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## **Food Act 2003**

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## **Food Act 2003**

**An Act to ensure the provision of food that is safe and fit for human consumption and to promote good nutrition and for related matters**

**[Royal Assent 16 April 2003]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## PART 1 - Preliminary

### 1. Short title

This Act may be cited as the Food Act 2003 .

### 2. Commencement

This Act commences on a day to be proclaimed.

### 3. 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.

### 4. Interpretation

(1) In this Act, unless the contrary intention appears –

***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;

***appropriate review body*** means the Magistrates Court (Administrative Appeals Division);

***approved*** means approved by the Director of Public Health;

***approved form*** means a form that –

- (a) is approved by the Director of Public Health; or
- (b) contains information approved by the Director of Public Health;

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

***authorised officer*** means a person appointed under Division 3 of Part 8 ;

***court*** means the Magistrates Court;

***Director of Public Health*** means the person appointed as Director of Public Health under section 6 of the Public Health Act 1997 ;

***enforcement agency*** means the Director of Public Health or a council;

***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) ;

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

***food*** has the meaning given by section 5 ;

**food business** has the meaning given by section 6 ;

**food safety auditor** means a person approved under Division 1 of Part 6A ;

**food safety program** means a program that complies with the requirements specified in the regulations;

**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 (or of food ultimately intended 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;

**improvement notice** means an improvement notice issued under Part 5 ;

**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;

**mobile structure**, in relation to a food business, means a vehicle, trailer, cart, tent, stall, booth, pontoon, table, barbeque, pizza oven, or other mobile structure, that is not permanently fixed to the whole, or part, of a building, structure or land, in, at or from which food is, or is intended to be, handled or sold;

**occupier** includes a person in charge of, or operating, any premises;

**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
- (ca) a mobile structure; 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 7 ;

**prohibition order** means a prohibition order issued under Part 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;

**public institution** means a prison within the meaning of the Corrections Act 1997 , detention centre within the meaning of the Youth Justice Act 1997 , hospital, nursing home or any other health facility prescribed in the regulations;

**public notice** means a notice published in the *Gazette*;

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

**record** means a record of any kind, including a disk, tape or other article from which information is capable of being reproduced (with or without the aid of another article or device);

**regulations** means the regulations made and in force under this Act;

**repealed Act** means the Food Act 1998 ;

**sample** means a sample taken under this Act;

**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; or
- (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;

**this jurisdiction** means the State of Tasmania;

**unsafe** has the meaning given by section 8 ;

**unsuitable** has the meaning given by section 9 ;

**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.

## 5. 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 other substance or thing declared to be 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.

## 6. 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.

## 7. 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, or on premises that are associated with the premises on which the food 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, raised, cultivated, picked, harvested, collected or caught; or

(b) the packing or treating of food on premises that are associated with the premises on which it was grown, raised, cultivated, picked, harvested, collected or caught if carried out by a person who has purchased the food, or who is carrying out the packing or treating under contract (not being a contract of employment); or

(c) the sale or service of food directly to the public; or

(d) any other food production activity that is prescribed by the regulations for the purposes of this subsection.

(3) For the purposes of this section, premises are associated with each other if they form part of a single enterprise.

## **8. 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.

## **9. 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.

#### **10. Application of Act to primary food production**

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

#### **11. Application of Act to water suppliers**

- (1) The following provisions of this Act do not apply to or in respect of the supply of water for human consumption through a reticulated water system by a water supplier:
  - (a) sections 13 , 15 , 16(1) , 17(1) , 18 , 19 , 20 and 21 (but only to the extent to which it requires compliance with the requirements of the Food Safety Standards);
  - (b) Parts 5 and 7 .
- (2) In this section,  
*water supplier* means –
  - (a) a body that is constituted by or under an Act and that has as its function, 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) any body or person prescribed by the regulations for the purposes of this section.

#### **12. Act binds Crown**

This Act binds the Crown in right of the State and also, so far as the legislative power of Parliament permits, in all its other capacities.

## **PART 2 - Offences relating to food**

### ***Division 1 - Serious offences relating to food***

#### **13. Handling of food in unsafe manner**

(1) 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) a body corporate, a fine not exceeding 5 000 penalty units.

(2) 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 750 penalty units; or
- (b) a body corporate, a fine not exceeding 3 750 penalty units.

#### **14. Sale of unsafe food**

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

Penalty: In the case of –

- (a) an individual, a fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) a body corporate, a fine not exceeding 5 000 penalty units.

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

Penalty: In the case of –

- (a) an individual, a fine not exceeding 750 penalty units; or
- (b) a body corporate, a fine not exceeding 3 750 penalty units.

#### **15. 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) a body corporate, a fine not exceeding 5 000 penalty units.

(2) 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 750 penalty units; or
- (b) a body corporate, a fine not exceeding 3 750 penalty units.

(3) A person must not sell food that the person knows –

- (a) is falsely described; and
- (b) will cause, or is likely to cause, physical harm to a consumer of the food who relies on the description.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) a body corporate, a fine not exceeding 5 000 penalty units.

(4) A person must not sell food that the person ought reasonably to know –

- (a) is falsely described; and
- (b) is likely to cause physical harm to a consumer of the food who relies on the description.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 750 penalty units; or
- (b) a body corporate, a fine not exceeding 3 750 penalty units.

## ***Division 2 - Other offences relating to food***

### **16. 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

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

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

### **17. 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 400 penalty units; or
- (b) a body corporate, a fine not exceeding 2 000 penalty units.

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

Penalty: In the case of –

- (a) an individual, a fine not exceeding 400 penalty units; or
- (b) a body corporate, a fine not exceeding 2 000 penalty units.

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

#### **18. 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

(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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

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

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

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

#### **19. 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

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

#### **20. 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

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

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

## **21. 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

(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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

(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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

(4) A person must not sell or advertise for sale any food in a manner that contravenes a provision of the Food Standards Code.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

## **22. 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 15(3) or (4), food is falsely described for the purposes of section 15(3) or (4) 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.

### **23. 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.

## ***Division 3 - Defences***

### **24. 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 Director of Public Health, a council or an authorised officer 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.

### **25. 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.

### **26. 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.

(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 subsection (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.

## **27. Defence in respect of handling food**

In any proceedings for an offence under section 13 , section 16(1) or section 17(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.

## **28. Defence in respect of sale of unfit equipment or packaging or labelling material**

In any proceedings for an offence under section 20(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.

## **29. Defence of mistaken but reasonable belief not available**

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

## **30. Onus on person to prove certain statements about food**

(1) This section applies to a proceeding for an offence under this Part in which it is alleged that a statement on a package of food, or in an advertisement about food, that relates to the origin or composition of the food, or its

therapeutic or nutritive properties, caused the food to be falsely described.

(2) If a person charged with an offence under this Part was responsible for making the statement, the onus of proving the correctness of the statement is on the person.

### **31. Alternative verdicts for serious food offences**

(1) If, on the trial of a person charged with an offence against section 13 , the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 16(1) , the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 16(1) , and the person is liable to punishment accordingly.

(2) If, on the trial of a person charged with an offence against section 14 , the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 16(2) , the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 16(2) , and the person is liable to punishment accordingly.

## **PART 3 - Emergency powers**

### **32. Interpretation: Part 3**

In this Part,

*relevant authority* means the Director of Public Health, a council or an authorised officer.

### **33. Making of order**

An order may be made under this Part by a 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.

### **34. 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, the recall 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 who made the order in the same manner as the order was made.

### **35. 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 who made the recall order 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

who made the recall order from that person.

(4) In any proceedings for the recovery of the debt, a certificate signed by the relevant authority who made the recall order stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

### **36. 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 who made the order, 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.

### **37. 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 who made the order 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 who made the order is to pay such compensation to the applicant as is just and reasonable.

(3) The relevant authority who made the order 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 who made the order 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 compensation.

(5) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the relevant authority who made the order 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.

### **38. 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

### **39. 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 this Part.

## **PART 4 - Inspection and seizure powers**

### ***Division 1 - Inspection***

#### **40. 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 with 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 to 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 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;
- (i) seize and retain, or issue a seizure order in respect of, any thing that the authorised officer reasonably believes has been used in, or may be used as evidence of, a contravention of this Act;
- (j) 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;
- (k) stop and detain any vehicle that the authorised officer is authorised by this subsection to enter;
- (l) 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;
- (m) take such photographs, films or audio or visual recordings as the authorised officer considers necessary;
- (n) take any measurements and make sketches or drawings or any other type of record;
- (o) 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;
- (p) require a person to state the person's name and residential address;
- (q) generally make such investigations and inquiries as may be necessary to ascertain whether an offence under this Act is being or has been committed;

(r) exercise any other power prescribed by or under the regulations.

(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 of meals provided with paid accommodation.

(3) A person is not excused from a requirement under this section 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.

(4) 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 42 , 43 or 45 .

#### **41. Search warrants**

(1) An authorised officer may apply to a justice of the peace for a search warrant if the authorised officer has reasonable grounds to believe that a provision of this Act has been, is being or is about to be contravened on premises.

(2) A justice of the peace to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant.

(3) An authorised officer may execute a search warrant using such assistance as the authorised officer considers necessary.

(4) A warrant issued under this section may be made subject to any conditions that the justice of the peace considers appropriate.

(5) Subject to subsection (4) , a warrant issued under this section authorises the authorised officer named in the warrant to enter and search the premises specified in the warrant and exercise such of the powers specified in section 40 as are not expressly excluded by the justice of the peace who issued the warrant.

(6) Schedule 1 has effect with respect to a warrant issued under this section.

(7) This section does not limit the operation of section 40(1) .

#### **42. Failure to comply with requirements of authorised officers**

A person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer duly made under this Division.

Penalty: In the case of –

(a) an individual, a fine not exceeding 500 penalty units; or

(b) a body corporate, a fine not exceeding 2 500 penalty units.

#### **43. False information**

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

Penalty: In the case of –

(a) an individual, a fine not exceeding 500 penalty units; or

(b) a body corporate, a fine not exceeding 2 500 penalty units.

#### **44. 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 this Division.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 2 500 penalty units.

#### **45. 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.

Penalty: Fine not exceeding 500 penalty units.

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

Penalty: Fine not exceeding 100 penalty units.

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

Penalty: Fine not exceeding 500 penalty units.

### ***Division 2 - Items seized by authorised officers***

#### **46. 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.

#### **47. 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 54 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.

#### **48. 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.

#### **49. Return of seized item**

If, before any item seized under this Part is forfeited to the Crown or a council under this Division, an authorised officer becomes satisfied that there has been no contravention of this Act of which the item is evidence, the authorised officer 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 authorised officer to be entitled to it.

#### **50. Forfeiture of item**

(1) An item seized under this Part is forfeited to the Crown or a council –

- (a) on the expiration of the period allowed by section 54 for the making of an application for an order disallowing the seizure if the item has not been dealt with under section 49 and no application under section 54 has been made within that period; or
- (b) if an application for an order disallowing the seizure has been made under section 54 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 was refused or withdrawn.

(2) An item forfeited under this section may be destroyed, sold or otherwise disposed of as the enforcement agency concerned may determine.

#### **51. 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.

#### **52. 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 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.

#### **53. Compensation to be paid in certain circumstances**

(1) A person may apply for compensation for an item seized under this Part.

(2) The enforcement agency concerned 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 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.

#### **54. 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.

#### **55. 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 54 .

#### **56. Order for return of seized item**

The court, on the hearing of an application made under section 54 , 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 was being or had been or was about to be 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.

#### **57. 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.

#### **58. Adjournment pending hearing of other proceedings**

If on the hearing of an application made under section 54 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 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**

### **59. 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 intended for sale or any equipment or food transport vehicle, any food safety program 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 in 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.

### **60. 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; or
- (d) a food safety program be revised; or
- (e) in relation to the handling of food intended for sale in premises or in a food transport vehicle, measures be taken to implement the provisions of any relevant food safety program; or
- (f) other action be taken to ensure compliance with the provisions of the Food Standards Code –

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, an authorised officer 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 may include ancillary or incidental directions.

(4) An improvement notice is to state that it is issued under this section.

### **61. 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.

### **62. Prohibition order**

(1) If an authorised officer believes, on reasonable grounds –

(a) that any of the circumstances specified in section 59 exist; and

(b) that –

(i) the proprietor of the food business has not complied with an improvement notice within the time required for compliance; or

(ii) the issue of a prohibition order is necessary to prevent or mitigate a serious danger to public health –

the authorised officer 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 in 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; or

(e) prohibits other action being taken –

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 may include ancillary or incidental directions.

(4) A prohibition order is to state that it is issued under this section.

(5) The authorised officer 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 authorised officer or person finds 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.

### **63. Scope of notices and orders**

An improvement notice or a prohibition order may be issued 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 in 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.

### **64. 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.

## **65. Request for reinspection**

(1) The proprietor of the food business whose premises are affected by a prohibition order may at any time after the order has been served make a written request to the enforcement agency who employs the authorised officer 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 enforcement agency who employs the authorised officer 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 enforcement agency 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 2 days after the receipt of the request by the enforcement agency, a certificate of clearance is taken to have been given to the proprietor of the food business under section 62 .

## **66. Contravention of improvement notice or prohibition order**

A person must not, without reasonable excuse, contravene or fail to comply with an improvement notice or a prohibition order served on the person under this Part.

Penalty: In the case of –

(a) an individual, a fine not exceeding 500 penalty units; or

(b) a body corporate, a fine not exceeding 2 500 penalty units.

## **67. Review of decision to refuse certificate of clearance**

(1) A person aggrieved by a decision of an authorised officer to refuse to give a certificate of clearance under this Part may apply to the appropriate review body for a review of the decision.

(2) An application under subsection (1) must be made within 28 days after the day on which notification of the decision is received.

## **68. Compensation**

(1) A person bound by a prohibition order who suffers loss as a result of the issuing of the order may apply to the enforcement agency that issued the order for compensation if the person considers that there were no grounds for the issuing of the order.

(2) If there were no grounds for the issuing of the order, the enforcement agency that issued the order is to pay such compensation to the applicant as is just and reasonable.

(3) The 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) If the enforcement agency has not determined an application for compensation under this section within 28 days of receiving the application, the enforcement agency 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 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 –

(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 after the 28-day period referred to in that subsection.

## **PART 6 - Taking and analysis of samples**

### ***Division 1 - Taking of samples***

#### **69. Proprietor to be informed**

Whenever an authorised officer obtains a sample of food for the purposes of analysis, the 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, or was, taken; or
- (b) if the proprietor is not present or readily available, the person from whom the sample is to be, or was, taken or who is in charge of the food from which the sample is to be, or was, taken –

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

#### **70. Payment for sample**

An authorised officer when obtaining a sample of food must pay, or tender payment of, an amount equal to the current market value of the sample to the person from whom the sample is obtained.

#### **71. Samples from vending machines**

Sections 69 and 70 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.

#### **72. 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 2 or more smaller packages of the same food.

#### **73. 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.

#### **74. 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.

#### **75. Analysis of food in certain cases**

In any proceedings relating to food purchased by a person other than an authorised officer in the ordinary course of business and analysed, if it is proved that the food when submitted for analysis was in the same state as when bought –

- (a) the certificate of analysis provided under section 77 in relation to that food is admissible as evidence; and
- (b) section 73 is not required to be complied with.

### ***Division 2 - Procedures relating to analyses***

#### **76. 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.

#### **77. Certificate of analysis**

- (1) This section applies to an analysis that is carried out by an approved laboratory for the purposes of this Act.
- (2) On completion of an analysis to which this section applies, the person in charge of the laboratory at which the analysis was carried out 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; 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***

#### **78. Approval of laboratories**

- (1) The Director of Public Health 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, on payment of the approved fee, make an application, in the approved form, to the Director of Public Health for an approval of the laboratory under this Division.
- (3) The Director of Public Health may, after considering an application for approval –

(a) grant the application, with or without conditions; or

(b) refuse the application.

(4) If the Director of Public Health grants an application for approval, he or she must issue the applicant with a written approval that sets out the conditions, if any, to which the approval is subject.

(5) If the Director of Public Health refuses an application for approval, he or she must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

#### **79. Term of approval**

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

#### **80. Approved laboratory to give notice of certain interests**

The person in charge of an approved laboratory must notify the Director of Public Health 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.

Penalty: Fine not exceeding 100 penalty units.

#### **81. Variation of conditions, or suspension or cancellation, of approval of laboratory**

(1) The Director of Public Health 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 Director of Public Health is satisfied that a person providing services at the laboratory has contravened or failed to comply with any provision of this Act;

(b) if the Director of Public Health is satisfied that a person providing services at the laboratory has contravened a condition to which the approval is subject;

(c) if the Director of Public Health 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 Director of Public Health, 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 Director of Public Health considers appropriate.

(3) The Director of Public Health 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 for his or her 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 on the day on which the notice is served or on a later day specified in the notice.

#### **82. Review of decisions relating to approval**



(1) A person aggrieved by a decision of the Director of Public Health 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 must be made within 28 days after service of –

- (a) the written approval or notice of refusal under this Division; or
- (b) the notice of the variation, suspension or cancellation under this Division.

### **83. List of approved laboratories to be maintained**

- (1) The Director of Public Health is to prepare and maintain a list of approved laboratories.
- (2) The list is to be made publicly available.
- (3) The Director of Public Health may charge a reasonable fee for inspection.

## **PART 6A - Auditing**

### ***Division 1 - Approval of food safety auditors***

#### **83A. Approval of food safety auditors**

(1) The Director of Public Health may approve a natural person to be a food safety auditor for the purposes of this Act if the Director 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 approved guidelines relating to competency criteria.

(2) A natural person may make an application, in the approved form, to the Director of Public Health for approval under this Part.

(3) The application is to be accompanied by –

- (a) such information as the Director of Public Health requires to determine the application; and
- (b) the fee, if any, prescribed by the regulations.

(4) The Director of Public Health may, after considering an application for approval –

- (a) grant the application with or without conditions; or
- (b) refuse the application.

(5) If the Director of Public Health grants an application for approval, he or she must issue the applicant with a written approval that sets out any conditions to which the approval is subject.

(6) If the Director of Public Health refuses an application for approval, he or she must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

#### **83B. 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.

#### **83C. Food safety auditor to give notice of certain interests**

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

Penalty: Fine not exceeding 50 penalty units.

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

#### **83D. Variation of conditions, or suspension or cancellation, of approval of food safety auditor**

(1) The Director of Public Health 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 Director of Public Health is satisfied that the person has wilfully or negligently contravened any provision of this Act;
- (b) if the Director of Public Health is satisfied that the person has contravened a condition to which the approval is subject;
- (c) if the Director of Public Health is satisfied that the person has not competently carried out any duty of a food safety auditor under this Act;

(d) if the Director of Public Health is satisfied that the person has a direct or indirect interest in any food business that, in the opinion of the Director, could affect the performance of the person's duties as a food safety auditor under this Act;

(e) at the request of the person;

(f) for any other reason that the Director of Public Health considers appropriate.

(3) Payment to a food safety auditor for performing the duties of a food safety auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (2)(d) .

(4) The Director of Public Health may only vary the conditions of, or suspend or cancel, the approval of a person –

(a) after having given the person –

(i) written reasons for the Director's 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.

### **83E. Review of decisions relating to approvals**

(1) A person aggrieved by a decision of the Director of Public Health 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 Director of Public Health for a review of the decision if the decision was made by a body acting under a delegation given by the Director:

(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 28 days after service of –

(a) the written approval or notice of refusal under section 83A ; or

(b) the notice of the variation, suspension or cancellation under section 83D .

## ***Division 2 - Auditing and reporting requirements***

### **83F. Interpretation**

In this Division –

*appropriate authority*, in relation to a food business, means the Director of Public Health or the council of the municipal area in which the food business is located.

### **83G. 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.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

(2) The proprietor of a food business must ensure that any food safety program required by the regulations to be prepared in relation to the food business is audited at least as frequently as is determined under section 83H(1) , or as redetermined under section 83K , in relation to the food business.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

### **83H. Priority classification system and frequency of auditing**

(1) The appropriate authority 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 by the regulations to be prepared in relation to the food businesses.

(2) The determination must be made having regard to an approved priority classification system for types of food businesses.

(3) The appropriate authority 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 by the regulations to be prepared in relation to the food business; and
- (c) the date by which the food business must have implemented any food safety program required by the regulations to be prepared in relation to the food business.

(4) The appropriate authority may change the priority classification of an individual food business if the appropriate authority 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 authority must provide written notification to the proprietor of a food business of any change in priority classification of the food business under subsection (4) .

### **83I. 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 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 83J .

### **83J. Reporting requirements**

(1) A food safety auditor must report in writing to the appropriate authority the results of any audit or 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 approved form; and

(b) be submitted to the appropriate authority 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 authority, 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 food safety auditor must give a copy of a report provided to the appropriate authority in relation to an audit or assessment to the proprietor of the food business concerned.

### **83K. 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 83H .

(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 the 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.

(3) A food safety auditor must advise the proprietor of the food business concerned of a redetermination made under subsection (1) .

**83L. Certificates of authority of food safety auditors**

(1) The Director of Public Health is to provide each food safety auditor with a certificate of authority as a food safety auditor.

(2) The certificate of authority must –

(a) state that it is issued under this Act; and

(b) 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) state the date, if any, on which it expires; and

(d) specify any conditions to which the person's approval is subject; and

(e) 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.

**83M. List of food safety auditors to be maintained**

(1) The Director of Public Health 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.

**83N. 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.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 2 500 penalty units; or

(b) an individual, a fine not exceeding 500 penalty units.

(2) A person must not impersonate a food safety auditor.

Penalty: Fine not exceeding 500 penalty units.

(3) A person must not assault a food safety auditor in the exercise of the food safety auditor's functions under this Act.

Penalty: Fine not exceeding 500 penalty units.

## **PART 7 - Notification and registration of food businesses**

### **84. Notification of conduct of food businesses**

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 council of the municipal area in which the food business is located before the food business is conducted.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 1 200 penalty units.

### **85. Exemption in relation to notification of information**

Section 21 (to the extent to which it requires notification of the information referred to in section 84 ) and section 84 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;
- (b) any food business that is registered under this Act or under a law prescribed by the regulations.

### **86. Requirement to register food business**

(1) The Director of Public Health, by notice in the *Gazette*, may require the proprietor of any food business or class of food businesses to register the food business.

(2) A person must comply with a requirement under subsection (1) .

Penalty: In the case of –

- (a) an individual, a fine not exceeding 500 penalty units; or
- (b) a body corporate, a fine not exceeding 1 200 penalty units.

### **87. Registration of food business**

(1) For the purposes of this Part, a council may register a food business –

- (a) located in the municipal area; and
- (b) to which a notice under section 86 relates.

(2) The proprietor of a food business to which a notice under section 86 relates is to apply to the council of the municipal area in which the food business is located for the food business to be registered.

(3) An application is to be –

- (a) in an approved form; and
- (b) lodged with the council of the municipal area in which the food business is located.

(4) The application is to be accompanied by –

- (a) if required by the council, the design and fitout specifications, in a form approved by the council, of any premises or proposed premises in which food is to be handled in the course of conducting the food business; and
- (b) such other information as the council requires to determine the application; and
- (c) the fee, if any, determined by the council.

(5) The council may, after considering an application for registration –

- (a) grant the application, with or without conditions; or

(b) refuse the application.

(6) If the council grants an application for registration, it must issue the applicant with a certificate of registration that sets out the conditions, if any, to which the registration is subject.

(7) If the council refuses an application for registration, the council must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

#### **88. Single certificate of registration for whole State**

A certificate of registration of a food business, which is conducted in whole, or in part, in, at or from a mobile structure, issued by one council is sufficient to satisfy the requirement of registration in respect of that food business throughout the State.

#### **89. Renewal of registration**

(1) The holder of a certificate of registration under this Part may, at any time during the currency of the registration, apply to the council of the municipal area in which the food business is located for a renewal of the registration.

(2) The application is to be accompanied by the fee, if any, determined by the council.

(3) The council 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 council 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 council refuses an application for renewal of registration, the council 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 90 .

#### **90. Term of registration**

Except during any period of suspension, the registration of a food business under this Part remains in force for the period specified in the certificate of registration or for a period of 12 months from the date of its issue, whichever is the lesser.

#### **91. Variation of conditions, or suspension or cancellation, of registration of food businesses**

(1) The council of the municipal area in which the food business is registered 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 council is satisfied that there has been a contravention of any provision of this Act in the conduct of the food business;

(b) if the council 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 council considers appropriate.



(3) The council 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.

## **92. Registration not transferable**

A certificate of registration is not transferable.

## **93. Review of decisions relating to registration**

(1) A person aggrieved by a decision of a council 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 28 days after –

- (a) the issue of the certificate of registration under section 87(6) or section 89(4) ; or
- (b) the giving of the notice of refusal under section 87(7) or section 89(5) ; or
- (c) the service of the notice of the variation, suspension or cancellation under section 91(5) .

## **94. Register of food businesses to be maintained**

(1) Each council is to prepare and maintain a list containing all of the following:

- (a) food businesses notified to it under section 84 ;
- (b) food businesses registered by it under section 87 ;
- (c) food businesses whose registration is renewed under section 89 .

(2) The list is to be made publicly available and is to be revised at least annually.

## **PART 8 - Administration**

### ***Division 1 - Director of Public Health***

#### **95. General functions and powers of Director of Public Health**

- (1) The functions of the Director of Public Health are as follows:
  - (a) to take measures to ensure that the provisions of this Act are complied with;
  - (b) to advise the Minister on any changes to this Act that may be necessary or appropriate;
  - (c) to carry out any other function for the purpose of this Act the Minister determines.
- (2) The Director of Public Health may do anything necessary or convenient to perform any function under this Act.
- (3) The Minister may give the Director of Public Health directions in respect of any power or function of the Director of Public Health under this Act and the Director of Public Health must comply with the directions.

#### **96. Delegation by Director of Public Health**

- (1) The Director of Public Health may delegate any of his or her functions or powers, other than this power of delegation, to any person, class of persons or State Service Agency.
- (2) The Director of Public Health is not to delegate any function or power to a council without that council's consent.
- (3) The Director of Public Health is not to revoke a delegation to a council without consulting that council.

### ***Division 2 - Councils***

#### **97. Functions of councils**

A council, within its municipal area, is to –

- (a) take adequate measures to ensure that the provisions of this Act are complied with; and
- (b) carry out any other function the Minister or Director of Public Health determines.

#### **98. Power of Director of Public Health to order council to perform functions**

- (1) The Director of Public Health may order –
  - (a) a council to exercise any power or perform any function under this Act; or
  - (b) any authorised officer to carry out a specified function of a council under this Act; or
  - (c) any authorised officer to perform any function under this Act in any municipal area.
- (2) If a council fails to exercise any power or perform any function, the Director of Public Health may exercise the power or perform the function at the council's expense.
- (3) Before the Director of Public Health makes an order or takes any action under this section in relation to a council, the Director of Public Health, unless the circumstances require immediate action, is to consult with the council.
- (4) A council may request the Director of Public Health to exercise any of its powers or perform any of its functions at the council's expense.

#### **99. Power over wharves, &c.**

A power or function of a council under this Act extends to any wharf or body of water in, or adjacent to, its municipal area.

#### **100. Reports by councils**

- (1) The council is to report to the Director of Public Health, at such intervals as the Director of Public Health requires, on the performance of functions under this Act by persons employed or engaged by the council.
- (2) In addition to any report required under subsection (1) , the council is to forward to the Director of Public Health details of any proceedings for an offence under this Act taken by an officer, employee or agent of the council within one month of the proceedings being finally dealt with.

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

#### **101. Appointment of authorised officers**

- (1) The Director of Public Health may appoint a State Service officer or State Service employee to be an authorised officer for the purpose of this Act and that officer or employee may hold that office in conjunction with State Service employment.
- (2) A council may appoint a person to be an authorised officer for the purposes of this Act.
- (3) A person may not be appointed as an authorised officer under this section unless the person holds an approved qualification.
- (4) The Director of Public Health may approve the qualifications required for appointment as an authorised officer generally or for a particular appointment.

#### **102. Certificates of authority**

- (1) The Director of Public Health is to provide each authorised officer appointed under section 101(1) with a certificate of authority as an authorised officer.
- (2) A council is to provide an authorised officer appointed under section 101(2) with a certificate of authority as an authorised officer.
- (3) The powers of an authorised officer may be limited by the authorised officer's certificate of authority.
- (4) 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 any thing or to answer any question.

## **PART 9 - Procedural and evidentiary provisions**

### **103. Nature of proceedings for offences**

Proceedings for an offence under this Act are to be dealt with summarily.

### **104. Institution of proceedings**

(1) Proceedings for an offence under this Act –

(a) may only be instituted by –

- (i) the Minister or a person authorised by the Minister; or
- (ii) an authorised officer; or
- (iii) the Director of Public Health or a council; and

(b) may only be instituted –

- (i) unless subparagraph (ii) applies, within 3 years after the date on which the offence is alleged to have been committed; or
- (ii) if the proceedings are in respect of a sample of food, within 120 days after the date on which the sample was obtained.

(2) A person may apply to a magistrate within the time limits referred to in subsection (1) to extend those time limits.

### **105. Offences by employers**

(1) If an employee contravenes any provision of this Act, 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 proved that the employer could not, by taking all reasonable precautions and exercising all 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.

### **106. Offences by bodies corporate**

(1) If a body corporate contravenes, whether by act or omission, any provision of this Act, each person who is a member of the governing body of the body corporate or who is concerned in the management of the body corporate 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 body corporate has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate under this Act.

### **107. Liability of employees and agents**

(1) Except as provided by subsection (2), it is no defence in proceedings for an offence under this Act 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, 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.

(3) Except by leave of the court, a defence under subsection (2) is only available if the person intending to rely on that defence gives notice in writing to the court and the complainant –

- (a) stating that intention; and
- (b) stating the name and address of the owner.

#### **108. Defences relating to analysis**

In any proceedings for an offence under this Act relating to food that has been analysed, it is not a defence for a person to allege –

- (a) that the person instituting the proceedings is not the person who caused the analysis to be made; or
- (b) that any part of the food retained for future comparison has undergone any deterioration or material change in its constitution.

#### **109. Onus to prove certain matters on defendant**

In any proceedings for an offence under this Act 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.

#### **110. Presumptions**

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

- (a) a person intends to sell food if he or she sells any thing of which food is a constituent; and
- (b) 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
- (c) 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
- (d) 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
- (e) 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
- (f) 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
- (g) any food found in any food business used for the manufacture of food is intended –
  - (i) to be used in the manufacture of food; and
  - (ii) for human consumption; and
- (h) 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
- (i) food that has been sold to a consumer has been sold at some time by any person who respectively imported, manufactured, prepared or packed the food; and
- (j) a signature purporting to be that of the Director of Public Health, the general manager of a council, an authorised officer or the person in charge of an approved laboratory is that signature.

#### **111. Certificate evidence and evidence of analysts**

(1) A certificate of the result of an analysis obtained by the defendant or the complainant in proceedings for an offence under this Act is admissible in any such proceedings and evidence of the facts stated in it if –

- (a) the certificate was issued in accordance with this Act; 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, the complainant cannot rely on an analysis as evidence for the purposes of those proceedings unless the person who carried out the analysis is employed or engaged by an approved laboratory.

(4) In any proceedings for an offence under this Act –

- (a) a document purporting to be a copy of any approval, order, notice or authority under this Act is evidence of that approval, order, notice or authority; or

- (b) a document purporting to be signed by the Director of Public Health, general manager of a council or an authorised officer certifying that at a specified time or during a specified period –

- (i) there was or was not in force any approval, order, notice or authority in relation to a specified person or persons; and

- (ii) an 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 Director of Public Health, general manager of a council or an authorised officer 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; or

- (iii) that there was or was not in force any notification under section 84 or certification of registration under section 87 or 89 –

is evidence of the matters contained in the document.

## **112. Power of court to order further analysis**

(1) In any proceedings for an offence under this Act, 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 this Act be sent by the enforcement agency concerned to an 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 115, the cost of an analysis under this section is to be borne by the enforcement agency concerned.

## **113. Proceedings relating to third persons**

(1) A person charged with an offence under this Act who alleges that the offence was due to the act or omission of another person may apply to a justice for a summons to that other person to appear in proceedings relating to that offence.

(2) On receipt of the application, a justice is to –

- (a) issue the summons; and

- (b) adjourn the proceedings until the return date of the summons.

- (3) The summons is to include –
  - (a) particulars of the complaint; and
  - (b) the allegations relating to the other person's act or omission.
- (4) The defendant is to forward to the complainant a copy of the application for the summons.
- (5) In proceedings for the offence, the complainant and the other person summonsed to appear may –
  - (a) cross-examine the defendant, if the defendant gives evidence, and any witness called by the defendant; and
  - (b) call evidence in rebuttal.
- (6) In determining proceedings for the offence, a court –
  - (a) may convict the other person summonsed to appear if the defendant proves that the offence was due to that person's act or omission; and
  - (b) is to dismiss the charge against the defendant if the defendant proves that he or she exercised due diligence to ensure compliance with the provision that gave rise to the offence; and
  - (c) may make any order it considers appropriate for the payment of costs by any party to any other party.
- (7) If an authorised officer is reasonably satisfied that an offence has been committed by a person and that the offence was due to an act or omission of another person –
  - (a) the authorised officer may cause proceedings to be brought against that other person without first causing proceedings to be brought against the person committing the offence; and
  - (b) the other person may be charged with, and convicted of, that offence.

#### **114. Disclosure by witnesses**

- (1) In any proceedings for an offence under this Act, 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 subsections (1) and (2), a court hearing proceedings for an offence under this Act 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.

#### **115. 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 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 disposal of any thing the subject of those proceedings.

#### **116. Court may order forfeiture**

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

#### **117. 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 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 10 - Infringement notices**

### **118. Infringement notices**

- (1) An authorised officer 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.
- (3) An infringement notice is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 .

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### **122.**

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### **123. 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.

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### **125.**

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### **126.**

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## **PART 11 - Regulatory provisions**

### **127. Regulations**

- (1) The Governor may make regulations for the purpose of this Act.
- (2) Without limiting the generality of subsection (1) , the regulations may –
  - (a) require the preparation, implementation, maintenance 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; and
  - (b) specify the requirements for food safety programs; and
  - (c) prescribe 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; and
  - (d) prescribe fees for the making of applications under this Act; and
  - (e) impose requirements for the notification by food businesses of information relating to the conduct of those food businesses.
- (3) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations.
- (4) The regulations may –
  - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.
- (5) The regulations may –
  - (a) authorise any matter to be determined, applied or regulated by a specified person or body; and
  - (b) confer a power or impose a duty on a specified person or class of persons.
- (6) The regulations may adopt or incorporate the whole or part of any standard, rule, code, specification or guidelines, as amended from time to time, with or without modification, issued, prescribed, made or published by any person or body before or after the regulations take effect.
- (7) The regulations may rescind regulations or other subordinate legislation made under the repealed Act.

### **128. Temporary emergency regulations**

- (1) Despite section 127(1) , 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 Director of Public Health 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.

### **129. Regulations of savings or transitional nature**

(1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the commencement of this Act or a later day.

**130. Council fees**

A council, by resolution, may impose fees relating to applications made to it under Part 7 .

## **PART 12 - Miscellaneous**

### **131. Protection from liability**

No liability attaches to –

- (a) the Crown, an enforcement agency, an authorised officer or any other authority or person engaged in the administration of this Act; or
- (b) a person employed by the Crown or an enforcement agency to carry out analyses for the purposes of this Act –

for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

### **132. 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.

Penalty: Fine not exceeding 500 penalty units.

### **133. Disclosure of information**

A person must not disclose any information obtained for the purpose of this Act relating to a person except in accordance with any relevant regulations and –

- (a) with the written consent of the person to whom the information relates; or
- (b) to a person authorised by the Director of Public Health; or
- (c) for the purposes of legal proceedings arising out of this Act; or
- (d) for a purpose authorised or required by this Act or another Act; or
- (e) for the purposes of study or research approved by the Director of Public Health.

Penalty: Fine not exceeding 50 penalty units.

### **134. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Health and Human Services; and
- (b) the department responsible to the Minister for Health and Human Services in relation to the administration of this Act is the Department of Health and Human Services.

### **135. Savings and transitional provisions**

- (1) A food business operating in premises registered under the repealed Act at the commencement of this Act may continue to operate until the registration of the premises under the repealed Act expires.
- (2) A notice served under section 36 of the repealed Act and in force immediately before the commencement of this Act is taken to be an improvement notice served under section 59 of this Act.
- (3) A notice under section 37 of the repealed Act and in force immediately before the commencement of this Act is taken to be a prohibition order served under section 62 of this Act.
- (4) A laboratory authorised under section 43 of the repealed Act immediately before the commencement of this Act is taken to be approved under section 78 of this Act.
- (5) An application made in accordance with section 55 of the repealed Act but not finally determined under the repealed Act before the commencement of this Act is to be dealt with as if it were an application made under

section 87(2) of this Act.

**136. Food Act 1998 repealed**

The Food Act 1998 is repealed.

**137.**

*See Schedule 2 .*

# **SCHEDULE 1 - Provisions with respect to search warrants**

Section 41(6)

## **1. Applications for search warrants**

- (1) An application for a search warrant is to be made in writing.
- (2) A justice of the peace is not to issue a search warrant unless –
  - (a) the application for the search warrant sets out the grounds for seeking the search warrant; and
  - (b) the applicant for the search warrant has given the justice of the peace, either orally or in writing, any further information the justice of the peace requires concerning the grounds for seeking the search warrant; and
  - (c) the information given by the applicant is verified before the justice of the peace on oath or by affidavit.

## **2. Record of proceedings before justice of the peace**

A justice of the peace who issues a search warrant is to cause a record to be made of all relevant particulars of the grounds the justice of the peace has relied on to justify the issue of the search warrant.

## **3. Duty to show search warrants**

An authorised officer executing a search warrant is to produce the search warrant for inspection by an occupier of the premises if requested to do so by that occupier.

## **4. Expiry of search warrants**

A search warrant ceases to have effect –

- (a) on the date specified in the search warrant as the date on which it ceases to have effect; or
- (b) if it is withdrawn before that date by the justice of the peace who issued the search warrant; or
- (c) after it has been executed; or
- (d) if the person to whom it is issued ceases to be an authorised officer –

whichever first occurs.

## **5. Reports to justice of the peace on execution of search warrants, &c.**

- (1) The authorised officer to whom a search warrant is issued is to furnish a report in writing to the justice of the peace who issued the search warrant –
  - (a) stating whether or not the search warrant has been executed; and
  - (b) if the search warrant has been executed, setting out briefly the result of the execution of the search warrant, including a brief description of anything seized; and
  - (c) if the search warrant has not been executed, setting out briefly the reasons why the search warrant has not been executed.

- (2) A report with respect to a search warrant is to be made within the period of 10 days immediately after the execution of the search warrant or the expiry of the search warrant, whichever first occurs.

## **6. Death, absence, &c., of justice of the peace who issued search warrant**

If the justice of the peace who issued a search warrant has died, has ceased to be a justice of the peace or is absent, a report required to be furnished to that justice of the peace is to be furnished to another justice of the peace.

## **7. Defects in search warrants**

A search warrant is not invalidated by any defect, other than a defect that affects the substance of the search warrant in a material particular.

## **SCHEDULE 2 - Consequential Amendments**

The amendments effected by Section 137 and this Schedule have been incorporated into authorised versions of the following Acts and Statutory Rules:

- (a) Agricultural and Veterinary Chemicals (Control of Use) Act 1995 ;
- (b) Food Act 1998 ;
- (c) Food Act 2003 ;
- (d) Local Government Act 1993 ;
- (e) Poisons Act 1971 ;
- (f) Public Health Act 1962 ;
- (g) Public Health Act 1997 ;
- (h) Public Health (Exemption) Order 2001 .