written notice inviting the holder to show why the approval should not be amended, suspended or cancelled (the *proposed action*).
- (2) The notice must state the following—
  - (a) the proposed action;
  - (b) the grounds for the proposed action;
  - (c) the facts and circumstances that are the basis for the grounds;



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- (d) if the proposed action is suspension of the approval, the proposed suspension period;
  - (e) if the proposed action is to amend the approval, the proposed amendment;
  - (f) that representations may be made about the notice;
  - (g) how the representations may be made;
  - (h) where the representations may be made or sent;
  - (i) a day and time for making the representations or a period within which the representations must be made.
- (3) The stated day or period must be, or must end, at least 28 days after the notice is given.
- (4) If, after considering all representations made within the stated period, the chief executive officer still considers the proposed action should be taken, Safe Food may—
- (a) if the proposed action is to amend the approval—amend the approval; and
  - (b) if the proposed action is to suspend the approval—suspend the approval for no longer than the proposed suspension period; and
  - (c) if the proposed action is to cancel the approval—cancel the approval or suspend it for a period.
- (5) This subsection does not apply if an approval is amended under section 66(a).

## **69 Immediate suspension of approvals**

- (1) This section applies if the chief executive officer believes on reasonable grounds the holder of an approval is not competent to conduct audits under this Act.
- (2) The chief executive officer may immediately suspend the approval by written notice given to the holder.
- (3) The notice must state the reason for the decision.

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- (4) Safe Food must, within 7 days after the chief executive officer gives the notice under subsection (2), give the holder a notice under section 68(2).
- (5) The approval is suspended under this section until the earlier of the following happens—
  - (a) Safe Food gives the holder a notice of Safe Food's decision under section 68(4);
  - (b) the end of 60 days after the notice under subsection (2) was given to the holder.

## **70 Notice and effect of amendment, suspension or cancellation**

- (1) If Safe Food amends, suspends or cancels an approval under section 68, Safe Food must give the approval holder an information notice for the decision to amend, suspend or cancel the approval.
- (2) An amendment takes effect from the day stated in the information notice.
- (3) If Safe Food suspends the approval, it is ineffective during the period of suspension.
- (4) The suspension—
  - (a) has effect from—
    - (i) the day the information notice is given; or
    - (ii) if a later day is stated in the information notice—the later day; and
  - (b) may be for the period Safe Food decides.
- (5) If Safe Food cancels the approval, it ceases to have effect from—
  - (a) the day the information notice is given; or
  - (b) if a later day is stated in the information notice—the later day.

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## **71 Return of amended, suspended or cancelled approvals**

- (1) If Safe Food amends, suspends or cancels an approval, it may, by written notice, ask the holder of the approval to give the approval to Safe Food by the reasonable day stated in the notice.
- (2) The holder must comply with the notice unless the holder has a reasonable excuse for not complying with it.  
Maximum penalty—40 penalty units.
- (3) After amending an approval, Safe Food must return it to the holder.
- (4) If a suspended approval is returned to Safe Food, Safe Food must give the approval to the holder at the end of the suspension period.

## **Division 4 Surrender**

### **72 Surrender of approvals**

- (1) The holder of an approval may surrender the approval by written notice given to Safe Food.
- (2) The approval must accompany the notice.

## **Division 5 Identity cards and register**

### **73 Auditor's identity card**

- (1) Safe Food must give each auditor an identity card.
- (2) The identity card must—
  - (a) contain a recent colour photograph of the auditor; and
  - (b) contain a copy of the auditor's signature; and
  - (c) identify the individual as an auditor under this Act; and
  - (d) state the conditions of the auditor's approval; and

- (e) state the day, if any, on which the approval expires.

## **74 Register of auditors**

- (1) Safe Food must keep a register of auditors.
- (2) The register must contain the following information about each auditor—
  - (a) the auditor's name;
  - (b) the conditions, if any, of the auditor's approval;
  - (c) any other information decided by Safe Food.
- (3) Safe Food must ensure the register is available for inspection by members of the public during normal office hours at Safe Food's head office.

## **Division 6                      Audit reports and auditors' responsibilities**

### **75 Audit reports**

- (1) An auditor must, within 14 days after completion of an audit under this Act, give a copy of the report about the audit to—
  - (a) Safe Food; and
  - (b) the person audited.Maximum penalty—50 penalty units.
- (2) The audit report must include the following information—
  - (a) the auditor's name;
  - (b) the day the audit started;
  - (c) the day the audit was completed;
  - (d) the duration of the audit;
  - (e) the address of, or other information sufficient to identify, the place at which the audit is conducted;

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- (f) details of the activities audited, and the food safety scheme or food safety program relevant to the audit;
  - (g) whether, in the auditor's opinion—
    - (i) the activities comply with the food safety scheme relating to the activities; or
    - (ii) the auditor needs to conduct a further audit in relation to the person's food safety program;
  - (h) the reasons that the auditor considers the activities comply, or do not comply, with the food safety scheme.

## **76 Responsibilities of auditors**

- (1) If, in the course of conducting the audit, the auditor forms a reasonable belief a person has committed, or is committing, an offence against this Act, the auditor must inform Safe Food of—
  - (a) the person's name and address; and
  - (b) details about the facts and circumstances giving rise to the belief.
- (2) If the offence is a serious food safety offence, the auditor must inform Safe Food—
  - (a) immediately after the auditor forms the reasonable belief unless the auditor has a reasonable excuse for not informing Safe Food immediately; or
  - (b) if the auditor has a reasonable excuse for not informing Safe Food immediately—immediately after the reasonable excuse ceases to have effect.

Maximum penalty—1300 penalty units.
- (3) If the offence is another offence, the auditor must inform Safe Food—
  - (a) within 7 days after the auditor forms the reasonable belief unless the auditor has a reasonable excuse for not informing Safe Food within 7 days; or



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## 80 Supply of unwholesome meat or seafood

- (1) A person must not supply meat or seafood ready for human consumption, or preparation for human consumption, if the person knows, or ought reasonably to know, the meat or seafood is unwholesome.

Maximum penalty—1000 penalty units or imprisonment for 1 year.

- (2) In this section—

*unwholesome* means the meat or seafood is in a condition, or contains a substance, a consumer would ordinarily regard as making the meat or seafood unfit for human consumption.

## 81 Meat substitution

A person must not, during meat processing, do something to the meat—

- (a) with the intention of deceiving someone else about the species of animal the meat is from; or
- (b) that the person knows, or ought reasonably to know, is likely to result in someone else being deceived about the species of animal the meat is from.

Maximum penalty—1500 penalty units.

## 82 Supply of equipment or other things

- (1) This section applies to equipment or another thing that, if used for the purpose for which it is designed or intended to be used, is likely to make primary produce unsafe when the primary produce is supplied to someone.
- (2) A person must not supply the equipment or thing if the person knows, or ought reasonably to know, that the equipment or thing is likely to make the primary produce unsafe.

Maximum penalty—650 penalty units.

## **Part 8                      Enforcement, investigations and offences**

### **Division 1                Enforcement and investigations**

#### **Subdivision 1        Authorised officers**

#### **83      Appointment and qualifications of authorised officers**

- (1) Safe Food may appoint any of the following persons to be an authorised officer—
  - (a) an employee of Safe Food;
  - (b) a public service employee;
  - (c) an employee of a local government if the local government approves of the appointment;
  - (d) an employee of the Commonwealth or another State;
  - (e) an employee of an entity—
    - (i) established under a law of the Commonwealth or another State with functions relating to food safety matters; and
    - (ii) prescribed under a regulation.
- (2) However, Safe Food may appoint a person as an authorised officer only if satisfied the person has the necessary expertise or experience to be an authorised officer.

#### **84      Functions and powers of authorised officers**

- (1) An authorised officer has the function of conducting investigations and inspections to monitor and enforce compliance with this Act.
- (2) An authorised officer has the powers given under this or another Act.



- (3) The powers of an authorised officer may be limited—
  - (a) under a regulation; or
  - (b) under a condition of appointment; or
  - (c) by notice of Safe Food given to the authorised officer.

## **85 Conditions of appointment of authorised officers**

- (1) An authorised officer holds office on the conditions stated in the officer's instrument of appointment.
- (2) An authorised officer—
  - (a) if the appointment provides for a term of appointment, ceases to hold office at the end of the term; and
  - (b) may resign by signed notice of resignation given to Safe Food.

## **86 Authorised officer's identity card**

- (1) Safe Food must give each authorised officer an identity card.
- (2) The identity card must—
  - (a) contain a recent colour photograph of the authorised officer; and
  - (b) contain a copy of the authorised officer's signature; and
  - (c) identify the person as an authorised officer under this Act.
- (3) This section does not prevent the giving of a single identity card to a person for this Act and other Acts.

## **87 Failure to return identity card**

A person who ceases to be an authorised officer must return the person's identity card to Safe Food as soon as practicable, but within 15 business days, after ceasing to be an authorised officer, unless the person has a reasonable excuse for not returning it.

Maximum penalty—10 penalty units.

## **88 Production or display of identity card**

- (1) An authorised officer may exercise a power under this Act in relation to someone else only if the authorised officer—
  - (a) first produces his or her identity card for the person's inspection; or
  - (b) has the identity card displayed so it is clearly visible to the person.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) Failure to comply with this section does not effect the validity of the exercise of the power.

## **Subdivision 2 Power to enter places**

### **89 Power to enter places**

- (1) An authorised officer may enter a place if—
  - (a) its occupier 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) the authorised officer enters the place under section 116(2).
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer 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 officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

## **Subdivision 3 Procedure for entry**

### **90 Entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 89(1)(a).
- (2) Before asking for the consent, the authorised officer 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 officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment 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 officer consent to enter the place and exercise powers under this division; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.
- (6) A court must find the occupier of a place did not consent to an authorised officer entering the place under this division if—

[s 91]

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- (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry under section 89(1)(a); and
- (b) an acknowledgment mentioned in subsection (4) is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

## 91 Application for warrant

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised officer 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.

## 92 Issue of warrant

- (1) The magistrate may issue a warrant 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, may be at the place.
- (2) The warrant must state—
  - (a) that a stated authorised officer may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for the entry; and

- (ii) exercise the authorised officer's powers under this division; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

### 93 Special warrants

- (1) An authorised officer may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the special warrant before the application is sworn.
- (4) After issuing the special warrant, the magistrate must promptly fax a copy (a *facsimile warrant*) to the authorised officer if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the authorised officer—
  - (a) the magistrate must tell the authorised officer—
    - (i) what the terms of the special warrant are; and
    - (ii) the date and time the special warrant is issued; and
  - (b) the authorised officer must complete a form of warrant (a *warrant form*) and write on it—

- (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the special warrant; and
  - (iii) the terms of the special warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.
- (7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised officer completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the special warrant.
- (9) A court must find the exercise of the power by an authorised officer was not authorised by a special warrant if—
  - (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved by the person relying on the lawfulness of the entry that the authorised officer obtained the warrant.

## **94 Warrants—procedure before entry**

- (1) This section applies if an authorised officer named in a warrant issued under this division for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
  - (a) comply with section 88(1);

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- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 93(6), a copy of the facsimile warrant or warrant form;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

## **Subdivision 4 Powers after entering a place**

### **95 General powers after entering places**

- (1) This section applies to an authorised officer who enters a place.
- (2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to the authorised officer only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring or enforcing compliance with this Act, the authorised officer 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 testing; or
  - (d) copy a document at the place; or
  - (e) take into or onto the place any person, equipment and materials the authorised officer reasonably requires for the exercise of a power under this division; or

- (f) require the occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e); or
  - (g) require the occupier of a place, or a person at the place, to give the authorised officer information to help the authorised officer ascertain whether the Act is being complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

## **96 Failure to help authorised officer**

- (1) A person required to give reasonable help under section 95(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person has a reasonable excuse if complying with the requirement might tend to incriminate the person.

## **97 Failure to give information**

- (1) A person required to give information under section 95(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person has a reasonable excuse if complying with the requirement might tend to incriminate the person.



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## Subdivision 5 Power to seize evidence

### 98 Definition for sdiv 5

In this subdivision—

*owner*, of a seized thing, includes the person entitled to possession of it.

### 99 Seizing evidence

- (1) This section applies if—
  - (a) an authorised officer—
    - (i) is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
    - (ii) the authorised officer enters the place after obtaining the necessary consent or warrant; or
  - (b) the authorised officer enters the place under section 116(2).
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place if—
  - (a) the authorised officer 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 officer enters the place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer may seize anything else at the place if the authorised officer 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 officer may seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against this Act.

## 100 Securing seized things

Having seized a thing, an authorised officer 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; or
- (c) if the thing is equipment—make it inoperable.

*Examples of restricting access to a thing—*

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

*Example of making equipment inoperable—*

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

## 101 Tampering with seized things

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

Maximum penalty—100 penalty units.

- (2) If an authorised officer makes seized equipment inoperable, a person must not tamper with the equipment, without an authorised officer's approval.

Maximum penalty—100 penalty units.

- (3) In this section—

*tamper* includes attempt to tamper.

## 102 Powers to support seizure

- (1) To enable a thing to be seized, an authorised officer 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 stated reasonable period.
- (2) The requirement—
  - (a) must be made by notice in the approved form; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by a notice in the approved form as soon as practicable.
- (3) A further requirement may be made under this section about the 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 for subsection (4)—50 penalty units.

## 103 Receipts for seized things

- (1) As soon as practicable after an authorised officer seizes a thing, the authorised officer 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 officer 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, having regard to the thing's nature, condition and value.

#### **104 Authorised officer may dispose of seized primary produce**

- (1) This section applies to primary produce seized under section 99 if an authorised officer believes on reasonable grounds that the primary produce poses a health risk to any person or animal, or is otherwise unfit for consumption or sale.
- (2) The authorised officer may, with the chief executive officer's approval, destroy or dispose of the primary produce in a way decided by the authorised officer.
- (3) If the authorised officer destroys or disposes of primary produce under subsection (2), the officer must give the owner of the primary produce a notice stating—
  - (a) the primary produce has been destroyed or disposed of; and
  - (b) the reason for the destruction or disposal; and
  - (c) that the owner may claim compensation under section 121 for loss or damage caused by the destruction or disposal.

#### **105 Forfeiture by authorised officer**

- (1) A thing that has been seized under this subdivision is forfeited to Safe Food if the authorised officer 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 officer 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 officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (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.

## **106 Forfeiture on conviction**

- (1) On conviction of a person for an offence against this Act, the court may order the forfeiture to Safe Food of anything owned by the person and seized under this subdivision.
- (2) The court may make any order to enforce the forfeiture it considers appropriate.
- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

## **107 Dealing with forfeited things**

- (1) On forfeiture of a thing to Safe Food, the thing becomes Safe Food's property and may be dealt with by Safe Food as it considers appropriate.
- (2) Without limiting subsection (1), Safe Food may destroy or dispose of the thing.

## **108 Recovering costs of destruction or disposal**

Any reasonable cost or expense incurred by Safe Food in destroying or disposing of a thing under this division is a debt owing to Safe Food by—

- (a) if the thing is destroyed or disposed of under section 104(2)—the owner of the thing immediately before its seizure; and
- (b) if the thing is destroyed or disposed of under section 107—the owner of the thing immediately before its forfeiture.

## **109 Return of seized things**

- (1) If a seized thing is not forfeited, or destroyed or disposed of under section 104(2), the authorised officer 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) Despite subsection (1), unless the thing is forfeited, or destroyed or disposed of under section 104(2), the authorised officer must immediately return a thing seized to its owner if the authorised officer stops being satisfied—
  - (a) its continued retention as evidence is necessary; or
  - (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, the offence.

## **110 Access to seized things**

- (1) Until a seized thing is forfeited, destroyed or disposed of under section 104(2) or returned, an authorised officer 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.

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## **Subdivision 6 Power to obtain information**

### **111 Power to require name and address**

- (1) This section applies if—
  - (a) an authorised officer finds a person committing an offence against this Act; or
  - (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the authorised officer to reasonably suspect the person has just committed an offence against this Act.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) When making the requirement, the authorised officer 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 officer may require the person to give evidence of the correctness of the stated name or residential address if the authorised officer reasonably suspects the stated name or address to be false.

### **112 Failure to give name or address**

- (1) A person of whom a requirement is made under section 111 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 officer who suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

### **113 Power to require information**

- (1) This section applies if an authorised officer 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 officer may, by notice given to the person, require the person to give information about the offence to the authorised officer at a stated reasonable place and at a stated reasonable time.
- (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 a person not to give information if giving the information may tend to incriminate the person.

### **114 Power to require production of documents**

- (1) An authorised officer may require a person to make available for inspection by an authorised officer, or produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer, a document required to be kept by the person under this Act.
- (2) The authorised officer may keep the document to copy it.
- (3) If the authorised officer copies a document mentioned in subsection (1), or an entry in the document, the authorised officer 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 officer must return the document to the person as soon as practicable after copying it.



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## **115 Failure to produce documents**

- (1) A person required to make available, or produce, for inspection a document under section 114(1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person has a reasonable excuse if complying with the requirement might tend to incriminate the person.

## **Subdivision 7 Emergency powers of authorised officers**

### **116 Emergency powers**

- (1) This section applies if an authorised officer is satisfied on reasonable grounds—
  - (a) the production of primary produce is being carried out at a place, other than a place, or part of a place, used only for residential purposes; and
  - (b) it is necessary to exercise powers under this section to avoid an imminent risk of death or serious illness of any person from the primary produce.
- (2) The authorised officer may, without a warrant or the consent of the occupier of the place, enter the place.
- (3) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
  - (a) comply with section 88(1);
  - (b) tell the person the authorised officer is permitted under this Act to enter the place;
  - (c) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (4) However, the authorised officer need not comply with subsection (3) if the authorised officer reasonably believes

that immediate entry to the place is required to avoid an imminent risk of death or serious illness of any person.

- (5) Also, the authorised officer may in relation to the primary produce—
  - (a) direct a person at the place to take stated reasonable steps within a stated reasonable period in relation to the primary produce; or
  - (b) take the reasonable steps; or
  - (c) authorise another person to take the reasonable steps.
- (6) The direction may be given orally or by written notice.
- (7) However, if the direction is given orally, the authorised officer must as soon as practicable confirm the direction by written notice given to the person.
- (8) When giving the direction under subsection (5)(a), the authorised officer must warn the person it is an offence not to comply with the direction unless the person has a reasonable excuse.
- (9) If the authorised officer takes the steps, the officer may also exercise any of the powers of an authorised officer under this division.
- (10) The authorised officer may exercise the powers mentioned in subsections (2), (5)(b) and (9) (the *emergency powers*) with the help, and using the force, that is necessary and reasonable in the circumstances.
- (11) In exercising or attempting to exercise emergency powers, an authorised officer must take all reasonable steps to ensure the officer causes as little inconvenience to any person at the place, and does as little damage, as is practicable in the circumstances.
- (12) This section does not limit any power an authorised officer has apart from this section.
- (13) If an authorised officer authorises a person to take steps under subsection (5)(c)—

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- (a) the person may exercise the powers mentioned in subsection (9); and
  - (b) the authorised officer must inform the person—
    - (i) of the steps the person is authorised to take; and
    - (ii) of the person's powers under this section.

### **117 Failure to comply with authorised person's directions in emergency**

A person to whom a direction is given under section 116(5)(a) must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—300 penalty units.

## **Subdivision 8 Power to require compliance**

### **118 Compliance notice**

- (1) This section applies if an authorised officer reasonably believes a person—
  - (a) is committing an offence against this Act; or
  - (b) has committed an offence against this Act.
- (2) The authorised officer may give the person a notice (a ***compliance notice***) requiring the person to—
  - (a) stop committing the offence; or
  - (b) stop committing the offence and rectify the matter; or
  - (c) rectify the matter.
- (3) The compliance notice must state—
  - (a) that the authorised officer believes the person—
    - (i) is committing an offence against this Act; or
    - (ii) has committed an offence against this Act; and

- (b) the offence the authorised officer believes is being, or has been, committed; and
  - (c) briefly, how it is believed the offence is being, or has been committed; and
  - (d) if the notice requires the person to rectify a matter—
    - (i) the matter the authorised officer believes is reasonably capable of being rectified; and
    - (ii) the reasonable steps the person must take to rectify the matter; and
    - (iii) the stated reasonable period in which the person must take the steps.
- (4) The person must comply with the compliance notice unless the person has a reasonable excuse.
- Maximum penalty—300 penalty units.
- (5) If the person does, or does not do, something in contravention of the compliance notice, the authorised officer may take any reasonable action to stop the contravention.
- (6) Any reasonable cost or expense incurred by the authorised officer in doing anything under subsection (5) may be recovered as a debt owing to Safe Food by the person if the person is convicted of the offence mentioned in subsection (3)(b).
- (7) If the compliance notice requires the person to rectify a matter relating to an offence against this Act, the person can not be prosecuted for the offence if the person rectifies the matter within the period stated in the notice.

## **Division 2                      Other enforcement provisions**

### **119      Restraining orders**

- (1) Safe Food may bring a proceeding in the District Court for an order to restrain a person from continuing or repeating a particular activity.

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- (2) The court may make an order under subsection (1) if satisfied—
    - (a) the person will commit an offence against this Act if the person continues or repeats the activity; and
    - (b) the activity may adversely affect the health of persons or animals.
  - (3) If a person fails to comply with an order under this section, the person commits an offence against this subsection.  
Maximum penalty for subsection (3)—1000 penalty units.

## 120 Notice of damage

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

## **121 Compensation**

- (1) A person may claim compensation from Safe Food if the person incurs loss or damage because of the exercise or purported exercise of a power under this part.
- (2) Without limiting subsection (1), compensation may be claimed for loss or damage incurred in complying with a requirement made of the person under this part.
- (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 satisfied it is just to make the order in the circumstances of the particular case.

## **Division 3 Offences**

### **122 False or misleading statements**

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

Maximum penalty—60 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was, without specifying which, false or misleading.

### **123 False or misleading documents**

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

Maximum penalty—60 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is enough to state that the document was, without specifying which, false or misleading.

## **124 Obstructing an authorised officer**

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

Maximum penalty—60 penalty units.

- (2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—
  - (a) it is an offence to obstruct the authorised officer, unless the person has a reasonable excuse; and
  - (b) the authorised officer considers the person’s conduct an obstruction.
- (3) In this section—

*obstruct* includes assault, hinder and threaten, and attempt to obstruct.

## **125 Impersonation of authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—80 penalty units.

## **Part 9                      Review of decisions**

### **126      Who may apply for review**

The following persons may apply, as provided under the QCAT Act, to QCAT for a review of the decision stated for the person—

- (a) a person whose application for an accreditation, or renewal of an accreditation, under part 5 has been granted subject to a condition or refused;
- (b) a person whose accreditation is amended, suspended or cancelled under section 53(4);
- (c) a person whose application for an approval, or renewal of an approval, as an auditor under part 6 has been granted subject to a condition or refused;
- (d) a person whose approval as an auditor is amended, suspended or cancelled under section 68(4).

## **Part 10                      Miscellaneous**

### **132      Review of Act**

- (1) The Minister must review this Act within 6 years after the date of assent to decide whether the provisions remain appropriate.
- (2) The Minister must, as soon as practicable after finishing the review, table a report about the outcome of the review in the Legislative Assembly.

### **132A    Advisory committees**

- (1) The Minister may establish the advisory committees the Minister considers appropriate for this Act.



- (2) An advisory committee has the functions the Minister decides.

### **133 Protecting authorised persons and other persons from liability**

- (1) An authorised officer or a person acting under direction of an authorised officer is not civilly liable for an act done, or an omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability from attaching to a person, the liability instead attaches to Safe Food.

### **134 Summary proceedings for offences**

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

### **135 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about any matter for which provision may be made by a food safety scheme.
- (3) A regulation may impose a penalty of not more than—
  - (a) for a contravention of a provision of a regulation about a matter for which a food safety scheme may be made—50 penalty units; or

- (b) for a contravention of another provision—20 penalty units.

## **Part 11                      Transitional and savings provisions**

### **Division 1                      Transitional and savings provisions for Act No. 45 of 2000**

#### **136      Definitions for div 1**

In this division—

*commencement* means the commencement of the section in which it appears.

*Queensland Livestock and Meat Authority* means the Queensland Livestock and Meat Authority established under the *Meat Industry Act 1993*.

#### **137      Dissolution of Queensland Livestock and Meat Authority**

- (1) On the commencement—
  - (a) the Queensland Livestock and Meat Authority is dissolved; and
  - (b) the administrator of the Queensland Livestock and Meat Authority appointed under the *Meat Industry Act 1993*, part 7A, goes out of office.
- (2) No compensation is payable to the administrator because of subsection (1)(b).

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**138 Transfer of assets and liabilities**

The assets and liabilities of the Queensland Livestock and Meat Authority are transferred to Safe Food and become assets and liabilities of Safe Food.

**139 Administrator becomes chief executive officer of Safe Food**

- (1) The administrator of the Queensland Livestock and Meat Authority immediately before the commencement becomes the chief executive officer of Safe Food.
- (2) The administrator—
  - (a) is taken to be the chief executive officer until the earlier of the following—
    - (i) the day a person is appointed as the chief executive officer under section 17(1);
    - (ii) 31 March 2001; and
  - (b) holds office on the conditions not provided for by this Act that are decided by the Minister.

**140 Employees**

- (1) A person employed by the Queensland Livestock and Meat Authority (the *former employer*) immediately before the commencement becomes an employee of Safe Food.
- (2) Subsection (1) does not—
  - (a) constitute a redundancy or retrenchment of the person's employment by the former employer; or
  - (b) entitle the person to a benefit or payment merely because the person is no longer employed by the former employer; or
  - (c) interrupt the person's continuity of service.

[s 140A]

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- (3) For the Industrial Relations Act, the person's period of employment with the former employer is taken to be an equivalent period of employment with Safe Food.
- (4) Subject to the Industrial Relations Act, the person has the same employment rights against Safe Food that the person had against the former employer immediately before the commencement.
- (5) If an industrial instrument under the Industrial Relations Act bound the person and the former employer immediately before the commencement, it binds the person and Safe Food.
- (6) In this section—

*employment rights* includes existing and accruing rights to—

- (a) remuneration; and
- (b) recreation, long service, sick or other leave; and
- (c) superannuation or other benefits and entitlements.

*Industrial Relations Act* means the *Industrial Relations Act 1999*.

## **Division 2                      Transitional and savings provisions for repeal of Dairy Industry Act 1993**

### **140A    Definitions for div 2**

In this division—

*commencement* means the commencement of the section in which it appears.

*dissolution day* means the dissolution day for the former authority under the repealed Act, section 99I.

*former authority* means the former Queensland Dairy Authority established under the repealed Act.

*part 3 or 4 matter* means a matter that relates to the repealed Act, part 3 or 4.

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*repealed Act* means the repealed *Dairy Industry Act 1993*.

*tribunal* means the Dairy Industry Tribunal established under the repealed Act.

## **140B Existing licences**

- (1) This section applies to a person who, immediately before the commencement, held a licence under the repealed Act.
- (2) The person, on the commencement, is taken to be the holder of an accreditation for the same business in the dairy industry as the licence authorised.
- (3) The parts of the person's Quality Assurance Program about food safety issues are taken to be the person's food safety program.
- (4) Safe Food must review the person's food safety program within 1 year after the commencement to decide if the person's program is an approved program.
- (5) Until Safe Food reviews the food safety program, the program is taken to be the approved program for the accreditation.
- (6) If the licence held by the person immediately before the commencement was subject to a restriction or condition, the accreditation the person is taken to hold on the commencement is also taken to be subject to a condition in the same terms, so far as practicable, as the restriction or condition.
- (7) The accreditation the person is taken to hold ends, unless sooner cancelled or suspended, on the earlier of the following days—
  - (a) the day the balance of the licence period ends;
  - (b) if Safe Food grants an accreditation under section 48, the day the accreditation is granted.
- (8) If Safe Food grants an accreditation before the licence period ends, Safe Food must refund the person the proportion of the licence fee paid for any unused part of the licence period for which the fee was paid.

(9) In this section—

*balance of the licence period* means the part of the licence period after the commencement.

*licence period*, for a licence, means the period for which the licence was granted under the repealed Act, starting on the day the licence was granted.

*Quality Assurance Program* means a program approved by the former authority under the repealed Act.

#### **140C Variation, suspension and cancellation of licences**

If, before the commencement, the former authority—

- (a) has given a person written notice of a proposed variation, suspension or cancellation of the person's licence; and
- (b) has not made a decision about the proposed variation, suspension or cancellation;

the decision must be made under the repealed Act.

#### **140D Existing tribunal appeals about part 3 or 4 matter**

If, before the dissolution day, an appeal to the tribunal about a part 3 or 4 matter has not been decided, it may be continued before, and finished by, the tribunal as if this Act had not been enacted.

#### **140E Appeals to court about part 3 or 4 matter**

(1) If before the dissolution day—

- (a) a person had appealed to a court against a decision of the former authority or the tribunal about a part 3 or 4 matter; and
- (b) the appeal had not been decided;

the court may hear, or continue to hear, and decide the appeal under that Act as if it had not been repealed.

- (2) If—
- (a) because of an event that happened before the dissolution day, a person could have appealed to a court against a decision of the former authority about a part 3 or 4 matter; and
  - (b) the person had not appealed before the dissolution day; the person may appeal under that the repealed Act as if it had not been repealed.

#### **140F Proceedings by or against former authority about part 3 or 4 matters**

- (1) A proceeding by or against the former authority about a part 3 or 4 matter that has not been finished before the dissolution day may be continued and finished by or against Safe Food.
- (2) If, because of an event that happened before the dissolution day, a proceeding could have been started by or against the former authority about a part 3 or 4 matter, it may be started by or against Safe Food.

*Note—*

For other proceedings, see the repealed Act, section 99J (Proceedings by or against authority not about part 3 or 4).

#### **140G Liabilities of former authority for part 3 or 4 matters**

On the dissolution day, a liability of the former authority about a part 3 or 4 matter becomes a liability of Safe Food.

*Note—*

For other liabilities, see the repealed Act, section 99I (Dissolution of authority).

#### **140H Existing authorised persons**

A person who held an appointment as an authorised person under the repealed Act immediately before the commencement is taken to be appointed as an authorised person under this Act.

### **140I References to repealed Act**

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

### **140J Safe Food taken to be the former authority**

In an Act or document, a reference to the former authority must, if the context permits, be taken to be a reference to Safe Food.

## **Division 3 Transitional and savings provisions for repeal of Meat Industry Act 1993**

### **140K Definitions for div 3**

In this division—

*commencement* means the commencement of the section in which it appears.

*former authority* means the former Queensland Livestock and Meat Authority established under the repealed Act.

*repealed Act* means the repealed *Meat Industry Act 1993*.

*tribunal* means the Meat Industry Tribunal established under the repealed Act.

### **140L Existing accreditations**

- (1) This section applies to a person who, immediately before the commencement, held an accreditation under the repealed Act.
- (2) The person, on the commencement, is taken to be the holder of an accreditation for the same business in the meat industry as the accreditation under the repealed Act authorised.
- (3) The parts of the person's program of production about food safety issues are taken to be the person's food safety program.



- (4) Safe Food must review the person's food safety program within 1 year after the commencement to decide if the person's program is an approved program.
- (5) Until Safe Food reviews the food safety program, the program is taken to be the approved program for the accreditation.
- (6) If the accreditation held by the person immediately before the commencement was subject to a restriction or condition, the accreditation the person is taken to hold on the commencement is also taken to be subject to a condition in the same terms, so far as practicable, as the restriction or condition.
- (7) The accreditation the person is taken to hold ends, unless sooner cancelled or suspended, on the earlier of the following days—
  - (a) the day the balance of the accreditation period ends;
  - (b) if Safe Food grants an accreditation under section 48, the day the accreditation is granted.
- (8) If Safe Food grants an accreditation before the accreditation period ends, Safe Food must refund the person the proportion of the accreditation fee for the unused part of the accreditation period.
- (9) In this section—

***accreditation fee***, for an accreditation, means the fee paid for accreditation granted under the repealed Act.

***accreditation period***, for an accreditation, means the period for which the accreditation was granted under the repealed Act, starting on the day the accreditation was granted.

***balance of the accreditation period*** means the part of the accreditation period after the commencement.

***program of production*** means a program approved by the former authority under the repealed Act.

### **140M Existing temporary accreditations**

- (1) This section applies to a person who, immediately before the commencement, held a temporary accreditation under the repealed Act.
- (2) The person, on the commencement, is taken to be the holder of a temporary accreditation for the same business in the meat industry as the temporary accreditation authorised.
- (3) The parts of the person's program of production about food safety issues are taken to be the approved program.
- (4) The temporary accreditation remains in force until the earlier of the following happens—
  - (a) the end of the period stated in the temporary accreditation;
  - (b) the accreditation applied for is granted, or the application is refused, under section 46(1);
  - (c) a temporary accreditation is granted under section 47(1).
- (5) In this section—

*program of production* means a program approved by the former authority under the repealed Act.

### **140N Variation, suspension and cancellation of accreditation**

If, before the commencement, the former authority—

- (a) has given a person written notice of a proposed variation, suspension or cancellation of the person's accreditation; and
- (b) has not made a decision about the proposed variation, suspension or cancellation;

the decision must be made under the repealed Act.

### **140O Existing appeals to tribunal**

- (1) This section applies if an appeal has been made to the tribunal, but not decided, under the repealed Act.

- (2) The proceeding may be continued before, and completed by, the tribunal as if this Act had not been enacted.

#### **140P Appeals to court**

- (1) If—
- (a) a person had appealed to a court under the repealed Act before the commencement against a decision of the former authority or the tribunal; and
  - (b) the appeal had not been decided before the commencement;
- the court may hear, or continue to hear, and decide the appeal under that Act as if it had not been repealed.

- (2) If—
- (a) because of an event that happened before the commencement a person could have appealed to a court under the repealed Act against a decision of the former authority or the tribunal; and
  - (b) the person had not appealed before the commencement;
- the person may appeal under that Act as if it had not been repealed.

#### **140Q Proceedings by or against former authority**

- (1) A proceeding by or against the former authority that has not been finished before the commencement may be continued and finished by or against Safe Food.
- (2) If, because of an event that happened before the commencement, a proceeding could have been started by or against the former authority, it may be started by or against Safe Food.

### **140R Existing meat safety persons**

A person who held an appointment as a meat safety person under the repealed Act immediately before the commencement is taken to be appointed as an authorised person under this Act.

### **140S References to repealed Act**

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

### **140T Safe Food taken to be the former authority**

In an Act or document, a reference to the authority must, if the context permits, be taken to be a reference to Safe Food.

## **Division 4 Transitional provision for Primary Industries and Other Legislation Amendment Act 2003**

### **140U References in existing documents**

In a document in existence, for the purposes of part 2, division 3, immediately before the commencement of this section, a reference to the Minister may, if the context permits, be taken to be a reference to the board.

## **Division 5 Transitional provision for Agriculture and Other Legislation Amendment Act 2020**

### **140V Food Safety Advisory Committee**

- (1) On the commencement, the Food Safety Advisory Committee established under part 3, as in force before the

commencement, is dissolved and the members of the committee go out of office.

- (2) No compensation is payable to a member of the committee because of subsection (1).

## **Part 12                      Repeal of Acts**

### **141      Repeal of Dairy Industry Act 1993**

- (1) The *Dairy Industry Act 1993* is repealed.
- (2) The *Dairy Industry Act 1993*, sections 99I and 99J are declared to be laws to which the *Acts Interpretation Act 1954*, section 20A applies.

### **142      Repeal of Meat Industry Act 1993**

- (1) The *Meat Industry Act 1993* is repealed.
- (2) The *Meat Industry Act 1993*, parts 7 and 7B are declared to be laws to which the *Acts Interpretation Act 1954*, section 20A applies.

# Schedule 1      **Additional provisions about board of Safe Food**

section 16F

## **Part 1                      Directors**

### **1                      Qualifications for appointment**

- (1) A person is not qualified to be, or to continue as, a director if the person—
  - (a) is an insolvent under administration; or
  - (b) is, or has been, convicted of an indictable offence.
- (2) A person is not qualified to be, or to continue as, a director appointed under section 16C(1)(c) (an *appointed director*) if the person is—
  - (a) the holder of an accreditation; or
  - (b) a member or employee of an organisation the functions of which include representing accreditation holders.

### **2                      Duration of appointment**

The appointment of an appointed director is for the term, not longer than 3 years, stated in the director's instrument of appointment.

### **3                      Terms of appointment**

- (1) An appointed director is appointed on a part-time basis.
- (2) Appointed directors are entitled to be paid the remuneration and allowances decided by the Governor in Council.
- (3) In relation to matters not provided under this Act, an appointed director holds office on the terms decided by the Governor in Council.

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#### **4 Termination of appointment**

The Governor in Council may, at any time, terminate the appointment of all appointed directors, or an appointed director, for any reason or none.

#### **4A Resignation of director**

A director may resign by signed written notice given to the Minister.

## **Part 2 Business and meetings of board**

#### **5 Conduct of business**

Subject to this part, the board may conduct its business, including its meetings, in the way it considers appropriate.

#### **6 Committees**

The board may, from time to time, establish a committee to advise on matters referred to the committee by the board.

*Example—*

a risk management committee or an audit committee

#### **7 Times and places of meetings**

- (1) Board meetings are to be held at the times and places the chairperson decides.
- (2) However, the chairperson must call a meeting if asked, in writing, to do so by at least the number of directors forming a quorum for the board.

## **8 Quorum**

A quorum for the board is the number equal to one-half of the number of directors or, if one-half is not a whole number, the next highest whole number.

## **9 Presiding at meetings**

- (1) The chairperson must preside at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent from a board meeting the director chosen by the members present must preside.

## **10 Delegations**

- (1) A director mentioned in section 16C(1)(a) or (b) may delegate the director's functions under this Act to an appropriately qualified senior executive in the public service.
- (2) In this section—  
*function* includes power.

## **11 Conduct of meetings**

- (1) A question at a board meeting is decided by a majority of the votes of the directors present.
- (2) Each director present at the meeting has a vote on each question to be decided and, if the votes are equal, the director presiding also has a casting vote.
- (3) A director present at the meeting who abstains from voting is taken to have voted for the negative.
- (4) The board may hold meetings, or allow directors to take part in its meetings, by using any technology that reasonably allows directors to hear and take part in discussions as they happen.

*Example of use of technology—*  
teleconferencing



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- (5) A director who takes part in a board meeting under subsection (4) is taken to be present at the meeting.
  - (6) A resolution is validly made by the board, even if it is not passed at a board meeting, if—
    - (a) a majority of the directors gives written agreement to the resolution; and
    - (b) notice of the resolution is given under procedures approved by the board.

## **12 Minutes**

The board must keep—

- (a) minutes of its meetings; and
- (b) a record of any resolutions made under section 11(6).

## **13 Disclosure of interests by directors**

- (1) This section applies to a director if—
  - (a) the director has a direct or indirect interest in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper performance of the director's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the director's knowledge, the director must disclose the nature of the interest to a board meeting.
- (3) Unless the board otherwise directs, the director must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board about the issue.
- (4) The director must not be present when the board is considering whether to give a direction under subsection (3).

- (5) If there is another director who must, under subsection (2), also disclose an interest in the issue, the other director must not—
- (a) be present when the board is considering whether to give a direction under subsection (3) about the director; or
  - (b) take part in making the decision about giving the direction.
- (6) If—
- (a) because of this section, a director is not present at a board meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
  - (b) there would be a quorum if the director were present; the remaining directors present are a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (7) A disclosure under subsection (2) must be recorded in the board's minutes.

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## Schedule 2 Dictionary

## section 7

**accreditation** means an accreditation granted under part 5.

**appointed director** see schedule 1, section 1.

**approval** means an approval granted under part 6.

**auditor** means an individual approved as an auditor under part 6.

**authorised officer** means a person appointed as an authorised officer under section 83.

**board** see section 16A.

**chairperson** means the chairperson of the board.

**dairy produce** see section 8.

**directors** see section 16C.

**food** means a substance ordinarily consumed, or intended for consumption, by humans or animals.

**food safety hazard**, for primary produce, means a thing or a situation that has the potential to cause the produce not to comply with—

- (a) if a compulsory standard applies under a regulation for a requirement under the regulation—the compulsory standard for the requirement; or
- (b) if an advisory standard applies under a regulation for a requirement under the regulation—
  - (i) the advisory standard for the requirement; or
  - (ii) if a program is following another way that gives the same or better level of risk for the requirement—the way stated in the program.

*Example—*

A food safety hazard exists if—

- (a) milk supplied to an accreditation holder who processes dairy produce has a residue level greater than the MRLs stated in the compulsory standard for a requirement; but
- (b) the milk is not unacceptable.

***food safety scheme*** means a food safety scheme made under section 39.

***food standards code*** means the Australia New Zealand Food Standards Code as defined under the *Food Standards Australia New Zealand Act 1991* (Cwlth).

***health chief executive*** means the chief executive of the department responsible for the administration of the *Hospital and Health Boards Act 2011*.

***holder***—

- (a) of an accreditation, means the person to whom the accreditation is granted; or
- (b) of an approval, means the person to whom the approval is granted.

***indictable offence*** includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659, applies to the indictable offence.

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

***meat*** see section 9.

***meat processing*** means—

- (a) the killing of animals for meat; or
- (b) anything done to a killed animal, or part of a killed animal, to produce meat; or
- (c) the preparation, packaging or display of meat for retail sale.

***MRLs*** means maximum residue limits within the meaning of the food standards code, Part 1.4 ‘Contaminants and residues’, Standard 1.4.2 ‘Maximum residue limits (Australia only)’.

***owner***, for part 8, division 1, subdivision 5, see section 98.

**packaging** does not include labelling.

**place** includes—

- (a) land or premises; and
- (b) a vehicle.

**premises** includes—

- (a) a building or structure, or part of a building or structure; and
- (b) land on which a building or structure is situated.

**primary produce** see section 10.

**production of primary produce** see section 11.

**public place** means a place the public is entitled to use, open to the public or used by the public, whether or not on payment of an amount.

**Safe Food** see section 13(1).

**seafood** means any of the following intended for human or animal consumption—

- (a) marine, estuarine or freshwater fish or other aquatic animals;
- (b) aquatic plants.

**sell** includes the following—

- (a) barter or exchange;
- (b) offer or agree to sell;
- (c) invite to treat or expose for sale;
- (d) cause or permit to be sold;
- (e) supply under a lease, exchange, hiring or other commercial arrangement.

**serious food safety offence** means an offence against part 7.

**smallgoods** means—

- (a) dried meat; or

*Example of dried meat—*

beef jerky

- (b) uncooked and fermented minced meat products; or

*Example for paragraph (b)—*

salami

- (c) cooked offal or minced meat products; or

*Examples for paragraph (c)—*

1 chicken liver pâté

2 luncheon sausage

- (d) cooked whole meat products; or

*Example for paragraph (d)—*

ham

- (e) bacon.

**supply** includes the following—

- (a) distribute, give or sell;  
(b) offer or agree to distribute, give or sell;  
(c) cause or permit to be distributed, given or sold;  
(d) attempt to supply or do an act mentioned in paragraphs (a) to (c).

**unsafe**, for primary produce, means—

- (a) if the primary produce is ready for immediate consumption—the primary produce, or food produced by a process involving a substantial change to the primary produce, is likely to cause harm to a person who consumes the primary produce or food if it is prepared, stored or consumed according to its reasonable intended use; or  
(b) if the primary produce is not ready for immediate consumption—food produced by the production of the primary produce, or another process involving a substantial change to the primary produce, is likely to cause harm to a person who consumes the food if it is

prepared, stored or consumed according to its reasonable intended use.

*vehicle* means anything used for carrying anything or any person by land, water or air.