

# Food Regulation Agreement

**AN AGREEMENT** made the 6 July 2010 between:

The COMMONWEALTH OF AUSTRALIA ('the Commonwealth') and

The STATE OF NEW SOUTH WALES;

The STATE OF VICTORIA;

The STATE OF QUEENSLAND;

The STATE OF WESTERN AUSTRALIA;

The STATE OF SOUTH AUSTRALIA;

The STATE OF TASMANIA;

The AUSTRALIAN CAPITAL TERRITORY; and

The NORTHERN TERRITORY OF AUSTRALIA  
collectively called 'the States and Territories'.

## **WHEREAS -**

A. The Commonwealth and the States and Territories agree that there is a need to maintain a co-operative national system of food regulation with the following objectives:

(a) providing safe food controls for the purpose of protecting public health and safety;

(b) reducing the regulatory burden on the food sector;

(c) facilitating the harmonisation of Australia's domestic and export food standards and their harmonisation with international food standards;

(d) providing cost effective compliance and enforcement arrangements for industry, government and consumers;

(e) providing a consistent regulatory approach across Australia through nationally agreed policy, standards and enforcement procedures;

(f) recognising that responsibility for food safety encompasses all levels of government and a variety of portfolios; and

(g) supporting the joint Australia and New Zealand efforts to harmonise food standards.

B. The Commonwealth and the States and Territories agree that there is a need to ensure that all sectors in the food supply chain manage their food safety risks but recognise that the mechanisms for ensuring that this happens will vary from sector to sector.

C. This Agreement constitutes the agreement made between the Commonwealth and the States and Territories on 3 November 2000 as amended in the agreement dated 6 December 2002, 3 July 2008 and as now amended.

Note: The Agreement between the Commonwealth of Australia, the States, the Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards made on 30 July 1991 ceased to operate upon the commencement of the 2000 Agreement.

D. Under this Agreement, the Parties have established a Council, known as the Australia and New Zealand Food Regulation Ministerial Council, with the functions set out in Part III of this Agreement and roles and responsibilities set out under the *Food Standards Australia New Zealand Act 1991* (the Commonwealth Act).

E. The Commonwealth has established the authority entitled Food Standards Australia New Zealand under the Commonwealth Act, to give effect to the Food Regulation Agreement as in force on 1 July 2002, with the functions set out in Part 2 of that Commonwealth Act and managed by the Board as constituted under Part 4, Division 1 of that Commonwealth Act.

F. The Government of Australia and the Government of New Zealand entered into an Agreement that came into force on 1 July 2002 entitled 'Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system'.

Note: This Agreement replaced the agreement between the Government of Australia and the Government of New Zealand that came into force on 5 July 1996 for establishing a system for the development of joint food standards.

## **IT IS AGREED THAT -**

### **PART I - PURPOSE**

1. The purpose of this Agreement is to give effect to a national approach to food regulation within Australia.

### **PART II - INTERPRETATION**

2. In this Agreement -

(a) 'COAG' means the Council of Australian Governments;

'Commonwealth Act' means the *Food Standards Australia New Zealand Act 1991* (Cth), which was previously known as the *Australia New Zealand Food Authority Act 1991*, as in force from time to time;

'Codex Alimentarius' means the code of international food standards set by the Codex Alimentarius Commission to guide and promote the elaboration and establishment of definitions and requirements for foods, to assist their harmonisation and, in doing so, to facilitate international trade;

'consistent' means that the wording of the jurisdiction's provision may differ, if necessary, from the provision in Annex A or Annex B to this Agreement. However, the provision must deal with the same subject matter, in a manner appropriate for the legal regime of the jurisdiction, and must have the same intent and effect as the particular provision being enacted;

'draft standard or variation' has the same meaning as that phrase in Part 3, Division 3 of the Commonwealth Act;

'food legislation' means the laws regulating the packaging, labelling, sale, handling and distribution of food;

'food standard', where the context permits, includes a draft standard or variation and an urgent standard;

'FSANZ' means Food Standards Australia New Zealand, formerly established under this Agreement and continued in existence under Part 2 of the Commonwealth Act;

'in the same terms' means that the same words must be used in the provision in the jurisdiction's Food Legislation as is used in the provision in Annex A to this Agreement, subject to the Parliamentary conventions of the jurisdiction;

'jurisdiction' means the Parties to this Agreement and the Government of New Zealand;

'lead Minister' means a Minister who is a member of the Ministerial Council and is nominated by each of the Parties to be responsible to the Ministerial Council for the responses of that Party, or is nominated by the Government of New Zealand to be responsible to the Ministerial Council for the responses of the Government of New Zealand, pursuant to Part III of the Agreement;

'Ministerial Council' means the Australia and New Zealand Food Regulation Ministerial Council, established under this Agreement;

'Party' means a party to this Agreement;

'Standing Committee' means the Standing Committee of Senior Officials to the Ministerial Council, known as the Food Regulation Standing Committee and established under this Agreement; and

'urgent standard' means a standard or variation approved by FSANZ as a result of an 'urgent application' or an 'urgent proposal', as those terms are defined in the Commonwealth Act.

(b) a reference to a Part is a reference to a Part of this Agreement;

(c) a reference to a clause is a reference to a clause of this Agreement;

(d) words importing the singular include the plural and vice versa; and

(e) words importing a gender include the other gender.

## **PART III - ADMINISTRATIVE ARRANGEMENTS**

### **Australia and New Zealand Food Regulation Ministerial Council**

3. The Australia and New Zealand Food Regulation Ministerial Council, established under this Agreement:

- (a) has responsibility for:
  - (i) the development of domestic food regulatory policy;
  - (ii) the development of policy guidelines for setting domestic food standards;
  - (iii) the promotion of harmonised food standards within Australia between the Parties (harmonisation of domestic standards between States and Territories and of domestic standards with export standards) and with Codex Alimentarius (harmonisation of domestic and export standards with international food standards set by Codex Alimentarius);
  - (iv) the general oversight of the implementation of domestic food regulation and standards; and
  - (v) the promotion of a consistent approach to the compliance with, and enforcement of, food standards;
- (b) consists of one or more members representing each Party, and the Government of New Zealand, being the Minister for Health of each Party or Government and other Ministers nominated by that Party or Government with prime responsibility for matters with which this agreement is concerned;
- (c) is chaired by a Minister with responsibility for the Commonwealth Health portfolio and supported by a Secretariat provided by that Minister's portfolio;
- (d) will operate under the following arrangements:
  - (i) each Party, and the Government of New Zealand, shall have one vote on a proposed resolution of the Ministerial Council and this vote shall represent the views of all Ministers of the Party, or Government of New Zealand;
  - (ii) only a lead Minister representing a Party (or his or her designated proxy for a particular meeting) and the lead Minister representing the Government of New Zealand shall have the right to vote on a resolution proposed by the Ministerial Council;
  - (iii) where the lead Minister representing a Party on the Ministerial Council is unable to be present at a meeting at which a vote is to be taken, that lead Minister may:
    - (A) advise the Chairperson of the voting intentions of his or her Party, in writing by mail, teleprinter, facsimile or other mode of electronic communication prior to the meeting; or
    - (B) if the lead Minister has not advised the Chairperson of his or her voting intentions in accordance with clause 3(d)(iii)(A), by notice in writing to the Chairperson appoint another person to act as his or her proxy at that meeting and to vote on that resolution in the lead Minister's place;

- (iiia) where the lead Minister representing the Government of New Zealand on the Ministerial Council is unable to be present at a meeting at which a vote is to be taken, that lead Minister may advise the Chairperson of the voting intentions of his or her Government, in writing by mail, teleprinter, facsimile or other mode of electronic communication prior to the meeting;
  - (iv) a vote under clause 3(d)(iii) or 3(d)(iiia) will have the same effect as if the lead Minister representing a Party or the Government of New Zealand (as the case may be), were present and voting at the meeting;
  - (v) a decision of the Ministerial Council may be made without a meeting being convened and held;
  - (vi) a vote on a resolution, either at a meeting or out-of-session, will be carried by a simple majority of all jurisdictions;
  - (via) a vote on a resolution, either at a meeting or out-of-session, concerning a request for a review of a draft standard or variation under clause 3(e), will be carried by consensus if possible, or if no consensus is possible by a simple majority of all jurisdictions;
  - (vii) subject to this Agreement, the Ministerial Council may determine its own procedures and for that purpose make rules of procedure, including rules relating to notice of meeting, quorum and conduct of business at meetings, and may from time to time alter such rules; and
  - (viii) the Ministerial Council shall hold a meeting at least once in each calendar year;
- (e) will request FSANZ to review the draft standard or variations if:
- (a) FSANZ notifies the Ministerial Council that FSANZ has approved a draft standard or variation; and
  - (b) the Ministerial Council considers that one or more of the following criteria apply to the draft standard or variation:
    - (i) it is not consistent with existing policy guidelines set by the Ministerial Council;
    - (ii) it is not consistent with the objectives of the legislation which establishes FSANZ;
    - (iii) it does not protect public health and safety;
    - (iv) it does not promote consistency between domestic and international food standards where these are at variance;
    - (v) it does not provide adequate information to enable informed choice;
    - (vi) it is difficult to enforce or comply with in both practical or resource terms;
    - (vii) it places an unreasonable cost burden on industry or consumers;
- (f). will ensure that a request for review made by the Ministerial Council under clause 3(e) includes details of:
- (i) the criterion, or criteria, that the Ministerial Council considered to be applicable to the draft standard or variation; and
  - (ii) the rationale and evidence that supports the Council's decision that the criterion or criteria is, or are (as the case may be), applicable;

(fa) will make public any decision by the Ministerial Council to request a review of a draft standard or variation, and the reasons for and evidence supporting that decision.

(g) has the power to amend or reject the draft standard or variation if:

(i) it receives notice from FSANZ that, subsequent to a review undertaken under clause 3(e), FSANZ has decided to reaffirm a draft standard or variation (either in its entirety or subject to amendments) and

(ii) it is agreed that one or more of the criteria in clause 3(e) still applies to the draft standard or variation,

provided the Ministerial Council complies with the Commonwealth Act in doing so;

(h) has the same obligations and powers in relation to urgent standards as it has under clauses 3(e), 3(f), 3(fa) and 3(g) in relation to draft standards and variations, except that for urgent standards the reference in clause 3(g) to 'amend or reject' is replaced with a reference to 'amend or revoke'; and

(i) can request FSANZ review an existing standard if the Ministerial Council considers that one or more of the criteria in clause 3(e) applies to that existing standard.

4. (a) Where:

(i) the Ministerial Council notifies FSANZ that it does not intend to request FSANZ to review a draft standard or variation under clauses 3(e); or

(ii) the Ministerial Council notifies FSANZ that it does not intend to amend or reject the draft standard or variation under clause 3(g); or

(iii) the Ministerial Council informs FSANZ that it has amended the draft standard or variation under clause 3(g),

the Commonwealth Act shall require FSANZ to publish details about the draft standard or variation, as amended by the Ministerial Council if applicable, in various manners (including publication in the Commonwealth of Australia Gazette) as soon as practicable after receiving the notice from the Ministerial Council.

(b) The Parties agree that the Commonwealth Act will require FSANZ to publish in various manners (including publication in the Commonwealth of Australia Gazette), details about any amendment or revocation of an urgent standard if the Ministerial Council exercises its powers under clause 3(h).

5. The Parties shall invite the President of the Australian Local Government Association, or his delegate, to participate in the activities of the Ministerial Council as an observer.

### **Food Regulation Standing Committee**

6. The Food Regulation Standing Committee, established under this Agreement:

(a) has the functions of:

(i) co-ordinating policy advice to the Ministerial Council; and

(ii) ensuring a nationally consistent approach to the implementation and enforcement of food standards;

(b) has a membership reflecting the Ministerial Council membership;

(c) is to be chaired by the Secretary of the Department for which the Chairperson of the Ministerial Council has portfolio responsibility; and

(d) is to be supported by the Ministerial Council secretariat.

7. The Parties shall invite the Australian Local Government Association to be a full participating member of the Standing Committee.

### **Consultative Mechanism**

8. For the development of policy on food regulation and to seek input and advice from 'Stakeholders' the Ministerial Council has established a flexible approach to consultation, known as the Consultative Mechanism. The Consultative Mechanism was established in accordance with the processes agreed by the Parties and set out in the Principles and Protocols document published on the food regulation website, [www.foodsecretariat.health.gov.au](http://www.foodsecretariat.health.gov.au).

9. The Consultative Mechanism:

(a) shall

(i) provide for the views of stakeholders to be considered by the Ministerial Council when setting food regulation policy guidelines;

(ii) inform the policy guideline development process;

(iii) provide for increased accountability and transparency in decision making on policy guidelines; and

(iv) enhance stakeholder confidence in the food regulatory system and build relationships with those developing policy.

(b) shall accommodate the diversity of stakeholders across Australia and New Zealand including:

(i) Primary production;

(ii) Processed food;

(iii) Food retail;

(iv) Food service;

(v) Consumers;

(vi) Public health professionals;

(vii) Small business.

## **PART IV - FOOD LEGISLATION AND ADOPTION OF FOOD STANDARDS**

### **State and Territory Food Acts**

10. The States and Territories will use their best endeavours to ensure that their respective Parliaments retain in force, legislation that complies with clause 13 and which gives effect to

the provisions listed at Annex A and Annex B of this Agreement which provide for the effective and consistent administration and enforcement of the Food Standards Code (including the Food Safety Standards).

11. The legislation that each State and Territory must make their best endeavours to keep current and retain in force:

(a) must contain provisions that are either:-

(i) in the same terms as all of those contained in Annex A of this Agreement, noting that the words in square brackets are optional; or

(ii) if the State or Territory has separate legislation governing safe primary food production, consistent with all of those contained in Annex A of this Agreement noting that the words in square brackets are optional;

(b) may contain whichever provisions it chooses to include from those contained in Annex B of this Agreement. These provisions are administrative in nature and, because of the differing administrative or enforcement arrangements of particular jurisdictions, do not need to be adopted in the same terms by the States and Territories but, rather, can be adopted in a manner consistent with the relevant provision in Annex B; and

(c) may contain additional provisions that do not conflict with any of the provisions enacted pursuant to clause 11(a) or 11(b).

12. Where a State or Territory prescribes a food production activity for the purposes of the definition of 'primary food production' in Annex A of this Agreement, it will advise the Ministerial Council of its intentions in order to promote national consistency.

13. States and Territories shall set penalties, whether by dollar amounts or by penalty units, for offences in the legislation submitted in accordance with clause 11 that are the same as, or as close as possible to (recognising the limits imposed by that jurisdiction's general penalty provisions scheme), the penalties for offences that are contained in Annex A of this Agreement and the penalties for offences that have been included from Annex B.

### **Amendment of the Annexes**

14. Where a Party considers that Annex A or the intent of any of the provisions of Annex B should be amended, that jurisdiction will recommend its proposed amendments to the Ministerial Council.

15. Where the Ministerial Council agrees, by a majority vote, to a recommendation under clause 14, it will refer the proposed amendments to the Parliamentary Counsels' Committee for drafting.

16. Where the Ministerial Council does not agree, by a majority vote, with the proposed amendment, the amendment will not be made.

17. A State or Territory may introduce into Parliament, a Bill to amend its Act if it is necessary to do so as a matter of urgency in order to ensure continuous and effective administration or enforcement of its Act. The State or Territory must immediately report any such Bill introduced to the Ministerial Council. The Ministerial Council, at its next meeting,



will consider any inconsistencies between the introduced Bill and the Annex A provisions and may agree, by majority vote, to include appropriate amendments to the relevant Annex of this Agreement in order to maintain national consistency.

18. After amendment of an Annex under clause 15, States and Territories will use their best endeavours to submit to their respective Parliaments in accordance with clause 11, legislation which gives effect to the amendment.

### **Adoption of Food Standards**

19. The States and Territories will take such legislative or other steps as are necessary to adopt or incorporate as food standards in force under the food legislation of the State or Territory, the food standards (including variations to those standards) that are from time to time:

(a) developed by FSANZ or the Australian Pesticides and Veterinary Medicines Authority (APVMA); and

(b) published in the Commonwealth of Australia Gazette.

20. Such standards are to take effect on the date specified in the Gazette.

21. Subject to clause 24, no State or Territory shall, subsequent to the steps taken pursuant to clause 19, amend the food standards referred to in that clause.

22. No State or Territory shall, by legislation or other means, establish or amend a food standard other than in accordance with this Agreement.

23. It is hereby agreed that a food standard, developed by FSANZ and published in the Commonwealth of Australia Gazette, may include a provision in respect of a State or Territory or part of a State or Territory where the Ministerial Council is satisfied that the provision is necessary because of exceptional conditions in that State or Territory and that the provision would not present a risk to public health or safety or contravene Australia's international treaty obligations.

24. Where a State or Territory determines that an issue affecting public health and safety requires a new food standard, or variation of a standard adopted pursuant to clause 19, and that the circumstances affecting public health and safety would not allow time for the steps pursuant to clause 19 to be taken, the State or Territory may, under the food legislation of the State or Territory, adopt or vary a food standard accordingly, provided that:

(a) the lead Minister for that State or Territory notifies FSANZ of its intention to adopt or vary the food standard;

(b) the new or varied food standard applies for a period of no longer than twelve months from the date of its adoption or variation; and

(c) the lead Minister for that State or Territory makes, on so determining, an immediate application to FSANZ to adopt the new food standard or to vary the relevant food standard.

25. An application to FSANZ pursuant to clause 24(c) shall be expedited by FSANZ so that it must notify the Ministerial Council of any approved standard arising from its consideration of that application within six months of the application being made.

26. Where a State or Territory determines that requirements relating to mandatory food safety programs are necessary in that State or Territory, the State or Territory may amend its food legislation to require mandatory food safety programs.

27. To promote national consistency, the States and Territories will work towards a best practice model for food safety programs.

## **PART V - COMMENCEMENT OF THIS AGREEMENT**

28. The Parties acknowledge and agree that the amendments to Part III clause 3(f), (g) and 4(a) of this amended Agreement cannot be given full effect unless and until the day on which an amendment of the 'Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system', that came into force on 1 July 2002, enters into force to reduce from two to one the number of occasions on which the Council may request FSANZ to review a draft standard or variation.

29. Until the agreement between Australia and New Zealand referred to in clause 28 comes into force, the Parties shall retain clause 3(f), (g) and 4(a) in the following terms:

*3(f) if the Ministerial Council receives notice from FSANZ that, subsequent to a review undertaken under clause 3(e), FSANZ has decided to reaffirm a draft standard or variation (either in its entirety or subject to amendments), request FSANZ to review the draft standard or variation a second time if it is agreed, by a majority vote, that one or more of the criteria in clause 3(e) applies to the standard;*

*3(g) have the power to amend or reject a draft standard or variation that has been reviewed a second time under clause 3(f) if it is agreed, by a majority vote, that one or more of the criteria in clause 3(e) still applies to the standard, provided the Ministerial Council complies with the Commonwealth Act in doing so;*

*4(a) Where:*

- (i) the Ministerial Council notifies FSANZ that it does not intend to request FSANZ to review a draft standard or variation under clauses 3(e) or 3(f); or*
- (ii) the Ministerial Council notifies FSANZ that it does not intend to amend or reject the draft standard or variation under clause 3(g); or*
- (iii) the Ministerial Council informs FSANZ that it has amended the draft standard or variation under clause 3(g),*

*the Commonwealth Act shall require FSANZ to publish details about the draft standard or variation, as amended by the Ministerial Council if applicable, in various manners (including publication in the Commonwealth of Australia Gazette) as soon as practicable after receiving the notice from the Ministerial Council.*

30. The Parties further acknowledge and agree that the amendments to Part III clause 3 of this amended Agreement cannot be given full effect unless and until the day on which an amendment of the 'Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system', that came into force on 1 July 2002, enters into force to remove the ability for any Lead Minister on the Ministerial Council to request a review of a draft standard.

31. Until the agreement between Australia and New Zealand referred to in clause 30 comes into force, the Parties shall retain clause 3 of the existing agreement.

## **PART VI - REVIEW OF IMPLEMENTATION AND EFFECTIVENESS**

30. The Parties shall submit each year an update on key issues and associated outcomes deliberated by the Ministerial Council and Standing Committee during the preceding financial year to COAG.

31. Where a Party considers that this Agreement should be reviewed, it may request consultation with the other Parties to agree to conduct and conclude jointly a review of the effectiveness of this Agreement at a time mutually agreed by the Parties.

## **PART VII - AMENDMENT OR VARIATION OF AGREEMENT**

32. Where a Party considers that this Agreement should be amended, it may request consultations with the other Parties to this end, except in respect of amendments to Annexes A and B which may only be amended in accordance with clauses 14 to 18.

33. Amendments to this Agreement, other than amendments to Annex A or B, may only be made with the written consent of all Parties.

34. Any agreed amendments to the Agreement shall be contained in a document distributed to all Parties and which shall include a reference to the date on which the amendment shall come into force.

## **PART VIII - DISPUTE RESOLUTION**

35. Where a dispute (other than a dispute in connection with the contents of a food standard or variation of a food standard) arises under this Agreement:

- (a) the Parties shall require the members of the Ministerial Council to attempt to resolve the dispute in the first instance;
- (b) if this fails, the Parties may refer the dispute to COAG to seek a resolution to the dispute through COAG processes.

## **PART IX - WITHDRAWAL AND TERMINATION**

36. Any Party may withdraw from this Agreement provided it gives not less than 12 months notice in writing to each of the other Parties.

37. Withdrawal from the Agreement by any Party shall result in the Agreement being terminated.

38. Upon receiving notice from a Party that they wish to withdraw from the Agreement, the Commonwealth shall notify the Government of New Zealand to this effect.

# Model Food Provisions—Annex A

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## Model Food Provisions—Annex A

### Part 1 Preliminary

#### 1 Objects of Act

The objects of this Act include the following:

- (a) to ensure food for sale is both safe and suitable for human consumption,
- (b) to prevent misleading conduct in connection with the sale of food,
- (c) to provide for the application in this jurisdiction of the Food Standards Code.

#### 2 Definitions

(1) In this Act:

**advertisement** means:

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

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

**analysis** includes any examination or testing of food or any other thing.

**animal** includes an amphibian, bird, crustacean, fish, mollusc or reptile.

**equipment** means the whole or part of:

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

**food** has the meaning given by section 3.

**food business** has the meaning given by section 4.

**Food Safety Standards** means the standards contained in Chapter 3 of the Food Standards Code.

**Food Standards Code** means the Australia New Zealand Food Standards Code as defined in the *Australia New Zealand Food Authority Act 1991* of the Commonwealth [as adopted or incorporated by the regulations].

**Food transport vehicle** means a vehicle used for the transport of food for sale.

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

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

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

**premises** includes:

- (a) land (whether or not vacant), or
- (b) the whole or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature), or
- (c) a pontoon, or
- (d) a vehicle (other than a food transport vehicle while it is engaged in the transport of food).

**primary food production** has the meaning given by section 5.

**proprietor** of a food business means:

- (a) the person carrying on the food business, or
- (b) if that person cannot be identified—the person in charge of the food business.

**recall order** means an order under Part 3 requiring the recall or disposal, or both, of any food.



**sell** includes:

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

**unsafe** has the meaning given by section 6.

**unsuitable** has the meaning given by section 7.

**vehicle** means any means of transport, whether self-propelled or not, and whether used on land or sea or in the air.

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

### 3 Meaning of "food"

(1) In this Act, **food** includes:

- (a) any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared), or
- (b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a), or
- (c) any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid, or
- (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum, or
- (e) any substance or thing declared to be a food under a declaration in force under section 3B of the *Australia New Zealand Food Authority Act 1991* of the Commonwealth [and prescribed by the regulations for the purposes of this paragraph],

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

- (2) However, **food** does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth.
- (3) To avoid doubt, **food** may include live animals and plants.

### 4 Meaning of "food business"

In this Act, **food business** means a business, enterprise or activity (other than a business, enterprise or activity that is primary food production) that involves:

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

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

5 Meaning of "primary food production"

(1) In this Act, ***primary food production*** means the growing, raising, cultivation, picking, harvesting, collection or catching of food, and includes the following:

- (a) the transportation or delivery of food on, from or between the premises on which it was grown, raised, cultivated, picked, harvested, collected or caught,
- (b) the packing, treating (for example, washing) or storing of food on the premises on which it was grown, raised, cultivated, picked, harvested, collected or caught,
- (c) the storage of food in a silo that is not connected with a food processing operation and the transportation or delivery of food from, between or to such silos,
- (d) the sale of livestock at saleyards and the transportation of livestock to and from saleyards,
- (e) any other food production activity that is regulated by or under an Act prescribed by the regulations for the purposes of this subsection.

(2) However, ***primary food production*** does not include:

- (a) any process involving the substantial transformation of food (for example, manufacturing or canning), regardless of whether the process is carried out on the premises on which the food was grown, cultivated, picked, harvested, collected or caught, or
- (b) the sale or service of food directly to the public, or
- (c) any other food production activity that is prescribed by the regulations for the purposes of this subsection.

**Note.** Section 5 (2) (c) enables regulations to be made prescribing food production activities that are not included in the definition of primary food production. Such a regulation might be made, for example, to prescribe a food production activity in relation to which significant and unmanaged food safety hazards have been identified.

6 Meaning of "unsafe" food

(1) For the purposes of this Act, food is ***unsafe*** at a particular time if it would be likely to cause physical harm to a person who might later consume it, assuming:

- (a) it was, after that particular time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use, and

- (b) nothing happened to it after that particular time and before being consumed by the person that would prevent its being used for its reasonable intended use, and
  - (c) it was consumed by the person according to its reasonable intended use.
- (2) However, food is not unsafe for the purposes of this Act merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons.
- (3) In subsection (1), *processes* include processes involving storage and preparation.

#### 7 Meaning of "unsuitable" food

- (1) For the purposes of this Act, food is *unsuitable* if it is food that:
- (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use, or
  - (b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use, or
  - (c) is the product of a diseased animal, or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption, or
  - (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.
- (2) However, food is not unsuitable for the purposes of this Act merely because:
- (a) at any particular time before it is sold for human consumption it contains an agricultural or veterinary chemical, or
  - (b) when it is sold for human consumption it contains an agricultural or veterinary chemical, so long as it does not contain the chemical in an amount that contravenes the Food Standards Code, or
  - (c) it contains a metal or non-metal contaminant (within the meaning of the Food Standards Code) in an amount that does not contravene the permitted level for the contaminant as specified in the Food Standards Code, or
  - (d) it contains any matter or substance that is permitted by the Food Standards Code.

- (3) In this section, ***slaughter*** of an animal includes the killing of an animal in the process of capturing, taking or harvesting it for the purposes of preparing it for use as food.

**8 Application of Act to primary food production**

- (1) Parts 5, 7 and 8 [of Annex B] do not apply to or in respect of primary food production.
- (2) The functions conferred on authorised officers by Parts 4 and 6 [of Annex B] may only be exercised in respect of primary food production:
  - (a) to enable the investigation and prosecution of offences against this Act or the regulations, or
  - (b) in connection with the making or enforcement of emergency orders under Part 3.

**Note.** The definition of ***food business*** excludes primary food production.

## Part 2 Offences relating to food

### Division 1 Serious offences relating to food

#### 9 Handling of food in unsafe manner

A person must not handle food intended for sale in a manner that the person knows will render, or is likely to render, the food unsafe.

Maximum penalty: \$100,000 or imprisonment for 2 years, or both, in the case of an individual and \$500,000 in the case of a corporation.

#### 10 Sale of unsafe food

A person must not sell food that the person knows is unsafe.

Maximum penalty: \$100,000 or imprisonment for 2 years, or both, in the case of an individual and \$500,000 in the case of a corporation.

#### 11 False description of food

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

Maximum penalty: \$100,000 or imprisonment for 2 years, or both, in the case of an individual and \$500,000 in the case of a corporation.

*Note.* Examples of food that is falsely described are contained in section 18.

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

Maximum penalty: \$100,000 or imprisonment for 2 years, or both, in the case of an individual and \$500,000 in the case of a corporation.

*Note.* Examples of food that is falsely described are contained in section 18.

## Division 2            Other offences relating to food

### 12    Handling and sale of unsafe food

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

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

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

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

### 13    Handling and sale of unsuitable food

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

Maximum penalty: \$40,000 in the case of an individual and \$200,000 in the case of a corporation.

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

Maximum penalty: \$40,000 in the case of an individual and \$200,000 in the case of a corporation.

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

### 14    Misleading conduct relating to sale of food

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

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

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

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

*Note.* Examples of food that is falsely described are contained in section 18.

- (3) A person must not, in the course of carrying on a food business, sell Food that is packaged or labelled in a way that falsely describes the food.  
Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

Note. Examples of food that is falsely described are contained in section 18.

- (4) Nothing in subsection (2) or (3) limits the generality of subsection (1).

**15 Sale of food not complying with purchaser's demand**

- (1) A person must not, in the course of carrying on a food business, supply food by way of sale if the food is not of the nature or substance demanded by the purchaser.

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

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

**16 Sale of unfit equipment or packaging or labelling material**

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

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

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

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

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

**17 Compliance with Food Standards Code**

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

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.



- (2) A person must not sell any food that does not comply with any requirement of the Food Standards Code that relates to the food.  
Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.
- (3) A person must not sell or advertise any food that is packaged or labelled in a manner that contravenes a provision of the Food Standards Code.  
Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.
- (4) A person must not sell or advertise for sale any food in a manner that contravenes a provision of the Food Standards Code.  
Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

18 False descriptions of food

- (1) For the purposes of this Part, food that is falsely described includes food to which any one or more of the following paragraphs applies:
  - (a) the food is represented as being of a particular nature or substance for which there is a prescribed standard under the Food Standards Code and the food does not comply with that prescribed standard,
  - (b) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance in a quantity or proportion that significantly diminishes its food value or nutritive properties as compared with food of the represented nature or substance,
  - (c) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance of lower commercial value than food of the represented nature or substance,
  - (d) the food is represented as being of a particular nature or substance and a constituent of the food has been wholly or partly removed so that its properties are diminished as compared with food of the represented nature or substance,
  - (e) any word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression as to the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person,

- (f) the food is not of the nature or substance represented by the manner in which it is packaged, labelled or offered for sale.
- (2) Without limiting the application of subsection (1) of this section to Section 11 (2), food is falsely described for the purposes of section 11 (2) if it is supplied in response to a purchaser's request for a particular type of food, or a food that does not contain a particular ingredient, and the food is not of that type or contains that ingredient.

**19 Application of provisions outside jurisdiction**

For the purposes of a provision of this Part, it does not matter that the food concerned was sold or intended for sale outside this jurisdiction.

*Note.* See section 21 for a defence in relation to food intended for export.

**Division 3 Defences**

**20 Defence relating to publication of advertisements**

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

21 Defence in respect of food for export

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

22 Defence of due diligence

- (1) In any proceedings for an offence under this Part, it is a defence if it is proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.
- (2) Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved:
  - (a) that the commission of the offence was due to:
    - (i) an act or default of another person, or
    - (ii) reliance on information supplied by another person, and
  - (b) that:
    - (i) the person carried out all such checks of the food concerned as were reasonable in all the circumstances, or
    - (ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person, and
  - (c) that the person did not import the food into the jurisdiction from another country, and
  - (d) in the case of an offence involving the sale of food, that:
    - (i) the person sold the food in the same condition as when the person purchased it, or
    - (ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in any contravention of this Act or the regulations, and

- [(e) that the person did not know and had no reason to suspect at the time of commission of the alleged offence that the person's actor omission would constitute an offence under the relevant section].
- (3) In subsection (2) (a), **another person** does not include a person who was:
  - (a) an employee or agent of the defendant, or
  - (b) in the case of a defendant that is a body corporate, a director, employee or agent of the defendant.
- (4) Without limiting the ways in which a person may satisfy the requirements of subsection (1) or (2) (b) (i), a person may satisfy those requirements by proving that:
  - (a) in the case of an offence relating to a food business for which a food safety program is required to be prepared in accordance with the regulations, the person complied with a food safety program for the food business that complies with the requirements of the regulations, or
  - (b) in any other case, the person complied with a scheme (for example, a quality assurance program or an industry code of practice) that was:
    - (i) designed to manage food safety hazards and based on Australian national or international standards, codes or guidelines designed for that purpose, and
    - (ii) documented in some manner.

[23 Defence of mistaken and reasonable belief not available

In any proceedings for an offence under Division 2, it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence.]

24 Defence in respect of handling food

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

**25 Defence in respect of sale of unfit equipment or packaging or labelling material**

In any proceedings for an offence under section 16 (1) or (2), it is a defence if the person proves that the person reasonably believed that the equipment or material concerned was not intended for use in connection with the handling of food.

### Part 3 Emergency powers

#### 26 Making of order

An order may be made under this Part by the relevant authority if the relevant authority has reasonable grounds to believe that the making of the order is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

#### 27 Nature of order

- (1) An order under this Part may do any one or more of the following:
  - (a) require the publication of warnings, in a form approved by the relevant authority, that a particular food or type of food is unsafe,
  - (b) prohibit the cultivation, taking, harvesting or obtaining, from a specified area, of a particular food or type of food or other primary produce intended to be used for human consumption,
  - (c) prohibit a particular food or type of food from being advertised or sold,
  - (d) direct that a particular food or type of food consigned or distributed for sale or sold be recalled and specify the manner in which, and the period within which, there call is to be conducted,
  - (e) direct that a particular food or type of food or other primary produce intended to be used for human consumption be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which the impounding, isolation, destruction or disposal is to be conducted,
  - (f) prohibit absolutely the carrying on of an activity in relation to a particular food or type of food, or permit the carrying on of the activity in accordance with conditions specified in the order,
  - (g) without limiting the generality of paragraph (f), impose conditions relating to the taking and analysis of samples of the food or of water or soil or any other thing that is part of the environment in which that activity is carried on in relation to the food,
  - (h) specify methods of analysis (not inconsistent with any methods prescribed by the Food Standards Code)of any samples required to be taken in accordance with the order.

- (2) An order under this Part may be varied or revoked by the relevant authority in the same manner as the order was made.

**28 Special provisions relating to recall orders**

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

**29 Manner of making orders**

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

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

**30 Compensation**

- (1) A person bound by an order under this Part who suffers loss as a result of the making of the order may apply to the relevant authority for compensation if the person considers that there were insufficient grounds for the making of the order.
- (2) If there were insufficient grounds for the making of the order, the relevant authority is to pay such compensation to the applicant as is just and reasonable.
- (3) The relevant authority is to send written notification of its determination as to the payment of compensation under this section to each applicant for the payment of such compensation.
- (4) If the relevant authority has not determined an application for compensation under this section within 28 days of receiving the application, the relevant authority is taken to have refused to pay any compensation.
- (5) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the relevant authority as to the refusal to pay compensation or as to the amount of compensation may apply to the appropriate review body for a review of the determination:
  - (a) within 28 days after the day on which notification of the determination was received, or
  - (b) in a case to which subsection (4) applies, within 28 days of the 28-day period referred to in that subsection.

**31 Failure to comply with emergency order**

A person must not, without reasonable excuse:

- (a) carry on an activity in contravention of any prohibition imposed on the person by an order under this Part, or
- (b) neglect or refuse to comply with a direction given by such an order, or



(c) fail to comply with a condition specified in such an order.

Maximum penalty: \$50,000 in the case of an individual or \$250,000 in the case of a corporation.

## Part 4 Proceedings for offences

### 32 Alternative verdicts for serious food offences

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

# Model Food Provisions—Annex B

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## Model Food Provisions—Annex B

### Part 1 Preliminary

1 Name of Act

[Form to be determined by each jurisdiction].

2 Commencement

[Form to be determined by each jurisdiction].

3 Definitions

(1) In this Act:

**appropriate enforcement agency** means, in relation to the provision in which the expression is used, the enforcement agency prescribed by the regulations for the purposes of that provision.

**appropriate review body** [to be determined by each jurisdiction—for NSW this would be the Administrative Decisions Tribunal constituted under the *Administrative Decisions Tribunal Act 1997*].

**approved analyst** means a person approved under Division 4 of Part 6.

**approved form** means the form approved from time to time by the relevant authority.

**approved laboratory** means a laboratory approved under Division 3 of Part 6.

**Australia New Zealand Food Authority** means the Australia New Zealand Food Authority constituted by the *Australia New Zealand Food Authority Act 1991* of the Commonwealth.

**authorised officer** means a person appointed under Division 3 of Part 9.



**enforcement agency** means:

- (a) the relevant authority, or
- (b) any person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of this definition.

**examine** includes weigh, count, test or measure.

**food safety auditor** means a person approved under Division 1 of Part 7.

**head of an enforcement agency** means the person prescribed by the regulations as the head of an enforcement agency for the purposes of this definition.

**Improvement notice** means an improvement notice issued under Part 5.

**issuing officer** [to be determined by each jurisdiction—for NSW this would be an authorised justice within the meaning of the *Search Warrants Act 1985*].

**police officer** [to be determined by each jurisdiction—for NSW this definition is covered by the *Interpretation Act 1987*].

**prohibition order** means a prohibition order made under Part 5.

**public institution** means [to be determined by each jurisdiction—the intention is to cover prisons (correctional centres in NSW) and hospitals].

**relevant authority** [to be determined by each jurisdiction].

**the Minister** [to be determined by each jurisdiction—for NSW this definition is covered by the *Interpretation Act 1987*].

**this jurisdiction** [to be determined by each jurisdiction].

- (2) Notes included in this Act are explanatory notes and do not form part of this Act.

#### 4 Application of Act to water suppliers

- (1) The following provisions of this Act do not apply to a water supplier in respect of the supply of water for human consumption through a reticulated water system:
  - (a) sections 9, 11, 12 (1), 13 (1), 14, 15, 16 and 17 (but only to the extent to which it requires compliance with the requirements of the Food Safety Standards), **[Drafting note: These sections are contained in Annex A.]**
  - (b) Parts 5, 7 and 8.

- (2) In this section, *water supplier* means:
- (a) a body that is constituted by or under an Act and that has as or as one of its functions the supply of water for human consumption, or
  - (b) a person that is employed or engaged by such a body to supply water for human consumption, or
  - (c) anybody or person prescribed by the regulations for the purposes of this section.

## Part 2 Offences relating to food

### 5 Handling of food in unsafe manner

A person must not handle food intended for sale in a manner that the person ought reasonably to know is likely to render the food unsafe.

Maximum penalty: \$75,000 in the case of an individual and \$375,000 in the case of a corporation.

### 6 Sale of unsafe food

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

Maximum penalty: \$75,000 in the case of an individual and \$375,000 in the case of a corporation.

### 7 False description of food

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

Maximum penalty: \$75,000 in the case of an individual and \$375,000 in the case of a corporation.

*Note.* Examples of food that is falsely described are contained in section 18 [of Annex A].

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

Maximum penalty: \$75,000 in the case of an individual and \$375,000 in the case of a corporation.

*Note.* Examples of food that is falsely described are contained in section 18 [of Annex A].

**Drafting note: If the provisions of this Part are included, consequential amendments may need to be made to clauses 18 (2), 23, 24 and 32 of Annex A where specific reference is made to certain offence provisions.**

## Part 3 Emergency powers

### 8 Limitation on stay of operation of emergency orders

In any proceedings for judicial review or in any other proceedings, a Court or tribunal is not authorised to make an interlocutory order that has the effect of staying the operation of an order under Part3 [of Annex A].

## Part 4 Inspection and seizure powers

### Division 1 Inspection

#### 9 Powers of authorised officers

- (1) For the purposes of this Act, an authorised officer may, at any reasonable time, do any one or more of the following:
  - (a) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any premises that the authorised officer reasonably believes are used in connection with the handling of any food intended for sale or the sale of food or any food transport vehicle,
  - (b) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any premises or food transport vehicle, in which the authorised officer reasonably believes that there are any records or documents that relate to the handling of any food intended for sale or the sale of food,
  - (c) examine any food intended for sale,
  - (d) open and examine any package that the authorised officer reasonably believes contains any food intended for sale or any equipment,
  - (e) open and examine any equipment,
  - (f) subject to Division 1 of Part 6, for the purpose of analysing any food sold or intended for sale or for carrying out any other examination in order to determine whether the provisions of this Act or the regulations are being complied with, demand, select and obtain samples of any food,
  - (g) for the purpose of analysis, take samples of water or soil or any other thing that is part of the environment in which any food is handled to determine whether that environment poses a risk to the safety of the food for human consumption,
  - (h) take samples of any thing, other than for the purpose of analysis, that the authorised officer reasonably believes may be used as evidence that an offence has been, or is being, committed under this Act or the regulations,

- (i) examine any records or documents referred to in paragraph (b), make copies of those records or documents or any part of them and, for that purpose, take away and retain (for such time as may be reasonably necessary) any such records or documents or any part of them,
  - (j) stop and detain any vehicle that the authorised officer is authorised by this subsection to enter,
  - (k) open, or require to be opened, any container used for the conveyance of goods, or any package, that the authorised officer reasonably believes to contain any food sold or intended for sale, or any equipment,
  - (l) take such photographs, films or audio or visual recordings as the authorised officer considers necessary,
  - (m) take any measurements and make sketches or drawings or any other type of record,
  - (n) require a person to provide information or answer questions in connection with the authorised officer's functions under this Act or to produce any record, document or thing that an authorised officer is authorised to examine under this Act,
  - (o) require a person to state the person's name and residential address,
  - (p) generally make such investigations and inquiries as may be necessary to ascertain whether an offence under this Act or the regulations has been or is being committed.
- (2) This section does not authorise entry into any part of premises that is being used solely for residential purposes, except:
- (a) with the consent of the occupier of the premises, or
  - (b) under the authority of a search warrant, or
  - (c) if that part of the premises is being used for the preparation or service of meals provided with paid accommodation.

10 Self-incrimination not an excuse

- (1) A person is not excused from a requirement under section 9 to provide information or answer questions, or to produce any record, document or thing, on the ground that the information, answer, record, document or thing might incriminate the person or make the person liable to a penalty.

- (2) However, any information or answer furnished, or record, document or thing produced, by a natural person in compliance with such a requirement is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against section 13, 14, 15 or 16.

11 Power of seizure

An authorised officer may seize any food, or any vehicle, equipment, package or labelling or advertising material, or any other thing at all, that the authorised officer believes on reasonable grounds is evidence that an offence under this Act or the regulations has been or is being committed.

12 Search warrants

- (1) An authorised officer may apply to an issuing officer for a search warrant if the authorised officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An issuing officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant, when accompanied by a police officer, and such other person (if any) as is named in the warrant:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

13 Failure to comply with requirements of authorised officers

- (1) A person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer duly made under this Division.  
Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.
- (2) Such a requirement is not duly made unless, at the time of the making of the requirement, the person of whom the requirement is made is informed by the authorised officer that a refusal or failure to comply with the requirement may constitute an offence.

**14 Interfering with seized items**

A person must not, without the permission of an authorised officer, detain, remove or tamper with any food, vehicle, equipment, package or labelling or advertising material or other thing that has been seized under this Act, unless it has been returned in accordance with Division 2 or an order disallowing the seizure has been made under that Division.

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

**15 False information**

A person must not, in connection with a requirement or direction under this Act, provide any information or produce any document that the person knows is false or misleading in a material particular.

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

**16 Obstructing or impersonating authorised officers**

- (1) A person must not, without reasonable excuse, resist, obstruct, or attempt to obstruct, an authorised officer in the exercise of the authorised officer's functions under this Act.

Maximum penalty: \$50,000.

- (2) A person must not impersonate an authorised officer.

Maximum penalty: \$50,000.

- (3) A person must not threaten, intimidate or assault an authorised officer in the exercise of the authorised officer's functions under this Act.

Maximum penalty: \$50,000.

**Division 2 Items seized by authorised officers**

**17 Seized items**

- (1) Any item seized under this Part may, at the option of the authorised officer who seized the item or of any authorised officer acting in his or her place, be detained in the premises where it was found or be removed to another place and detained there.



- (2) If the item is to be detained in the premises where it was found, the authorised officer:
- (a) may place it in a room, compartment or cabinet in those premises, and
  - (b) may mark, fasten and seal the door or opening providing access to that room, compartment or cabinet, and
  - (c) must ensure that it is marked in such a way as to indicate that it has been seized under this Act.

**18 Notification of seizure**

An authorised officer who seizes any item under this Part must, as soon as practicable after the seizure, give the person from whom the item was seized written notification of the seizure that includes the following:

- (a) a description of the items seized,
- (b) the reason for the seizure,
- (c) an explanation of the person's right to make an application to the court under section 25 for an order disallowing the seizure,
- (d) the address of the place where the item is held if the item has been removed from the premises where it was seized,
- (e) the name of the enforcement agency to whom the authorised officer reports.

**19 Destruction of filthy, decomposed or putrid matter**

If an authorised officer who has seized food under this Part is satisfied that the food consists wholly or partly of filthy, decomposed or putrid matter or that it poses an immediate risk to health or property, the authorised officer (disregarding any provision to the contrary in this Part) may cause the food to be destroyed.

**20 Return of seized item**

If, before any item seized under this Part is forfeited to the Crown under This Division, the enforcement agency concerned becomes satisfied that there has been no contravention of this Act or the regulations of which the item is evidence, the enforcement agency must, as soon as practicable, cause the item to be delivered to:

- (a) the person from whom it was seized, or
- (b) such other person as appears to the enforcement agency to be entitled to it.

**21 Forfeiture of item**

- (1) An item seized under this Part is forfeited to the Crown:
  - (a) on the expiration of the period allowed by section 25 for the making of an application for an order disallowing the seizure if the item has not been dealt with under section 20 and no application under section 25 has been made within that period, or
  - (b) if an application for an order disallowing the seizure has been made under section 25 but the application has been refused or has been withdrawn before a decision on the application has been made, on the date on which the application is refused or withdrawn.
- (2) An item forfeited to the Crown under this section may be destroyed, sold or otherwise disposed of as the enforcement agency concerned may, generally or in a particular case, direct.

**22 Cost of destruction or disposal of forfeited item**

- (1) A person who was the owner of an item immediately before its forfeiture under this Division is liable for any cost incurred by or on behalf of the enforcement agency concerned in connection with the lawful destruction or disposal of the item (including any storage costs) and any such cost is taken to be a debt due to the enforcement agency from that person.
- (2) In any proceedings for the recovery of the debt, a certificate signed by the enforcement agency stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

**23 Return of forfeited item**

- (1) An item seized under this Part that is forfeited under this Division and that has not been destroyed or otherwise disposed of in a manner that would prevent its return must, as soon as practicable, be delivered to the person from whom it was seized, or such other person as appears to the enforcement agency concerned to be entitled to it, if the enforcement agency becomes satisfied that no contravention of this Act or the regulations has been committed in relation to the item.
- (2) On being so delivered, any proprietary and other interests in the item that existed immediately before its forfeiture are restored.

**24 Compensation to be paid in certain circumstances**

- (1) A person may apply for compensation for an item seized under this Part.
- (2) An enforcement agency is to pay such compensation as is just and reasonable in relation to any item seized under this Part by an authorised officer appointed by it if:
  - (a) no contravention of this Act or the regulations has been committed in relation to the item, and
  - (b) the item cannot be returned or has in consequence of the seizure depreciated in value.
- (3) An enforcement agency required to make a determination under subsection (2) as to the payment of compensation is to send written notification of its determination to the person from whom the item was seized and any person seeking compensation under this section.
- (4) If an enforcement agency determines to pay compensation under this section in relation to an item, the compensation is to be paid to the person from whom the item was seized, or such other person as appears to the enforcement agency to be entitled to it.
- (5) A person from whom an item was seized under this Part, or any other person who has sought compensation under this section, who is dissatisfied with a determination by an enforcement agency as to the payment of such compensation may apply to the appropriate review body for a review of the determination within 10 days after the date on which notification of the determination was received.

**25 Application for order disallowing seizure**

- (1) A person claiming to be entitled to any item seized under this Part may, within 10 days after the date on which the seizure took place, lodge an application with the court for an order disallowing the seizure.
- (2) The application is to be made in accordance with the rules governing the court and is not to be heard unless the applicant has previously served a copy of the application on the enforcement agency concerned.

**26 Enforcement agency entitled to answer application**

The enforcement agency concerned is entitled to appear as respondent at the hearing of an application made under section 25.

**27 Order for return of seized item**

The court, on the hearing of an application made under section 25, must make an order disallowing the seizure of an item if:

- (a) it is proved that the applicant would, but for the seizure, be entitled to the item and it is not proved that an offence under this Act or the regulations was being, or had been, committed, being an offence of which the item was evidence, or
- (b) in the opinion of the court, there are exceptional circumstances justifying the making of such an order,

but otherwise the court must refuse the application.

**28 Ancillary orders**

- (1) In the event that the court makes an order for the return of any item seized under this Part, it must also make one or both of the following orders:

- (a) an order directing the respondent to cause the item to be delivered to the applicant or to such other person as appears to the court to be entitled to it,
- (b) if the item cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing the enforcement agency concerned to pay to the applicant such amount by way of compensation as the court considers to be just and reasonable.

- (2) The award of costs with respect to the hearing of the application lies in the discretion of the court.

- (3) If the court makes an order for the payment of any amount as compensation or awards any amount as costs, the order is enforceable as a judgment of the court.

**29 Adjournment pending hearing of other proceedings**

If on the hearing of an application made under section 25 it appears to the court that the item that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence under this Act or the regulations or under any other Act or regulations under any other Act, the court, on the application of the respondent or on its own motion, may adjourn the hearing until the conclusion of those proceedings.

## Part 5 Improvement notices and prohibition orders for premises or equipment

### 30 Unclean or unfit premises, vehicles or equipment

If an authorised officer believes, on reasonable grounds, that:

- (a) any premises used by a food business in connection with the handling of food intended for sale or any equipment or food transport vehicle is in an unclean or insanitary condition or is otherwise unfit for the purpose for which it is designed or intended to be used, or
- (b) any premises used by a food business in connection with the handling of food intended for sale or any equipment or food transport vehicle does not comply with a provision of the Food Safety Standards, or
- (c) in relation to any premises used in connection with the handling of food for sale or any food transport vehicle, any relevant food safety program prepared in accordance with the regulations is not being implemented adequately by a food business, or
- (d) any provision of the Food Standards Code is being contravened in relation to the handling of food intended for sale on any premises or in any food transport vehicle used by a food business in connection with the handling of food intended for sale,

The authorised officer may serve an improvement notice on the proprietor of the food business in accordance with this Part.

### 31 Improvement notice

- (1) An improvement notice is to take the form of an order that:
  - (a) premises, equipment or a food transport vehicle be put into a clean and sanitary condition, or be repaired, to the satisfaction of an authorised officer, or
  - (b) equipment or a vehicle be replaced, or
  - (c) a food safety program be prepared if required by the regulations, or
  - (d) a food safety program required by the regulations be revised so as to comply with the requirements of the regulations, or
  - (e) in relation to the handling of food intended for sale, measures be taken to implement the provisions of any relevant food safety program required to be prepared by the regulations,

- (f) in relation to the handling of food intended for sale, measures be taken to implement the requirements of the Food Safety Standards,

within a period of 24 hours (or such longer period as is specified in the notice) after the service of the notice on the proprietor of the food business.

- (2) Before the end of the period specified in the improvement notice, the authorised officer who issued the notice may, on his or her own motion or on the application of the proprietor of the food business, extend the period within which the proprietor of the food business is to take action in accordance with the notice.
- (3) An improvement notice is to state that it is issued under this section.

**32 Compliance with improvement notice**

- (1) If an improvement notice is complied with, an authorised officer is to note the date of compliance on a copy of the notice.
- (2) An authorised officer must give a copy of an improvement notice, noted in accordance with this section, to the person on whom the improvement notice was served if requested to do so by the person.

**33 Prohibition order**

- (1) If a relevant authority or the head of an enforcement agency believes, on reasonable grounds:
  - (a) that any of the circumstances specified in section 30 (a), (b), (c) or (d) exist, and
  - (b) that:
    - (i) The proprietor of a food business has not complied with an improvement notice within the time required by section 31 for compliance, or
    - (ii) the issue of the order is necessary to prevent or mitigate a serious danger to public health,

the relevant authority or the head of the enforcement agency may serve a prohibition order on the proprietor of the food business in accordance with this Part.

- (2) A prohibition order is to take the form of an order that:
  - (a) no food intended for sale is to be handled on specified premises or a specified part of specified premises, or
  - (b) no food intended for sale is to be conveyed in a specified vehicle, or

- (c) specified equipment is not to be used in connection with food intended for sale, or
- (d) no food intended for sale is to be handled by a food business in a specified way or for a specified purpose,

until the proprietor of the food business has been given a certificate of clearance stating that the premises, part of the premises, vehicle or equipment may be used for the handling or conveyance of food intended for sale, or for use in connection with such food, or that the food may be handled in the specified way or for the specified purpose, as the case may be.

- (3) A prohibition order is to state that it is issued under this section.
- (4) The relevant authority or person that made the order must give a certificate of clearance if, after an inspection of the premises, part of the premises, vehicle or equipment, or the way of handling food, specified in the prohibition order, the relevant authority or person finds, by the relevant authority's or person's own inspection or the report of an authorised officer, that:
  - (a) the premises, part of the premises, vehicle or equipment, or the handling of food by the food business in the specified way or for the specified purpose, is not a serious danger to public health, and
  - (b) the person on whom the prohibition order was served has complied with the prohibition order and any improvement notices served on the person.

#### 34 Scope of notices and orders

An improvement notice or a prohibition order may be made with respect to any one or more of the following:

- (a) any premises or any part of any premises, food transport vehicle or equipment specified in the notice or order,
- (b) all equipment contained on any premises or any part of any premises, or in a food transport vehicle, specified in the notice or order, or any specified equipment so contained,
- (c) the handling of food intended for sale by a food business in a specified way or for a specified purpose.

#### 35 Notices and orders to contain certain information

An improvement notice or prohibition order under this Part:

- (a) Must specify any provision of the Food Standards Code to which it relates, and

- (b) may specify particular action to be taken by a person to ensure compliance with the provision of the Food Standards Code to which it relates.

**36 Request for re-inspection**

- (1) The proprietor of the food business whose premises (other than a vehicle) are affected by a prohibition order may at any time after the order has been served make a written request to the relevant authority or person who made the order to cause the premises to be inspected by an authorised officer.
- (2) The proprietor of the food business whose vehicle or equipment is affected by a prohibition order may at any time after the order has been served make a written request to the relevant authority or person who made the order to cause the vehicle or equipment to be inspected by an authorised officer:
  - (a) at the place where it was originally inspected, or
  - (b) if it is not convenient for it to be inspected at that place, at some other place that the relevant authority or person who made the order has agreed to.
- (3) If a request for inspection is made under this section and the premises, vehicle or equipment concerned, through no fault of the proprietor of the food business, is not inspected by an authorised officer within the period of 48 hours of the receipt of the request by the relevant authority or person, a certificate of clearance is taken to have been given to the proprietor of the food business under section 33.

**37 Contravention of improvement notice or prohibition order**

A person must not contravene or fail to comply with a prohibition order served on the person under this Part.

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

**38 Review of decision to refuse certificate of clearance**

A person aggrieved by a decision of the relevant authority or person to Refuse to give a certificate of clearance under section 33 may apply to the appropriate review body for a review of the decision.



39 Compensation

- (1) A person bound by a prohibition order who suffers loss as a result of the making of the order may apply to the relevant authority or person who made the order for compensation if the person considers that there were no grounds for the making of the order.
- (2) If there were no grounds for the making of the order, the relevant authority or enforcement agency is to pay such compensation to the applicant as is just and reasonable.
- (3) The relevant authority or enforcement agency is to send written notification of its determination as to the payment of compensation under this section to each applicant for the payment of such compensation.
- (4) An applicant for compensation under this section who is dissatisfied with a determination under subsection (3) as to the refusal to pay compensation or as to the amount of compensation may apply to the appropriate review body for a review of the determination within 28 days after the day on which notification of the determination was received.
- (5) If the relevant authority has not determined an application for compensation under this section within 28 days of receiving the application, the relevant authority is taken to have refused to pay any compensation.
- (6) An applicant for the payment of compensation under this section who is Dissatisfied with a determination by the relevant authority as to the refusal to pay compensation or as to the amount of compensation may apply to the appropriate review body for a review of the determination:
  - (a) within 28 days after the day on which notification of the determination was received, or
  - (b) in a case to which subsection (5) applies, within 28 days of the 28-day period referred to in that subsection.

## Part 6 Taking and analysis of samples

### Division 1 Taking of samples

#### 40 Proprietor to be informed

Whenever an authorised officer obtains a sample of food for the purposes of analysis, an authorised officer must, either before or as soon as practicable after obtaining the sample, inform:

- (a) the proprietor of the food business from which the sample is to be taken or was taken, or
- (b) if the proprietor is not present or readily available, the person from whom the sample was obtained or who was in charge of the food from which the sample was taken,

of the authorised officer's intention to have the sample analysed.

#### 41 Payment for sample

An authorised officer when obtaining a sample of food must pay, or tender payment of:

- (a) the amount prescribed by the regulations as the amount payable for the sample concerned, or
- (b) if no such amount is prescribed by the regulations, an amount equal to the current market value of the sample,

to the person from whom the sample is obtained.

#### 42 Samples from vending machines

Sections 40 and 41 do not apply to the obtaining of a sample by an authorised officer from a vending machine if the authorised officer obtains the sample by making proper payment for it and the authorised officer cannot identify anyone who at the time appears to be in charge of the machine.

#### 43 Packaged food

An authorised officer who takes a sample of food for the purposes of this Act that is contained in a closed package intended for retail sale must take the whole of the package unless the package contains two or more smaller packages of the same food.

44 Procedure to be followed

- (1) This section applies to the taking of samples for the purposes of this Act except to the extent that the Food Standards Code otherwise provides.
- (2) An authorised officer who obtains a sample of food for the purposes of analysis must (unless subsection (3) applies):
  - (a) divide the sample into 3 separate parts and mark and seal or fasten each part in such manner as its nature will permit, and
  - (b) leave one part with the proprietor of the food business or any other person from whom the sample was obtained or a person appearing to be the employee or agent of that proprietor or other person, and
  - (c) submit one of the remaining parts for analysis, and
  - (d) retain the other remaining part for future comparison.
- (3) If the division of a sample for analysis into 3 separate parts in accordance with subsection (2) would in the opinion of the authorised officer:
  - (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis, or
  - (b) result in the separate parts being of an insufficient size for accurate analysis, or
  - (c) render the sample in any other way unsuitable for analysis, including a method of analysis prescribed by the regulations in relation to the food from which the sample was taken,the authorised officer may take, in accordance with this section, as many samples as the authorised officer considers necessary to enable an accurate analysis to be carried out and may deal with the sample or samples in such manner as is appropriate in the circumstances.
- (4) If a sample of food is taken by an authorised officer in the form of separate or severable objects, it is not necessary, in dividing that sample into parts in accordance with this section, to divide any one of those objects, and it is sufficient compliance with this section if the authorised officer:
  - (a) takes a number of those objects, and
  - (b) divides the number so taken into the requisite number of parts so that each part consists of one or more than one of the separate or severable objects, and
  - (c) deals with those parts in accordance with the preceding provisions of this section.

45 Samples to be submitted for analysis

An authorised officer must submit any sample obtained in accordance with this Division for analysis under Division 2 unless no longer of the opinion that the sample ought to be analysed.

**Division 2**                      **Procedures relating to analyses**

46 Compliance with Food Standards Code

A person who carries out an analysis for the purposes of this Act is to comply with any requirements of the Food Standards Code relating to the carrying out of analyses.

47 Certificate of analysis

(1) This section applies to an analysis that is carried out:

- (a) by an approved laboratory, or
- (b) by an approved analyst, or
- (c) under the supervision of an approved analyst,

for the purposes of this Act.

(2) On completion of an analysis to which this section applies:

- (a) the person in charge of the laboratory at which the analysis was carried out, or
- (b) the approved analyst who carried out the analysis, or
- (c) the approved analyst who supervised the carrying out of the analysis,

is to give the person who requested the analysis, or an agent of the person, a certificate of analysis, in the approved form, that complies with the requirements of subsection (3).

(3) The certificate of analysis must:

- (a) be dated and signed by the person in charge of the laboratory at which the analysis was carried out or by the approved analyst who carried out the analysis or who supervised the carrying out of the analysis, and
- (b) contain a written report of the analysis that sets out the findings, and

- (c) specify the requirements, if any, of the Food Standards Code relating to the carrying out of the analysis and certify that the analysis was carried out in accordance with those requirements.

### **Division 3            Approval of laboratories**

#### **48    Approval of laboratories**

- (1) The relevant authority may approve laboratories for the purposes of carrying out analyses under this Act.
- (2) A person providing or intending to provide analysis services at a Laboratory may make an application, in the approved form, to the relevant authority for an approval of the laboratory under this Division.
- (3) The relevant authority may, after considering an application for approval:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (4) If the relevant authority grants an application for approval, it must issue the applicant with a written approval that sets out the conditions to which the approval is subject.
- (5) If the relevant authority refuses an application for approval, the relevant authority must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

#### **49    Term of approval**

Except during any period of suspension, an approval of a laboratory granted under this Division remains in force until cancelled.

#### **50    Approved laboratory to give notice of certain interests**

The person in charge of an approved laboratory must notify the relevant authority of any direct or indirect interest in any food business that a person concerned in the management of, or an employee of, the approved laboratory has as soon as possible after becoming aware of that interest.

Maximum penalty: \$5,000.

#### **51    Variation of conditions or suspension or cancellation of approval of laboratory**

- (1) The relevant authority may vary the conditions of, or suspend or cancel, the approval of a laboratory under this Division.

- (2) An approval of a laboratory may be suspended or cancelled on one or more of the following grounds:
  - (a) if the relevant authority is satisfied that a person providing services at the laboratory has wilfully or negligently contravened or failed to comply with any provision of this Act or the regulations,
  - (b) if the relevant authority is satisfied that a person providing services at the laboratory has contravened a condition to which the approval is subject,
  - (c) if the relevant authority is satisfied that a person in charge of, concerned in the management of or employed by, the laboratory has a direct or indirect interest in any food business that, in the opinion of the relevant authority, could affect the carrying out of the laboratory's functions under this Act,
  - (d) at the request of the person in charge of the laboratory,
  - (e) for any other reason that the relevant authority considers appropriate.
- (3) The relevant authority may only vary the conditions of, or suspend or cancel, the approval of a laboratory:
  - (a) after having given the person in charge of the laboratory:
    - (i) Written reasons of its intention to vary, suspend or cancel, and
    - (ii) an opportunity to make submissions, and
  - (b) after having considered any submissions made by the person.
- (4) Subsection (3) does not apply to the cancellation of an approval at the request of the person in charge of the laboratory.
- (5) A variation of the conditions of, or the suspension or cancellation of, approval of a laboratory:
  - (a) must be made by notice in writing, and
  - (b) must be served on the person in charge of the laboratory, and
  - (c) takes effect at the time at which the notice is served or at a later time specified in the notice.

**52 Review of decisions relating to approval**

- (1) A person aggrieved by a decision of the relevant authority relating to any of the following may apply to the appropriate review body for a review of the decision:
  - (a) the grant or refusal of an application for approval of a laboratory under this Division,
  - (b) the imposition of conditions on an approval,
  - (c) the variation of conditions of an approval,
  - (d) the suspension or cancellation of an approval.
- (2) An application under this section may only be made within 10 days after service of:
  - (a) the written approval or notice of refusal under section 48, or
  - (b) the notice of the variation, suspension or cancellation under section 51.

**53 List of approved laboratories to be maintained**

- (1) The relevant authority is to prepare and maintain a list of approved laboratories.
- (2) The list is to be made publicly available and is to be revised at least annually.

**Division 4 Approval of analysts**

**54 Approval of persons to carry out analyses**

- (1) The relevant authority may approve natural persons for the purposes of carrying out analyses under this Act.
- (2) A natural person may make an application, in the approved form, to the relevant authority for an approval under this Division.
- (3) The application is to be accompanied by:
  - (a) such information as the relevant authority requires to determine the application, and
  - (b) the fee, if any, prescribed by the regulations.
- (4) The relevant authority may, after considering an application for approval:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.

- (5) If the relevant authority grants an application for approval, it must issue the applicant with a written approval that sets out the conditions to which the approval is subject.
- (6) If the relevant authority refuses an application for approval, the relevant authority must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

55 Term of approval

Except during any period of suspension, an approval of a person granted under this Division remains in force until cancelled.

56 Approved analyst to give notice of certain interests

A person who is an approved analyst must notify the relevant authority of any direct or indirect interest in any food business that the person has as soon as possible after becoming aware of that interest.

Maximum penalty: \$5,000.

57 Variation of conditions or suspension or cancellation of approval of analyst

- (1) The relevant authority may vary the conditions of, or suspend or cancel, an approval under this Division.
- (2) An approval of a person under this Division may be suspended or cancelled on one or more of the following grounds:
  - (a) if the relevant authority is satisfied that the person has wilfully or negligently contravened any provision of this Act or the regulations,
  - (b) if the relevant authority is satisfied that the person has contravened a condition to which the approval is subject,
  - (c) if the relevant authority is satisfied that the person has a direct or indirect interest in any food business that, in the opinion of the relevant authority, could affect the carrying out of the person's functions under this Act,
  - (d) at the request of the person,
  - (e) for any other reason that the relevant authority considers appropriate.



- (3) The relevant authority may only vary the conditions of, or suspend or cancel, the approval of a person under this Division:
  - (a) after having given the person:
    - (i) written reasons of its intention to vary, suspend or cancel, and
    - (ii) an opportunity to make submissions, and
  - (b) after having considered any submissions made by the person.
- (4) Subsection (3) does not apply to the cancellation of an approval at the request of the person to whom the approval relates.
- (5) A variation of the conditions of, or the suspension or cancellation of, an approval of a person under this Division:
  - (a) must be made by notice in writing, and
  - (b) must be served on the person, and
  - (c) takes effect at the time at which the notice is served or at a later time specified in the notice.

**58 Review of decisions relating to approval**

- (1) A person aggrieved by a decision of the relevant authority relating to any of the following may apply to the appropriate review body for a review of the decision:
  - (a) the grant or refusal of an application for approval under this Division,
  - (b) the imposition of conditions on an approval,
  - (c) the variation of conditions of an approval,
  - (d) the suspension or cancellation of an approval.
- (2) An application under this section may only be made within 10 days after service of:
  - (a) the written approval or notice of refusal under section 54, or
  - (b) the notice of the variation, suspension or cancellation under section 57.

**59 List of approved analysts to be maintained**

- (1) The relevant authority is to prepare and maintain a list of approved analysts.
- (2) The list is to be made publicly available and is to be revised at least annually.

## Part 7 Auditing

### Division 1 Approval of food safety auditors

#### 60 Approval of food safety auditors

- (1) The relevant authority may approve a natural person to be a food safety auditor for the purposes of this Act if the relevant authority is satisfied that the person is competent to carry out the functions of a food safety auditor having regard to:
  - (a) the person's technical skills and experience, and
  - (b) any guidelines relating to competency criteria approved by the relevant authority.
- (2) A natural person may make an application, in the approved form, to the relevant authority for an approval under this Part.
- (3) The application is to be accompanied by:
  - (a) such information as the relevant authority requires to determine the application, and
  - (b) the fee, if any, prescribed by the regulations.
- (4) The relevant authority may, after considering an application for approval:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (5) If the relevant authority grants an application for approval, it must issue the applicant with a written approval that sets out any conditions to which the approval is subject.
- (6) If the relevant authority refuses an application for approval, the relevant Authority must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

#### 61 Term of approval

Except during any period of suspension, an approval granted under this Part remains in force for the period specified in the approval unless sooner cancelled.

**62 Food safety auditor to give notice of certain interests**

- (1) A food safety auditor must notify the relevant authority of any direct or indirect interest in any food business that the auditor has as soon as possible after becoming aware of that interest.

Maximum penalty: \$5,000.

- (2) Payment to an auditor for carrying out the functions of an auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (1).

**63 Variation of conditions or suspension or cancellation of approval of auditor**

- (1) The relevant authority may vary the conditions of, or suspend or cancel, an approval under this Part.
- (2) An approval of a person may be suspended or cancelled on one or more of the following grounds:
  - (a) if the relevant authority is satisfied that the person has wilfully or negligently contravened any provision of this Act or the regulations,
  - (b) if the relevant authority is satisfied that the person has contravened a condition to which the approval is subject,
  - (c) if the relevant authority is satisfied that the person has not competently carried out any duty of an auditor under this Act,
  - (d) if the relevant authority is satisfied that the person has a direct or indirect interest in any food business that, in the opinion of the relevant authority, could affect the performance of the person's duties under this Act,
  - (e) at the request of the person,
  - (f) for any other reason that the relevant authority considers appropriate.
- (3) Payment to an auditor for performing the duties of an auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (2) (d).

- (4) The relevant authority may only vary the conditions of, or suspend or cancel, the approval of a person:
  - (a) after having given the person:
    - (i) written reasons of its intention to vary, suspend or cancel, and
    - (ii) an opportunity to make submissions, and
  - (b) after having considered any submissions made by the person.
- (5) Subsection (4) does not apply to the cancellation of an approval at the request of the person to whom the approval relates.
- (6) A variation of the conditions of, or the suspension or cancellation of, the approval of a person under this Part:
  - (a) must be by notice in writing, and
  - (b) must be served on the person to whom the approval relates, and
  - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

64 Review of decisions relating to approvals

- (1) A person aggrieved by a decision of the relevant authority relating to any of the following may apply to the appropriate review body for a review of the decision:
  - (a) the grant or refusal of an application for an approval under this Part,
  - (b) the imposition of conditions on an approval,
  - (c) the variation of conditions of an approval,
  - (d) the suspension or cancellation of an approval.
- (2) A person aggrieved by a decision relating to any of the following may apply to the relevant authority for a review of the decision if the decision was made by a body acting under a delegation given by the relevant authority:
  - (a) the grant or refusal of an application for an approval under this Part,
  - (b) the imposition of conditions on an approval,
  - (c) the variation of conditions of an approval,
  - (d) the suspension or cancellation of an approval.

- (3) An application under this section may only be made within 10 days after service of:
  - (a) the written approval or notice of refusal under section 60, or
  - (b) the notice of the variation, suspension or cancellation under section 63.

## Division 2            Auditing and reporting requirements

### 65    Food safety programs and auditing requirements

- (1) The proprietor of a food business must ensure that any requirement imposed by the regulations in relation to the preparation, implementation, maintenance or monitoring of a food safety program for the food business is complied with.

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

- (2) The proprietor of a food business must ensure that any food safety program required to be prepared by the regulations in relation to the food business is audited at least as frequently as is determined under section 66 (1), or as redetermined under section 69, in relation to the food business.

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

### 66    Priority classification system and frequency of auditing

- (1) The appropriate enforcement agency must determine:
  - (a) the priority classification of individual food businesses for the purposes of the application of any requirements of the regulations relating to food safety programs, and
  - (b) the frequency of auditing of any food safety programs required to be prepared by the regulations in relation to the food businesses.
- (2) The determination must be made having regard to a priority classification system for types of food businesses approved by the relevant authority.
- (3) The appropriate enforcement agency must provide written notification to the proprietor of a food business of:
  - (a) the priority classification it has determined for the food business, and

- (b) the frequency of auditing of any food safety programs required to be prepared by the regulations in relation to the food business, and
  - (c) the date by which the food business must have implemented any food safety program required to be prepared by the regulations in relation to the food business.
- (4) The appropriate enforcement agency may change the priority classification of an individual food business if the appropriate enforcement agency believes that the classification is inappropriate for any reason, including as a result of changes made to the conduct of the food business.
- (5) The appropriate enforcement agency must provide written notification to the proprietor of a food business of any change in priority classification of the food business under subsection (4).

**67 Duties of food safety auditors**

A food safety auditor has the following duties:

- (a) to carry out audits of any food safety programs required by the regulations to be prepared in relation to food businesses having regard to the requirements of the regulations,
- (b) to carry out any necessary follow-up action, including further audits, if necessary, to check to see if action has been taken to remedy any deficiencies of any such food safety program identified in an audit,
- (c) to carry out assessments of food businesses to ascertain their compliance with requirements of the Food Safety Standards,
- (d) to report in accordance with section 68.

**68 Reporting requirements**

- (1) A food safety auditor must report in writing to the appropriate Enforcement agency the results of any auditor assessment carried out by the food safety auditor for the purposes of this Act.
- (2) A report under subsection (1) must:
- (a) be in the prescribed form, and
  - (b) be submitted to the appropriate enforcement agency within 21 days after the completion of the audit or assessment, and
  - (c) take account of any action taken before the submission of the report to remedy any deficiency identified by the food safety auditor.

- (3) A food safety auditor must indicate in a report of an audit under subsection (1):
  - (a) whether or not the food safety auditor is of the opinion that the food business is being carried on in compliance with the requirements of the regulations relating to food safety programs, and
  - (b) any such requirements that the food safety auditor is of the opinion are being contravened in relation to the food business and the manner in which they are being contravened.
- (4) A food safety auditor must indicate in a report of an assessment under subsection (1):
  - (a) whether or not the food safety auditor is of the opinion that the food business is being carried on in compliance with the provisions of the Food Safety Standards, and
  - (b) any such provisions that the food safety auditor is of the opinion are being contravened in relation to the food business and the manner in which they are being contravened.
- (5) A food safety auditor must report any contravention of this Act, the regulations relating to food safety programs, or the Food Safety Standards that comes to the food safety auditor's attention in the course of carrying out an audit or assessment for the purposes of this Act:
  - (a) that is an imminent and serious risk to the safety of food intended for sale, or
  - (b) that will cause significant unsuitability of food intended for sale,as soon as possible but in any event within 24 hours after the contravention comes to the food safety auditor's attention.
- (6) A food safety auditor must report in writing to the appropriate enforcement agency, giving reasons, if the food safety auditor considers that the priority classification of a food business that has been audited by the food safety auditor should be changed.
- (7) A copy of a report provided to the appropriate enforcement agency in relation to an audit or assessment must be given to the proprietor of the food business concerned.

**69 Redetermination of frequency of auditing**

- (1) A food safety auditor may determine that the audit frequency of a food safety program required by the regulations to be prepared for a food business that has been audited by a food safety auditor be changed from the initial audit frequency applicable to a food business within the relevant priority classification to another audit frequency within the range of audit frequencies appropriate for food businesses within that priority classification, as set out in the priority classification system referred to in section 66.
- (2) A food safety auditor must have regard to the following matters in making such a determination:
  - (a) the compliance history of the food business concerned in relation to any requirements of the regulations regarding food safety programs and the requirements of the Food Safety Standards,
  - (b) the audit compliance history (if any) established before the commencement of the Food Safety Standards.

**70 Certificates of authority of food safety auditors**

- (1) The relevant authority is to provide each food safety auditor with a certificate of authority as a food safety auditor.
- (2) The certificate of authority:
  - (a) must state that it is issued under this Act, and
  - (b) must give the name of the person to whom it is issued and bear a photograph of that person and the person's signature, and
  - (c) must state the date, if any, on which it expires, and
  - (d) must specify any conditions to which the person's approval is subject, and
  - (e) must bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

**71 List of food safety auditors to be maintained**

- (1) The relevant authority is to prepare and maintain a list of food safety auditors.
- (2) The list is to be made publicly available and is to be revised at least annually.



**72 Obstructing or impersonating food safety auditors**

- (1) A person must not, without reasonable excuse, resist, obstruct or attempt to obstruct, a food safety auditor in the exercise of the food safety auditor's functions under this Act.

Maximum penalty: \$50,000 in the case of an individual and \$250,000 in the case of a corporation.

- (2) A person who impersonates a food safety auditor is guilty of an offence.

Maximum penalty: \$50,000.

- (3) A person who assaults a food safety auditor in the exercise of the food safety auditor's functions under this Act is guilty of an offence.

Maximum penalty: \$50,000.

## Part 8 Notification and registration of food businesses and approval of food premises

### 73 Notification of conduct of food businesses

- (1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted.

Maximum penalty: \$50,000 in the case of an individual and \$120,000 in the case of a corporation.

- (2) The proprietor of a food business that is being conducted when the Notification requirements of the Food Safety Standards commence must give written notice, in the approved form and within 3 months after the commencement of those requirements, of the information specified in the Food Safety Standard that is to be notified to the appropriate enforcement agency.

Maximum penalty: \$50,000 in the case of an individual and \$120,000 in the case of a corporation.

### 74 Exemption in relation to notification of information

Section 17 (to the extent to which it requires notification of the information referred to in section 73 (1) or (2)) and section 73 do not apply to the following food businesses:

- (a) any food business that is not required by the Food Safety Standards to notify that information, or
- (b) any food business that is registered under this Act or under a law prescribed by the regulations.

**DRAFTING NOTE: Section 17 refers to section 17 in Annex A.**

### 75 Registration of food businesses

- (1) The appropriate enforcement agency may register a food business for the purposes of this Part.
- (2) The proprietor of a food business may make an application, in the Approved form, to the appropriate enforcement agency for the registration of the food business under this Part.

- (3) The application is to be accompanied by:
  - (a) If required by the appropriate enforcement agency, the design and fitout specifications, in a form approved by the appropriate enforcement agency, of any premises or proposed premises on which food is to be handled in the course of conducting the food business, and
  - (b) such other information as the appropriate enforcement agency requires to determine the application, and
  - (c) the fee, if any, prescribed by the regulations.
- (4) The appropriate enforcement agency may, after considering an application for registration:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (5) If the appropriate enforcement agency grants an application for registration, it must issue the applicant with a certificate of registration that sets out the conditions to which the registration is subject.
- (6) If the appropriate enforcement agency refuses an application for registration, the appropriate enforcement agency must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

#### 76 Renewal of registration

- (1) The holder of a certificate of registration under this Part may, at anytime during the currency of the registration, apply to the appropriate enforcement agency for a renewal of the registration.
- (2) The application is to be accompanied by such fee, if any, as is prescribed by the regulations.
- (3) The appropriate enforcement agency may, after considering an application for renewal of registration:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (4) If the appropriate enforcement agency grants an application for renewal of registration, the registration is renewed by the issue of a further certificate of registration:
  - (a) That takes effect from the expiry of the holder's current certificate of registration, or
  - (b) if the certificate is issued after that expiry—that takes effect, or is taken to have effect, from the date specified in the certificate.

- (5) If the appropriate enforcement agency refuses an application for renewal of registration, the appropriate enforcement agency must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.
- (6) Nothing in this section gives any force to a certificate of registration that has expired or been cancelled, or otherwise affects the operation of section 77.

**77 Term of registration**

Except during any period of suspension, the registration of a food Business granted under this Part remains in force for the period specified in the certificate.

**78 Variation of conditions or suspension or cancellation of registration of food businesses**

- (1) The appropriate enforcement agency may vary the conditions of, or suspend or cancel, the registration of a food business under this Part.
- (2) The registration of a food business may be suspended or cancelled on one or more of the following grounds:
  - (a) if the appropriate enforcement agency is satisfied that there has been a contravention of any provision of this Act or the regulations in the conduct of the food business,
  - (b) if the appropriate enforcement agency is satisfied that a condition to which the registration is subject is being contravened by the food business,
  - (c) at the request of the holder of the certificate of registration,
  - (d) for any other reason that the appropriate enforcement agency considers appropriate.
- (3) The appropriate enforcement agency may only vary the conditions of, or suspend or cancel, the registration of a food business after having given the holder of the certificate of registration:
  - (a) written notice of its intention to vary, suspend or cancel the registration setting out its reasons, and
  - (b) an opportunity to make submissions.
- (4) Subsection (3) does not apply to the cancellation of registration at the request of the holder of the certificate of registration.

- (5) A variation of the conditions of, or the suspension or cancellation of, the registration of premises:
  - (a) must be made by notice in writing, and
  - (b) must be served on the holder of the certificate of registration, and
  - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

**79 Review of decisions relating to registration**

- (1) A person aggrieved by a decision of an enforcement agency relating to any of the following may apply to the appropriate review body for a review of the decision:
  - (a) the grant or refusal of an application for the registration, or the renewal of registration, of a food business under this Part,
  - (b) the imposition of conditions on the registration of a food business,
  - (c) the variation of conditions of the registration of a food business,
  - (d) the suspension or cancellation of the registration of a food business.
- (2) An application under this section may only be made within 10 days after:
  - (a) the issue of the certificate of registration under section 75 (5) or 76 (4), or
  - (b) the service of the notice of refusal under section 75 (6) or 76 (5), or
  - (c) the service of the notice of the variation, suspension or cancellation under section 78 (5).

**80 Register of food businesses to be maintained**

- (1) Each enforcement agency is to prepare and maintain a list of:
  - (a) food businesses notified to it under section 73, and
  - (b) food businesses registered by it under section 75.
- (2) The list is to be made publicly available and is to be revised at least annually.

## Part 9 Administration

### Division 1 Relevant authority

#### 81 Functions of the relevant authority in relation to this Act

- (1) The relevant authority has such functions in relation to the administration of this Act as are conferred or imposed on it by or under this Act.
- (2) In particular, the relevant authority has the following functions in relation to the administration of this Act:
  - (a) to take measures to ensure that the provisions of this Act are complied with,
  - (b) to provide advice or recommendations to the Minister concerning possible changes to this Act or the regulations:
    - (i) that the relevant authority considers appropriate or necessary, or
    - (ii) that are proposed for consideration by the Australia New Zealand Food Standards Council.

#### 82 Delegation

- (1) The relevant authority may delegate to:
  - (a) a member of staff of the relevant authority, or
  - (b) an authorised officer, or
  - (c) the holder of an office prescribed by the regulations,any power of the relevant authority that is not specified in subsection (2).
- (2) The following powers of the relevant authority cannot be delegated:
  - (a) the power of delegation conferred by this section,
  - (b) any power under Part 3 (Emergency powers) [of Annex A],
  - (c) any power under Division 3 of Part 6 (Approval of laboratories),
  - (d) any power under Division 4 of Part 6 (Approval of analysts),
  - (e) any power under Part 7 (Auditing) other than sections 60, 63 and 70,
  - (f) any power under section 84 (Conditions on exercise of functions by enforcement agencies),
  - (g) any power under section 88 (Certificates of authority).

- (3) A delegate may sub-delegate to a person referred to in subsection (1) any power delegated by the relevant authority if the delegate is authorised in writing to do so by the relevant authority.
- (4) A power must not be delegated under this section to an enforcement agency or the head of an enforcement agency without the consent in writing of the enforcement agency or the head of the enforcement agency.

## Division 2 Functions of enforcement agencies

### 83 Functions of enforcement agencies in relation to this Act

- (1) An enforcement agency has such functions in relation to the administration of this Act as are conferred or imposed on it by or under this Act or are delegated to it under this Act.
- (2) A power conferred specifically on an enforcement agency (other than the relevant authority) by this Act cannot be delegated.

### 84 Conditions on exercise of functions by enforcement agencies

The relevant authority, after consultation with an enforcement agency, may, in writing, impose conditions or limitations on the exercise of functions under this Act by the enforcement agency.

### 85 Exercise of functions by enforcement agencies

- (1) The relevant authority may adopt national guidelines relating to the exercise of its functions under this Act and may require other enforcement agencies and authorised officers to adopt those guidelines in the carrying out of their functions under this Act.
- (2) In this section, ***national guidelines*** means guidelines prepared for the purposes of this section by the Australia New Zealand Food Authority.

### 86 Reports by enforcement agencies

- (1) The head of an enforcement agency (other than the relevant authority) is to report to the relevant authority, at such intervals as the relevant authority requires, on the performance of functions under this Act by persons employed or engaged by the agency.

- (2) In addition to any report required under subsection (1), the head of an enforcement agency is to forward to the relevant authority details of any proceedings for an offence under this Act or the regulations taken by an officer of the agency within one month of the proceedings being finally dealt with.

### **Division 3      Appointment of authorised officers**

#### **87      Appointment of authorised officers**

- (1) An enforcement agency may appoint a person to be an authorised officer for the purposes of this Act, but only if the enforcement agency considers the person has appropriate qualifications or experience to exercise the functions of an authorised officer.
- (2) Each enforcement agency is to prepare and maintain a list of authorised officers appointed by it.

#### **88      Certificates of authority**

- (1) An enforcement agency is to provide each authorised officer appointed by it with a certificate of authority as an authorised officer.
- (2) The powers of an authorised officer may be limited by the authorised officer's certificate of authority.
- (3) An authorised officer is required to produce the certificate of authority:
  - (a) if requested to do so by the proprietor of a food business whose premises are entered by the authorised officer, or
  - (b) if requested to do so by a person whom the authorised officer requires to produce anything or to answer any question.

### **Division 4      Advisory committees**

#### **89      Establishment of advisory committees**

- (1) The Minister may establish advisory committees to assist the relevant authority in the exercise of its functions.
- (2) An advisory committee is to consist of members appointed from persons having expertise in one or more of the following areas:
  - (a) the food industry,
  - (b) public health,



- (c) the interests of consumers,
  - (d) the enforcement of food legislation.
- (3) In addition, the Minister may appoint as members of an advisory committee persons having expertise in nutrition, toxicology, microbiology and food technology and such other persons as the Minister considers have appropriate expertise, qualifications or experience as will enable them to make a valuable contribution to the advisory committee.
- (4) The Minister may determine the term of office and remuneration of members and the procedure of an advisory committee.

90 Functions of advisory committees

An advisory committee has the following functions:

- (a) To provide advice to the Minister and the relevant authority on any Issue relating to food as the Minister or the relevant authority may require,
- (b) such other advisory functions relating to food as the Minister may determine.

## Part 10 Procedural and evidentiary provisions

### 91 Nature of proceedings for offences

- (1) Except as provided by subsection (3), proceedings for an offence under this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
  - (b) before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is \$10,000, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) An offence under Division 1 of Part 2 [of Annex A] is to be prosecuted on indictment.

**Drafting note: A provision to the effect of subclause (3) would be included by those jurisdictions that want to require the serious food offences to proceed on indictment before a jury.**

### 92 Institution of proceedings

- (1) Proceedings for an offence under this Act or the regulations may only be instituted:
  - (a) unless paragraph (b) applies, within 12 months after the date on which the offence is alleged to have been committed, or
  - (b) if the proceedings are in respect of a sample of food, within 6 months after the date on which the sample was obtained.
- (2) The court may extend the time referred to in subsection (1) for the institution of proceedings.
- (3) In any proceedings under this Act or the regulations in which an analyst's certificate is to be used, the certificate is to be served with the summons and the summons is to be made returnable not less than 14 days after the date on which it is served.

93 Penalty notices for certain offences

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under Division 2 of Part 2 (but only in relation to an offence for a contravention or failure to comply with a provision of the Food Safety Standards and not in relation to a failure to develop and implement a food safety program as required by the regulations).

**Drafting note: This is a reference to Part 2 of Annex A.**

- (2) The penalty for an offence that is dealt with by way of penalty notice is \$500.
- (3) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty specified in subsection (2) for the offence if dealt with under this section.
- (4) A penalty notice is to be served personally or by post.
- (5) If the amount of the penalty specified in subsection (2) for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

94 Offences by employers

- (1) If an employee contravenes any provision of this Act or the regulations, the employer is taken to have contravened the same provision.
- (2) It is a defence in proceedings against an employer for such a contravention if it is established that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (3) An employer may be proceeded against and convicted under a provision pursuant to this section whether or not the employee has been proceeded against or been convicted under that provision.

**95 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

**96 Liability of employees and agents**

- (1) Except as provided by subsection (2), it is no defence in proceedings for an offence under this Act or the regulations that the defendant was, at the time of the commission of the offence, an employee or agent of another person.
- (2) In any proceedings for an offence under this Act or the regulations, it is a defence for the defendant to prove that the defendant was under the personal supervision of the proprietor of the food business, or the owner or person in charge of the place or vehicle, in relation to which the offence was committed or of another person representing that proprietor, owner or person in charge.

**97 No defence to allege deterioration of sample**

In any proceedings for an offence under this Act or the regulations, it is not a defence for a person to allege that any part of a sample retained for future comparison with a sample that has been analysed has from natural causes deteriorated, perished or undergone any material change in its constitution.

**98 Onus to prove certain matters on defendant**

In any proceedings for an offence under this Act or the regulations against a defendant who was responsible for making a statement on a package or in an advertisement relating to the origin or composition of the food in question or the therapeutic or nutritive properties of the effect of the food, being a statement that is alleged to have caused the food to be falsely described, the onus of proving the correctness of the statement is on the defendant.

99 Presumptions

In any proceedings for an offence under this Act or the regulations, it is presumed until, on the balance of probabilities, the contrary is proved that:

- (a) any substance or thing capable of being used as food that was sold or prepared for sale or conveyed or intended for sale was sold, prepared, conveyed or intended for sale for human consumption, and
- (b) any substance or thing capable of being used as food is not for human consumption if it is prominently marked as not being for human consumption, or with words to that effect, and
- (c) food that is part of a batch, lot or consignment of food of the same class or description is representative of all of the food in that batch, lot or consignment, and
- (d) each part of a sample of food divided for the purpose of analysis under this Act is of uniform composition with every other part of that sample, and
- (e) a person who sold food in the conduct of a food business and was not the proprietor of the food business sold the food as the agent of the proprietor, and
- (f) a person who appears from any statement on a package containing food for sale to have imported, manufactured, packed or prepared the food is the importer, manufacturer, packager or preparer of the food, as the case may be, and
- (g) food that has been sold to a consumer has been sold at sometime by any person who respectively imported, manufactured, prepared or packed the food, and
- (h) a signature purporting to be that of the head of the relevant authority or other officer of the authority, an authorised officer, the person in charge of an approved laboratory or an approved analyst is that signature.

100 Certificate evidence and evidence of analysts

- (1) A certificate of the result of an analysis obtained by the defendant or the prosecution in proceedings for an offence under this Act or the regulations is admissible in any such proceedings and evidence of the facts stated in it if:
  - (a) the certificate was issued in accordance with section 47, and
  - (b) a copy of the certificate is served by the person who obtained it on the other party to the proceedings at least 7 days before the hearing.
- (2) An analyst who carried out an analysis in relation to which a certificate is produced as evidence in proceedings as referred to in subsection (1) need not be called as a witness in the proceedings by the party producing the certificate unless the court hearing the proceedings so orders (whether on application made to it or by any other means).
- (3) In any proceedings for an offence under this Act or the regulations, the prosecution cannot rely on an analysis as evidence for the purposes of those proceedings unless the person who carried out the analysis:
  - (a) is employed or engaged by an approved laboratory, or
  - (b) is an approved analyst, or
  - (c) was acting under the supervision of an approved analyst.
- (4) In any proceedings for an offence under this Act or the regulations:
  - (a) a document purporting to be a copy of any registration, approval, order, notice or authority under this Act is evidence of that registration, approval, order, notice or authority, or
  - (b) a document purporting to be signed by the head of the relevant authority certifying that at a specified time or during a specified period:
    - (i) there was or was not in force any registration, approval, order, notice or authority in relation to a specified person or persons, and
    - (ii) that a registration, approval, order, notice or authority was or was not subject to specified conditions,is evidence of the matters contained in the document, or

- (c) a document purporting to be signed by the head of the relevant authority certifying:
  - (i) as to the receipt or otherwise of any notice, application or payment, or
  - (ii) that any amount of fees or other money is payable under this Act by a specified person and has not been paid at the date of the certificate,is evidence of the matters contained in the document.

**101 Power of court to order further analysis**

- (1) In any proceedings for an offence under this Act or the regulations, the court may, at the request of any party to the proceedings or on its own motion, if satisfied that there is a disagreement between the evidence of the analysts for the parties to the proceedings, order that the part or parts of any sample retained under section 44 be sent by the enforcement agency concerned to an independent analyst specified by the court or agreed to by the parties.
- (2) An analyst who is sent a part or parts of a sample for analysis under this section is to make an analysis of that part or those parts for the information of the court.
- (3) Subject to section 105, the cost of an analysis under this section is to be borne by the enforcement agency concerned.

**102 Right of defendant to have third person before court**

- (1) A defendant charged with an offence under this Act or the regulations who alleges that the contravention constituting the offence was due to the act or default of another person may, on compliance with this section, have that other person brought before the court by which the charge is to be heard and determined.
- (2) Any such defendant who desires to use the provisions of this section:
  - (a) must give the informant and the court written notice of his or her intention to do so at least 7 days before the return date of the summons in question, and
  - (b) must include in that notice particulars of his or her claim that the contravention was due to the act or default of another person and that the defendant exercised due diligence to ensure compliance with the provisions of this Act or the regulations in question, and
  - (c) must lay an information against the other person for an offence under this Act or the regulations.

- (3) The court is to issue a summons directed to the other person requiring the other person to appear before the court on the date and at the time and place specified in the summons and, where that date is not the return date for the original summons, is to adjourn the hearing of the original charge to that date or the hearing of both charges to a later date and is to notify the parties accordingly.
- (4) On the hearing of the charges, the original informant or his or her legal practitioner as well as the other person who the defendant has alleged committed the offence:
  - (a) may cross-examine the defendant if the defendant gives evidence and any witness called by the defendant, and
  - (b) may call evidence in rebuttal.
- (5) The court:
  - (a) may convict the other person if the contravention or failure to comply with this Act or the regulations is proved and the original defendant satisfies the court that the contravention was due to the act or default of the other person, and
  - (b) must dismiss the charge against the original defendant if, in addition to satisfying the court that the contravention was due to the act or default of the other person, the original defendant satisfies the court that he or she exercised due diligence to ensure compliance with the relevant provisions of this Act or the regulations.
- (6) Nothing in this section prevents the court from ordering that proceedings against the other person be heard separately if the court considers that it is necessary in the interests of justice to do so.

103 Alternative defendants

- (1) If it appears to the enforcement agency that an offence under this Act or the regulations has been committed in respect of which some person may be charged and the enforcement agency is reasonably satisfied that:
  - (a) the offence was due to the act or default of some other person, and
  - (b) the first-mentioned person could successfully defend a proceeding by using the provisions of section 102,the enforcement agency may cause to be instituted proceedings against that other person for that offence without proceedings first being instituted against the first-mentioned person.



- (2) In proceedings in accordance with this section, the other person may be charged with the offence with which the first-mentioned person might have been charged and, on proof that the offence was due to the act or default of that other person, that other person may be convicted of the offence.

104 Disclosure by witnesses

- (1) In any proceedings for an offence under this Act or the regulations, a witness for the prosecution is not compelled to disclose the fact that the witness received information, the nature of the information received or the name of the person from whom the information was received.
- (2) An authorised officer appearing as a witness in any proceedings is not compelled to produce any document containing any confidential matter made or received in his or her capacity as an authorised officer.
- (3) Despite subclauses (1) and (2), a court hearing proceedings for an offence under this Act or the regulations may order the disclosure of any matter, or the production of a document, referred to in those subclauses if the court considers that it is necessary in the interests of justice.

105 Court may order costs and expenses

Without affecting any other power of a court to award costs, a court that hears proceedings for an offence under this Act or the regulations has power to make such order as it thinks fit in respect of the costs and expenses of and incidental to the examination, seizure, detention, storage, analysis (including further analysis), destruction or other disposition of any thing the subject of those proceedings.

106 Court may order forfeiture

A court by which a person is convicted of an offence under this Act or the regulations may order the forfeiture to the Crown of any thing that was used in the commission of the offence.

107 Court may order corrective advertising

A court by which a person (in this section referred to as *the defendant*) is found guilty of an offence under Part 2 [of Annex A], may make one or both of the following orders:

- (a) An order requiring the defendant to disclose in a particular manner to the public, to a particular person or to a particular class of persons specified information, or information of a specified kind, which the defendant possesses or to which the defendant has access,

- (b) an order requiring the defendant to publish, at his or her own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in the order.

## Part 11 Miscellaneous

### 108 Protection from liability

- (1) Any matter or thing done or omitted to be done by an enforcement agency, an advisory committee, or a protected person does not, if the matter or thing was done or omitted in good faith for the purpose of executing any provision of this Act or any other law, subject a protected person personally to any action, liability, claim or demand.
- (2) In this section, ***protected person*** means any of the following:
  - (a) the Minister,
  - (b) the head of an enforcement agency,
  - (c) any member of the enforcement agency or of the staff of the enforcement agency,
  - (d) an authorised officer,
  - (e) any person acting under the direction of the head of an enforcement agency,
  - (f) any member of an advisory committee,
  - (g) a person employed by the Crown to carry out analyses for the purposes of this Act or a person carrying out analyses under the supervision of such a person.

### 109 Bribery

A person must not give, procure, offer or promise any bribe, recompense or reward to influence any person in the exercise of functions or the performance of duties under this Act.

Maximum penalty: \$50,000.

### 110 Disclosure of certain confidential information

- (1) A person who has, in connection with the administration or execution of this Act, obtained information relating to manufacturing secrets or commercial secrets or working processes must not disclose that information unless the disclosure is made:
  - (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or

- (d) in accordance with a requirement imposed by or under this Act or any other law, or
- (e) to a person administering or enforcing a law of another jurisdiction that corresponds to this Act or any other law prescribed by the regulations, or
- (f) to the Australia New Zealand Food Authority, or
- (g) to a law enforcement authority, or
- (h) with other lawful excuse.

Maximum penalty: \$50,000.

- (2) A person is not guilty of an offence under this section if the information was publicly available at the time the disclosure concerned was made.

**111 Publication of names of offenders**

- (1) The relevant authority may publish a notification under this section in the Gazette or in a newspaper circulating in this jurisdiction in respect of any person who is convicted of an offence under this Act or the regulations relating to the handling or sale of food or an employee or agent of whom has been convicted of such an offence.
- (2) The notification may only be published within 21 days after the conviction unless an appeal is made against the conviction.
- (3) If an appeal is made against the conviction, a notification under this section must not be published unless a final order has been made on appeal affirming the conviction, in which case, the notification may only be published within 21 days of the final order being made.
- (4) A notification under this section may contain:
  - (a) the address of the relevant person's place of business, and
  - (b) the trade or company name under which the company trades, if relevant, and
  - (c) a description of the nature of the offence, the decision of the court, the penalty imposed or any forfeiture incurred, and
  - (d) such other information relating to the safety of the food concerned as the relevant authority thinks necessary.
- (5) No liability is incurred by a person for publishing in good faith:
  - (a) a notification under this section, or
  - (b) a fair report or summary of such a notification.

**112 Act to bind Crown**

This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Legislature of this jurisdiction permits, the Crown in all its other capacities.

**113 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, including the following:
  - (a) requiring the preparation, implementation, aintenance and monitoring of food safety programs for food businesses to ensure that the provisions of this Act and the Food Standards Code are complied with,
  - (b) fees or charges for the purposes of this Act, including (but not limited to) fees or charges for the provision of information, or for the carrying out of any inspection or analysis (whether or not the inspection or analysis was requested or agreed to), or in connection with the notification of the use of any food business or the registration of any food business,
  - (c) fees for the making of applications under this Act,
  - (d) requirements for the notification by food businesses of information relating to the conduct of those food businesses.
- (2) A regulation may create an offence punishable by a penalty not exceeding \$500.
- (3) Except as provided by subsection (4), the regulations may apply, adopt or incorporate, whether wholly or in part or with or without modifications, any standard, code or other document as in force from time to time or as in force at a particular time.
- (4) The regulations may adopt or incorporate the Food Standards Code, but only in whole, without modification and as in force from time to time.

**114 Temporary emergency regulations**

- (1) Despite section 113 (4), regulations may be made under this Part that contain provisions that are in addition to, or in substitution for, one or more of the provisions of the Food Standards Code as those provisions of the Code apply in this jurisdiction.

- (2) A regulation referred to in subsection (1) must not be made unless the Minister has certified that such a regulation is necessary as it relates to an issue of public health and safety.
- (3) A provision of a regulation referred to in subsection (1) does not continue in force:
  - (a) except as provided by paragraph (b), for a period that is more than 12 months, or
  - (b) if the provision is the same in substance as a provision of a regulation that was previously in force under this Act, for a period that, when added to the period for which that previous provision was in force, is more than 12 months.

115 Savings and transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) If such a regulation so provides, it has effect despite any provision of this Act.
- (3) A provision of a regulation made under this section may, if the regulation so provides, take effect from the date of assent to this Act or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Drafting note: The following supplementary provisions are self-contained infringement notice provisions from the Tasmanian Food Act 1998 and would be included in Part 10 if adopted.**

116 Service of infringement notice

- (1) An authorised person or a council may serve an infringement notice on a person, other than a person under the age of 16 years, if of the opinion that the person has committed a prescribed offence.
- (2) An infringement notice is not to relate to 4 or more offences.

**117 Form of infringement notice**

- (1) An infringement notice is to:
  - (a) be in an approved form, and
  - (b) specify:
    - (i) the offence to which it relates, and
    - (ii) the prescribed penalty and prescribed special penalty for that offence, and
    - (iii) the total amount payable, and
    - (iv) the place at which the penalty must be paid, and
    - (v) any other prescribed details.
- (2) An infringement notice is to state that the person on whom it is served may disregard the notice but that on doing so he or she may be prosecuted for the offence to which the notice relates.

**118 Acceptance of infringement notice**

A person may accept an infringement notice by:

- (a) paying the total amount payable to a clerk of petty sessions within 21 days after being served with the notice, or
- (b) lodging at the place specified in the notice within 21 days after being served with the notice a written undertaking to pay the amount payable.

**119 Extension of acceptance period**

If an infringement notice is not accepted before the period referred to in section 118 expires, a clerk of petty sessions or relevant council clerk may allow a further period of 14 days commencing on that expiry for the acceptance of that notice.

**120 Payment**

- (1) If a person undertakes under section 118 (b) to pay any amount payable under an infringement notice, a clerk of petty sessions or relevant council clerk may determine the period, not exceeding 60 days from the day on which the notice was served, within which the amount must be paid.
- (2) A person may make representations to a clerk of petty sessions or relevant council clerk in relation to the ability to pay the amount.
- (3) A clerk of petty sessions or relevant council clerk is to take the person's Representations into account before determining the period within which the amount is to be paid.

- (4) If a person fails to pay any amount in accordance with an undertaking, the same proceedings may be taken against the person in respect of the amount remaining outstanding as if it were a penalty imposed on the person on summary conviction.

**121 Payments to council or Consolidated Fund**

Any payments made in respect of an infringement notice:

- (a) are payable to a council, if the notice was served by the council, or
- (b) in any other case, are payable into the Consolidated Fund.

**122 Effect of acceptance**

- (1) The acceptance of an infringement notice is not an admission of liability in any civil proceedings.
- (2) Proceedings against a person for an offence to which an infringement notice relates that has not been withdrawn must not be brought:
  - (a) if the person accepts the infringement notice, or
  - (b) within:
    - (i) 28 days after the notice was served, if the person has not been allowed an additional period under section 119, or
    - (ii) 42 days after the notice was served, if the person has been allowed an additional period under section 119.

**123 Withdrawal of infringement notice**

- (1) The Director or a council or any person authorised by either of them may withdraw an infringement notice served on a person if of the opinion that:
  - (a) the infringement notice should not have been served, or
  - (b) the person should be proceeded against for the offence to which the notice relates.
- (2) An infringement notice may be withdrawn whether or not it has been accepted.
- (3) An infringement notice is to be withdrawn:
  - (a) by serving on a person a notice stating that the infringement notice has been withdrawn, and
  - (b) within 108 days after service of the infringement notice.
- (4) A clerk of petty sessions or relevant council clerk must repay to a person any amount paid by that person in respect of an infringement notice that is withdrawn.



**124 Certain evidence not admissible**

Evidence of the service, acceptance or withdrawal of an infringement notice is not admissible in any proceedings for the offence to which the notice relates.