

South Australia

## **Primary Produce (Food Safety Schemes) Act 2004**

An Act to provide for food safety matters relating to the production of primary produce; to repeal the *Dairy Industry Act 1992* and the *Meat Hygiene Act 1994*; to amend the *Prevention of Cruelty to Animals Act 1985*; and for other purposes.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

### **Part 1—Preliminary**

#### **Division 1—Formal**

##### **1—Short title**

This Act may be cited as the *Primary Produce (Food Safety Schemes) Act 2004*.

##### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

#### **Division 2—Interpretation**

##### **3—Interpretation**

In this Act, unless the contrary intention appears—

**accreditation** means an accreditation in force under Part 3, and includes a temporary accreditation;

**accreditation body** for a class of activities to which a food safety scheme applies means—

- (a) if the Minister is designated by the regulations as the accreditation body for accrediting producers engaged in that class of activities—the Minister; or
- (b) if a body corporate is established as the accreditation body for accrediting producers engaged in that class of activities—the body corporate;

**accredited producer** means a producer accredited under Part 3;

**approved auditor** means a person approved as an auditor under Part 4 Division 1;

**approved food safety arrangement** of an accredited producer means a food safety arrangement approved for the producer by the accreditation body that accredited the producer;

**audit** includes inspection;

**authorised person** means a person appointed as an authorised person under Part 4 Division 2, or an employee or agent of the Commonwealth or a local government authority having powers of an authorised person under an arrangement made under that Division;

**condition** includes a limitation;

**contravene** includes fail to comply with;

**dairy produce** means—

- (a) milk derived from—
  - (i) a cow, goat, sheep, buffalo; or

(ii) an animal prescribed by regulation; or

(b) milk products prescribed by regulation;

**director** of a body corporate includes a person who exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs;

**fish** means an aquatic animal;

**food** means a substance ordinarily consumed, or intended for consumption, by humans or pets;

**food safety arrangement**—see section 5;

**food safety scheme**—see Part 2;

**meat**—see section 6;

**meat processing**—see section 6;

**primary produce**—see section 7;

**producer** of primary produce means a person who carries on a business involving production of the primary produce;

**production of primary produce**—see section 8;

**retail business** means the business of selling products for use or consumption and not resale;

**sell** includes—

- (a) barter or exchange; and
- (b) offer or have in possession or display for sale; and
- (c) deliver on sale;

**unsafe** has the same meaning as in the *Food Act 2001*, and **safe** and **safety** have corresponding meanings;

**unsuitable** has the same meaning as in the *Food Act 2001*, and **suitable** and **suitability** have corresponding meanings;

**vehicle** includes an aircraft, train or vessel.

#### 4—Interaction with other Acts

This Act is in addition to and does not limit or derogate from the provisions of any other Act.

#### 5—Food safety arrangements

In this Act, a **food safety arrangement** is a set of processes adopted by a producer to apply to the production of primary produce for the safety and suitability of the produce, including processes relating to one or more of the following:

- (a) operations before, during and after production of the produce;
- (b) maintaining premises, vehicles, plant and equipment used in connection with the production of the produce;
- (c) auditing of compliance with the processes.

## 6—Meat and meat processing

In this Act—

- (a) *meat* is—
- (i) the whole or part of a killed animal intended for consumption by humans or pets; or
  - (ii) a product intended for consumption by humans or pets resulting from a process in which meat is mixed with another substance or is minced, cured, cooked, salted, fermented or otherwise treated, including a product of a class included by regulation within the ambit of this paragraph,
- but does not include—
- (iii) fish or a product produced from fish; or
  - (iv) a product if the proportion of meat in the product measured by mass is less than 30 per cent; or
  - (v) the whole or part of an animal, or a product resulting from the processing of meat, of a class excluded by regulation from the ambit of this definition; and
- (b) *meat processing* is any of the following activities for the production of meat:
- (i) killing an animal;
  - (ii) preparing a killed animal, or part of a killed animal;
  - (iii) producing a product that is within the ambit of the definition of *meat*.

## 7—Primary produce

In this Act, *primary produce* is—

- (a) an animal, plant or other organism, or part of an animal, plant or other organism, intended for consumption by humans or pets; or
- (b) food produced in the production of primary produce.

## 8—Production of primary produce

- (1) In this Act, *production of primary produce* includes the following:
- (a) the growing, raising, cultivation, picking, harvesting, collection or catching of primary produce;
  - (b) the sorting or grading of primary produce;
  - (c) the freezing, packing, refrigeration, storage, treating or washing of primary produce;
  - (d) the pasteurisation or homogenisation of milk, or manufacturing of other dairy produce;
  - (e) meat processing;
  - (f) the shucking of molluscs;
  - (g) the transportation, delivery or handling of primary produce;

- (h) the sale of livestock at saleyards;
  - (i) any other activity prescribed by regulation.
- (2) ***Production of primary produce*** does not include—
- (a) an activity, other than an activity relating to meat, insofar as it is carried on incidentally to the carrying on of a retail business; or
  - (b) except as specifically referred to in subsection (1), any process by which food is added to the primary produce or anything is done to the produce to markedly increase its shelf life, for example, manufacturing or canning.
- (3) In this section—
- treating*** of primary produce means—
- (a) enhancing the appearance of the produce, including waxing or oiling it; or
  - (b) dealing with the primary produce solely to kill bacteria or germs in the produce or to ripen it.

## **Division 3—Object**

### **9—Object**

The object of this Act is to develop food safety schemes for primary industries that reduce risks to consumers and primary industry markets associated with unsafe or unsuitable primary produce.

## **Part 2—Food safety schemes**

### **10—Establishment of advisory committees for class of activities**

- (1) The Governor may make regulations establishing an advisory committee for a specified class of activities involved in the production of primary produce.
- (2) An advisory committee will have the function of advising the Minister about—
  - (a) the establishment, variation or revocation of a food safety scheme for the class of activities for which the committee is established; and
  - (b) the contents and administration of such a scheme; and
  - (c) any other matter relevant to the class of activities for which the committee is established.
- (3) Regulations made under this section may make provision—
  - (a) for the membership of the committee (which must, as the Minister considers appropriate, include representation of relevant industry bodies); and
  - (b) conditions of membership; and
  - (c) procedures of the advisory committee.

### **11—Food safety schemes**

- (1) The Governor may make regulations establishing a food safety scheme for a class of activities involved in the production of primary produce.

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- (2) The regulations relating to a food safety scheme for a class of activities may do one or more of the following:
- (a) define the class of activities to which the scheme applies;
  - (b) require producers of primary produce who engage in the class of activities to be accredited;
  - (c) designate the Minister as the accreditation body or establish a body corporate as the accreditation body for accrediting producers of primary produce who engage in the class of activities;
  - (d) if a body corporate is established as the accreditation body, make provision relating to the body corporate, including provision for the membership of the accreditation body, conditions of membership, procedural matters, functions and powers, delegation, financial accounting and auditing and reporting to the Minister;
  - (e) make provision for any other matters relating to accreditation of producers who engage in the class of activities;
  - (f) make provision relating to the adoption of food safety arrangements by producers who engage in the class of activities and approval of such arrangements by the accreditation body, or if there is no accreditation body, the Minister;
  - (g) make provision relating to the safety and suitability of primary produce produced by producers who engage in the class of activities;
  - (h) make provision for the issuing of directions (for example, restrictions on activities or the movement of primary produce) by the accreditation body, or if there is no accreditation body, the Minister as required to deal with situations in which there is serious risk to the safety of primary produce;
  - (i) make provision for monitoring and record keeping by producers who engage in the class of activities;
  - (j) make provision for reporting or notification by producers who engage in the class of activities to the accreditation body or, if there is no accreditation body, the Minister;
  - (k) make provision relating to compliance and enforcement in respect of the food safety scheme.
- (3) Regulations establishing a food safety scheme relating to meat may, in addition, do one or more of the following:
- (a) require and regulate the marking of—
    - (i) animals intended to be killed for meat; or
    - (ii) meat; or
    - (iii) anything used in connection with such animals or meat;
  - (b) require meat sold for human consumption or consumption by pets to have been produced by accredited producers or other specified producers;

- (c) provide, for the purposes of proceedings for an offence against this Act, that allegations of the following matters will be accepted as proved in the absence of proof to the contrary:
    - (i) that specified matter was meat;
    - (ii) that specified meat was intended for human consumption;
    - (iii) that specified meat was intended for consumption by pets;
    - (iv) that the sale of specified meat was intended for human consumption;
    - (v) that the sale of specified meat was intended for consumption by pets;
  - (d) establish, for the purposes of proceedings for an offence against this Act, the circumstances in which a person is presumed to have offered, exposed or stored meat for sale.
- (4) Before regulations are made establishing, varying or revoking a food safety scheme for a class of activities, the Minister must—
- (a) refer the question of the establishment, variation or revocation of the scheme to an advisory committee established for that class of activities; and
  - (b) consider any report presented to the Minister by the advisory committee within the period allowed by the Minister; and
  - (c) engage in consultation with relevant industry bodies,
- but the validity of any such regulations may not be called into question on the ground of any alleged failure to comply with this subsection.
- (5) Any body corporate established by regulation will be an agency of the Crown and hold its property on behalf of the Crown.

## **Part 3—Accreditation**

### **12—Obligation to be accredited**

A producer of primary produce must not engage in a class of activities to which a food safety scheme applies without an accreditation if accreditation is required by the food safety scheme.

Maximum penalty: \$20 000.

### **13—Application for accreditation**

- (1) An application for accreditation—
- (a) must be made to the accreditation body; and
  - (b) must conform to the requirements of that body about its form, contents and the manner in which it is made; and
  - (c) must be accompanied by the fee fixed by regulation.
- (2) An application for accreditation must set out details of any proposed food safety arrangement.



- (3) The accreditation body may, by written notice, ask the applicant—
  - (a) to give the body further information, documents or records relevant to the application; or
  - (b) to allow persons authorised by the body to inspect premises, vehicles, plant or equipment proposed to be used by the applicant in connection with activities proposed to be authorised by the accreditation.
- (4) The accreditation body may refuse the application if the applicant does not comply with such a request.
- (5) The applicant may, with the approval of the accreditation body or at the request of the body, amend the application before the body has finished considering it.

#### **14—Temporary accreditation**

- (1) The accreditation body may, pending determination of an application for accreditation, grant temporary accreditation under this section.
- (2) Temporary accreditation operates for a term not exceeding 6 months and on conditions determined by the accreditation body.

#### **15—Grant of accreditation**

- (1) On application for accreditation, the accreditation body must grant the accreditation sought by the applicant if satisfied—
  - (a) that the applicant is a suitable person to hold such accreditation; and
  - (b) if the applicant is a body corporate, that each director of the body corporate is a suitable person to be the director of a body corporate that holds such accreditation; and
  - (c) that the applicant satisfies any requirements for accreditation set out in the food safety scheme applicable to the class of activities proposed to be engaged in by the applicant.
- (2) For the purposes of determining the suitability of a person under subsection (1), the accreditation body may, without limitation, take into account—
  - (a) any offence committed by the person against—
    - (i) this Act or an Act repealed by this Act; or
    - (ii) the *Food Act 2001*; or
    - (iii) a prescribed Act; or
    - (iv) a law of the Commonwealth or another State or Territory of the Commonwealth that corresponds to any of the above Acts; or
  - (b) any offence of dishonesty committed by the person.

#### **16—Conditions of accreditation**

- (1) Accreditation is subject to the following conditions:
  - (a) if the accredited producer has an approved food safety arrangement, the producer must—
    - (i) comply with the arrangement in all respects; and

- (ii) allow a person authorised for the purpose by the Minister or an approved auditor to perform, without notice to the producer—
    - (A) the number of periodic audits of the food safety arrangement required by condition imposed by the accreditation body; and
    - (B) if an audit shows a failure to comply with the food safety arrangement—such additional audits as the accreditation body considers appropriate; and
  - (iii) pay all or a proportion of the reasonable costs associated with those audits as required by condition imposed by the accreditation body;
  - (b) the accredited producer must comply with the regulations;
  - (c) any other conditions imposed by the accreditation body that are of a kind allowed under the food safety scheme applicable to the class of activities for which the accreditation is required.
- (2) An accredited producer who contravenes a condition of accreditation is guilty of an offence.  
Maximum penalty: \$20 000.
- (3) A person who hinders or obstructs a person performing an audit under a condition of accreditation is guilty of an offence.  
Maximum penalty: \$5 000.

### **17—Periodic fees and returns**

- (1) For each period fixed by regulation, an accredited producer must, not later than the date fixed by regulation—
  - (a) pay to the accreditation body the fee fixed by regulation; and
  - (b) lodge with the accreditation body a return that conforms to the requirements of the body about its form, contents and the manner in which it is made.
- (2) If an accredited producer fails to pay a fee or lodge a return in accordance with this section, the accreditation body may, by written notice, require the producer to make good the default and, in addition, to pay to the accreditation body the amount fixed by regulation as a penalty for default.
- (3) If an accredited producer fails to comply with the notice within 14 days after the giving of the notice, the accreditation is suspended until the notice is complied with.
- (4) If an accredited producer fails to comply with the notice within 6 months after the giving of the notice, the accreditation is cancelled.
- (5) The accreditation body must cause written notice of the suspension or cancellation to be given to the producer.

### **18—Variation of accreditation**

- (1) The accreditation body may, by written notice to an accredited producer—
  - (a) impose a further condition of accreditation; or
  - (b) vary or revoke a condition of accreditation; or

- (c) approve a food safety arrangement for the producer; or
  - (d) vary an approved food safety arrangement.
- (2) This section does not authorise the imposition of a condition other than a condition of a kind allowed under the food safety scheme applicable to the class of activities for which the accreditation is required.
  - (3) The accreditation body's power under this section may be exercised on the accreditation body's own initiative or on application by the accredited producer and payment of all relevant fees and charges.
  - (4) The imposition or variation of a condition or the approval or variation of a food safety arrangement will not, except with the agreement of the accredited producer, take effect until 6 months after the giving of the notice under subsection (1).
  - (5) An accredited producer must, at the request of the accreditation body and within the period stated by the accreditation body, return the accreditation to the accreditation body for the purposes of recording action under this section.

Maximum penalty: \$1 250.

Expiation fee: \$160.

## **19—Application for variation of accreditation**

- (1) An application for variation or revocation of a condition of accreditation or for the approval or variation of a food safety arrangement—
  - (a) must be made to the accreditation body; and
  - (b) must conform to the requirements of the accreditation body about its form, contents and the manner in which it is made; and
  - (c) must be accompanied by the fee fixed by regulation.
- (2) The accreditation body may, by written notice, ask the applicant—
  - (a) to give the accreditation body further information, documents or records relevant to the application; or
  - (b) to allow persons authorised by the accreditation body to inspect premises, vehicles, plant or equipment proposed to be used by the applicant in connection with activities authorised by the accreditation.
- (3) The accreditation body may refuse the application if the applicant does not comply with such a request.
- (4) The applicant may, with the accreditation body's approval or at the accreditation body's request, amend the application before the accreditation body has finished considering it.

## **20—Transfer of accreditation**

- (1) Subject to this section and any condition of the accreditation excluding or limiting the right of transfer under this section, the accreditation body must approve the transfer of an accreditation on application under this section.
- (2) The accreditation body may refuse to approve the transfer of an accreditation if not satisfied—
  - (a) that the proposed transferee is a suitable person to hold such accreditation; or

- (b) if the proposed transferee is a body corporate—that each director of the body corporate is a suitable person to be the director of a body corporate that holds such accreditation; or
  - (c) that the proposed transferee has the capacity, or has made or proposes to make appropriate arrangements to satisfy any requirements for accreditation set out in the food safety scheme applicable to the class of activities to be engaged in by the proposed transferee.
- (3) For the purposes of determining the suitability of a person under subsection (2), the accreditation body may, without limitation, take into account—
- (a) any offence committed by the person against—
    - (i) this Act or an Act repealed by this Act; or
    - (ii) the *Food Act 2001*; or
    - (iii) a prescribed Act; or
    - (iv) a law of the Commonwealth or another State or Territory of the Commonwealth that corresponds to any of the above Acts; or
  - (b) any offence of dishonesty committed by the person.
- (4) An application for transfer of accreditation—
- (a) must be made to the accreditation body; and
  - (b) must conform to the requirements of the accreditation body about its form, contents and the manner in which it is made; and
  - (c) must be accompanied by the fee fixed by regulation.

## **21—Suspension or revocation of accreditation**

- (1) The accreditation body may suspend or revoke an accreditation if satisfied that—
- (a) the accreditation was obtained improperly; or
  - (b) the accredited producer—
    - (i) has ceased to undertake the activity authorised by the accreditation; or
    - (ii) has not paid fees or charges payable to the accreditation body or an approved auditor within the required time; or
    - (iii) has committed an offence against this Act; or
    - (iv) has been convicted of an indictable offence.
- (2) A suspension under this section may be for a specified period, or until the fulfilment of specified conditions, or until further order of the accreditation body.
- (3) A suspension under this section may be expressed to have effect at a specified future time, or to have effect at a specified future time unless a specified condition is fulfilled.
- (4) Before the accreditation body acts under this section, the accreditation body must—
- (a) give written notice to the accredited producer of the proposed action specifying the reasons for the proposed action; and

- (b) allow the accredited producer at least 14 days within which to make submissions to the accreditation body in relation to the proposed action.
- (5) If the accreditation body suspends or revokes an accreditation, the producer must return the accreditation to the accreditation body within 14 days.

Maximum penalty: \$1 250.

Expiation fee: \$160.

## **22—Surrender of accreditation**

An accreditation may be surrendered to the accreditation body.

## **Part 4—Enforcement**

### **Division 1—Approved auditors**

#### **23—Approved auditors**

- (1) The Minister may approve a person as an auditor for the purposes of this Act if the Minister is satisfied that the person can provide satisfactory and efficient audit services for the purposes of this Act and that the services will be provided by suitably qualified persons.
- (2) An approval under this section may be subject to such conditions as the Minister thinks fit, including conditions—
  - (a) requiring the person to enter into an agreement with the Minister; or
  - (b) limiting the functions or powers of the person; or
  - (c) limiting the area of the State in which those functions or powers may be exercised; or
  - (d) fixing fees to be paid to the Minister.
- (3) An agreement under this section—
  - (a) must regulate the provision of audit services for the purposes of this Act; and
  - (b) must provide that the agreement terminates if the approval is withdrawn by the Minister; and
  - (c) must set out requirements relating to audit reports including the content of the reports; and
  - (d) may regulate the charges to be made by the auditor for audit services under this Act (by fixing specific charges or maximum and minimum charges or by setting out a method of calculating charges); and
  - (e) may regulate the withdrawal of audit services for non-payment of charges; and
  - (f) may contain any other provision agreed between the Minister and the person.
- (4) The Minister and an approved auditor may, by agreement, vary or terminate an agreement under this section.

- (5) The Minister may, by written notice to the approved auditor under this section—
- (a) impose a further condition of approval; or
  - (b) vary or revoke a condition of approval; or
  - (c) withdraw the approval if satisfied that the auditor is in breach of a condition of the approval or a term of the agreement between the holder and the Minister under this section.
- (6) An approval or an agreement under this section does not derogate from the right of an authorised person to exercise any power under this Act.

## **24—Duty of auditors to report certain matters**

If an approved auditor, in the course of conducting an audit in respect of a producer's activities to which a food safety scheme applies, forms a reasonable belief that the producer has—

- (a) engaged in conduct creating a serious risk to the safety of primary produce; or
- (b) engaged in conduct of a prescribed kind,

the auditor must, as soon as reasonably practicable, inform the accreditation body under the food safety scheme or, if there is no accreditation body, the Minister, of the name and address of the producer and details about the facts and circumstances giving rise to the belief.

Maximum penalty: \$2 500 or imprisonment for 6 months.

## **Division 2—Authorised persons**

### **25—Appointment of authorised persons**

- (1) The Minister may appoint suitable persons with appropriate qualifications and experience to be authorised persons for the purposes of this Act.
- (2) An appointment may be made subject to conditions specified in the instrument of appointment.
- (3) The Minister may make an agreement with the relevant Commonwealth Minister or a local government authority with respect to the exercise and discharge by an employee or agent of the Commonwealth or local government authority of the powers and functions of an authorised person.
- (4) The Minister may, at any time, revoke an appointment of an authorised person or vary or revoke a condition of appointment or impose a further condition of appointment.
- (5) The Commonwealth or local government authority must be notified in writing of any action proposed to be taken under subsection (4) in relation to an employee or agent of the Commonwealth or local government authority.

### **26—Identification of authorised persons**

- (1) An authorised person appointed under this Act must be issued with an identity card—
  - (a) containing the person's name and a photograph of the person; and
  - (b) stating that the person is an authorised person under this Act.

- (2) If the powers of an authorised person have been limited by conditions, the identity card issued to the authorised person must contain a statement of those conditions.
- (3) An authorised person must, at the request of a person in relation to whom the authorised person intends to exercise powers under this Act, produce for the inspection of the person his or her identity card (or in the case of an employee or agent of the Commonwealth or a local government authority exercising the powers of an authorised person, some other form of identification and authority).

## **27—General powers of authorised persons**

- (1) Subject to this section, an authorised person may—
  - (a) enter and inspect and, if necessary, use reasonable force to break into or open—
    - (i) any place or vehicle to which this section applies; or
    - (ii) any part of, or anything in or on, any place or vehicle to which this section applies; and
  - (b) give directions with respect to the stopping or movement of a vehicle to which this section applies; and
  - (c) take samples of or from any primary produce, substance or thing for analysis; and
  - (d) mark, or direct the marking of, primary produce or anything used, or apparently intended to be used, in connection with such produce; and
  - (e) seize and retain any primary produce, or issue a seizure order in respect of any primary produce—
    - (i) if the authorised person reasonably suspects that the produce may be unsafe or unsuitable; or
    - (ii) in order to prevent the produce being processed before it can be determined to be safe and suitable; and
  - (f) seize and retain, or issue a seizure order in respect of, anything that the authorised person reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; and
  - (g) examine or test any plant, equipment, vehicle or other thing, or cause or require it to be examined or tested, or seize it or require its production for examination or testing; and
  - (h) require any person to produce any documents, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; and
  - (i) examine, copy or take extracts from any documents or information so produced or require a person to provide a copy of any such document or information; and
  - (j) take photographs, films or audio, video or other recordings; and

- (k) require a person who the authorised person reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
  - (l) require a person who the authorised person reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act to answer questions in relation to those matters; and
  - (m) require a person holding or required to hold an accreditation to produce it for inspection; and
  - (n) give any directions required in connection with the exercise of a power conferred by any of the paragraphs above or otherwise in connection with the administration or enforcement of this Act.
- (2) An authorised person—
- (a) may only exercise the powers conferred by subsection (1) as reasonably required for the administration and enforcement of this Act; and
  - (b) may only exercise the power to use force under subsection (1)(a) on the authority of a warrant issued by a magistrate.
- (3) A magistrate must not issue a warrant under subsection (2) unless satisfied, by information given on oath or affirmation, that the warrant is reasonably required in the circumstances.
- (4) In the exercise of powers under this Act, an authorised person may be assisted by such persons as the authorised person considers necessary in the circumstances.
- (5) An authorised person may require an occupier of any place or a person apparently in charge of any plant, equipment, vehicle or other thing to give to the authorised person or a person assisting the authorised person such assistance as is reasonably required by the authorised person for the effective exercise of powers conferred by this Act.
- (6) If a person gives assistance to an authorised person as required under subsection (5), the person must, if he or she so requires, be reimbursed by the authorised person or the Minister for any reasonable costs and expenses incurred in giving the assistance.
- (7) This section applies to a place or vehicle—
- (a) that an authorised person reasonably suspects is being, or has been, used for or in connection with an activity to which a food safety scheme applies; or
  - (b) in which the authorised person reasonably suspects there may be records relating to an activity to which a food safety scheme applies or anything that has been used in, or may constitute evidence of, a contravention of this Act.

## **28—Provisions relating to seizure**

- (1) A seizure order under this Division—
- (a) must be in the form of a written notice given to the owner or person in control of the thing to which the order relates; and
  - (b) may be varied or discharged by further such written notice.



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- (2) If a seizure order is issued under this Division, a person who removes or interferes with the thing to which the order relates without the approval of an authorised person before the thing is dealt with under this section or the seizure order discharged is guilty of an offence.
- Maximum penalty: \$5 000.
- (3) If primary produce has been seized or made the subject of a seizure order under section 27(1)(e), the following provisions apply:
- (a) if an authorised person is satisfied that the produce is safe and suitable—it must be released immediately;
  - (b) if an authorised person is satisfied that the produce is unsafe or unsuitable—the authorised person may—
    - (i) direct that the produce be processed or otherwise dealt with in a specified manner to ensure that it becomes safe and suitable; or
    - (ii) direct that the produce only be used for specified limited purposes; or
    - (iii) condemn the produce and dispose of it as the authorised person thinks fit or direct its disposal in a specified manner.
- (4) Before exercising a power under subsection (3)(b), the authorised person must—
- (a) give the owner of the produce written notice of the proposed action and the reasons for the proposed action; and
  - (b) allow the owner of the produce a reasonable opportunity to comment on the proposed action.
- (5) If any thing has been seized or made the subject of a seizure order under section 27(1)(f), the following provisions apply:
- (a) the thing must, if it has been seized, be held pending proceedings for an offence against this Act related to the thing seized, unless the Minister, on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));
  - (b) if proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure or the issuing of the seizure order and the defendant is convicted or found guilty of the offence, the court may—
    - (i) order that it be forfeited to the Minister; or
    - (ii) if it has been released pursuant to paragraph (a) or is the subject of a seizure order—order that it be forfeited to the Minister or that the person to whom it was released or the defendant pay to the Minister an amount equal to its market value at the time of its seizure as the court thinks fit;
  - (c) if—
    - (i) proceedings are not instituted for an offence against this Act relating to the thing within the prescribed period after its seizure or the issuing of the seizure order; or

- (ii) proceedings have been so instituted and—
  - (A) the defendant is found not guilty of the offence; or
  - (B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),

then—

- (iii) in the case of a thing seized—the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure; or
- (iv) in the case of a thing subject to a seizure order—the order is discharged.

- (6) In this section—

*the prescribed period* means 6 months or such longer period as a magistrate may, on application by the Minister, allow.

## **29—Offence to hinder etc authorised persons**

- (1) A person who—
  - (a) hinders or obstructs an authorised person, or a person assisting an authorised person, in the exercise of powers conferred by this Act; or
  - (b) addresses offensive language to an authorised person, or a person assisting an authorised person; or
  - (c) refuses or fails to comply with a requirement or direction of an authorised person under this Division; or
  - (d) when required by an authorised person under this Division to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
  - (e) falsely represents, by words or conduct, that he or she is an authorised person,is guilty of an offence.

Maximum penalty: \$5 000.

- (2) A person who assaults an authorised person, or a person assisting an authorised person in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

### **30—Self-incrimination**

If a person is required to answer a question or to produce, or provide a copy of, a document or information under this Division and the answer or document or information would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless answer or produce, or provide a copy of, the document or information, but the answer or document or information will not be admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty other than proceedings in respect of the making of a false or misleading statement or declaration.

## **Division 3—Compliance orders**

### **31—Power to require compliance with legislative requirements**

- (1) If an authorised person reasonably suspects that, in the course of an activity to which a food safety scheme applies, a producer has contravened or is contravening legislative requirements, the authorised person may, by written notice to the producer—
  - (a) require specified action to be taken within a specified time to rectify the contravention; or
  - (b) require specified action to be taken within a specified time to ensure compliance with the legislative requirements; or
  - (c) prohibit the use of specified premises, vehicles, plant or equipment for or in connection with the production of primary produce until the legislative requirements are complied with.
- (2) An authorised person may vary a requirement or prohibition imposed under this section by further written notice to the producer.
- (3) In this section—

*legislative requirements* means requirements of this Act, including conditions of accreditation and requirements of a food safety scheme or approved food safety arrangement.

### **32—Offence of contravening compliance order**

If a requirement or prohibition imposed by notice under this Division is contravened, the producer to whom the notice was given is guilty of an offence.

Maximum penalty: \$20 000.

## **Part 5—Review and appeal**

### **33—Review by Minister**

- (1) Subject to this section, a person whose interests are affected by a decision made under Part 3 or Part 4 Division 3 may, within 28 days after the day on which the person is given written notice of the decision, apply to the Minister for a review of the decision.
- (2) The Minister may determine an application for review as the Minister thinks fit.
- (3) A review must be determined within 28 days of the application being lodged with the Minister.

- (4) If a review is not determined within that period, the Minister is to be taken to have confirmed the decision.
- (5) A right of review does not lie in relation to a temporary accreditation.

### **34—Appeal to District Court**

- (1) An applicant for a review under this Part who is not satisfied with the decision of the Minister on the review may appeal to the Administrative and Disciplinary Division of the District Court against the decision.
- (2) Subject to subsection (4), an appeal must be instituted within 28 days of the making of the decision appealed against.
- (3) The Minister must, if required by the applicant for the review, state in writing the reasons for the decision.
- (4) If the reasons of the Minister are not given to the applicant for the review in writing at the time of making the decision and that person (within 28 days of the making of the decision) requires the Minister to state the reasons in writing, the time for instituting an appeal runs from the time at which that person receives the written statement of those reasons.

## **Part 6—Miscellaneous**

### **35—Exemptions**

- (1) The Minister may, by notice published in the Gazette, exempt a person or class of persons from compliance with this Act or specified provisions of this Act.
- (2) An exemption is subject to any conditions stated in the notice.
- (3) An exemption may be varied or revoked by further notice in the Gazette.
- (4) A person who has been exempted from compliance with this Act or specified provisions of this Act must not contravene a condition of the exemption.  
Maximum penalty: \$20 000.

### **36—Delegation by Minister**

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act (except a function or power prescribed by regulation).
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **37—Immunity from personal liability**

- (1) No personal liability attaches to a member of an accreditation body, an authorised person or any other person engaged in the administration of this Act for an act done, or omission made, in good faith in the exercise or discharge, or purported exercise or discharge, of a power or function under this Act.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

### **38—False or misleading statements**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—\$10 000 or imprisonment for 2 years;
- (b) in any other case—\$5 000.

### **39—Statutory declaration**

If information is required by or under this Act to be provided to the Minister or an accreditation body, the Minister or accreditation body may require that the information be verified by statutory declaration and, in that event, the information will not be taken to have been provided as required unless it has been verified in accordance with the requirements of the Minister or accreditation body.

### **40—Confidentiality**

A person must not divulge any information relating to business processes or financial information obtained (whether by that person or some other person) in the administration or enforcement of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) as reasonably required in connection with the administration or enforcement of this Act; or
- (d) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.

Maximum penalty: \$10 000.

### **41—Giving of notice**

- (1) A notice required or authorised by this Act to be given to a person by the Minister, an accreditation body or an authorised person may be given—
  - (a) by delivering it personally to the person or an agent of the person; or
  - (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or

- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.
- (2) Without limiting the effect of subsection (1), a notice required or authorised to be given to an applicant under this Act or to an accredited producer or the holder of an approval under this Act may be given—
  - (a) by posting it to the person at the address last provided to the Minister or accreditation body by the person for that purpose; or
  - (b) by transmitting it to the person by fax transmission or email to the fax number or email address last provided to the Minister or accreditation body by the person for that purpose; or
  - (c) in the case of a company—in accordance with the *Corporations Act 2001* of the Commonwealth.

#### **42—Evidence**

- (1) In any proceedings, a certificate executed by the Minister or an accreditation body certifying as to a matter relating to—
  - (a) an accreditation under this Act; or
  - (b) an approval or agreement under this Act; or
  - (c) the appointment of an authorised person under this Act; or
  - (d) an arrangement with the Commonwealth or a local government authority under this Act; or
  - (e) a delegation under this Act; or
  - (f) a notice given under this Act; or
  - (g) an application made under this Act; or
  - (h) the receipt or non-receipt of information required under this Act,constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (2) An allegation in a complaint that specified matter was primary produce of a specified kind will be accepted as proved in the absence of proof to the contrary.
- (3) In any proceedings, evidence by an authorised person that, in his or her opinion, specified primary produce was unsafe or unsuitable is conclusive evidence of that matter.

#### **43—General defence**

- (1) It is a defence to a charge of an offence against this Act if the defendant proves that the offence did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.
- (2) A person who intends to rely on a defence under this section may only do so if the person gives written notice of that intention to the Minister within 28 days after the summons to answer to the charge is served on the person.

#### **44—Offences by bodies corporate**

If a body corporate is guilty of an offence against this Act, each director and the manager of the body corporate are, subject to the general defence, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

#### **45—Continuing offences**

- (1) If an offence against this Act is committed by a person by reason of a continuing act or omission—
  - (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence; and
  - (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.
- (2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

#### **46—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), regulations under this section or another section of this Act may—
  - (a) fix fees to be paid in respect of any matter under this Act and regulate the payment, recovery, waiver or reduction of such fees;
  - (b) impose fines, not exceeding \$5 000, for contravention of a regulation;
  - (c) fix expiation fees, not exceeding \$315, for contravention of a regulation.
- (3) Regulations under this section or another section of this Act may—
  - (a) be of general application or limited application;
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply;
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or an accreditation body;
  - (d) include evidentiary provisions to facilitate proof of breaches of the regulations for the purposes of proceedings for offences;
  - (e) contain provisions of a savings or transitional nature.

- (4) Regulations under this section or another section of this Act may provide for fees that vary or are determined by the Minister or an accreditation body according to factors specified in the regulations.
- (5) Regulations under this section or another section of this Act may refer to or incorporate, wholly or partially and with or without modification, a specified code or standard as in force at a specified time or as in force from time to time.
- (6) If a code or standard is referred to or incorporated in the regulations—
  - (a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
  - (b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

## **Schedule 1—Related amendments, repeals and transitional provisions**

### **Part 1—Preliminary**

#### **1—Preliminary**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendments**

#### **2—Amendment of *Prevention of Cruelty to Animals Act 1985***

Section 29(1)(a)(iii)—delete *Meat Hygiene Act 1994* and substitute:

*Primary Produce (Food Safety Schemes) Act 2004*

### **Part 3—Repeals**

#### **3—Repeal of Acts**

- (1) The *Dairy Industry Act 1992* is repealed.
- (2) The *Meat Hygiene Act 1994* is repealed.

### **Part 4—Transitional**

#### **4—Accreditation**

- (1) A person who held—
  - (a) a licence under the *Dairy Industry Act 1992*; or
  - (b) an accreditation under the *Meat Hygiene Act 1994*,

immediately before the repeal of that Act and who is required to hold an accreditation under this Act will be granted temporary accreditation by the Minister under this clause.



- (2) Temporary accreditation under this clause authorises the holder to carry on the activities for which the person was previously licensed or accredited for the term and subject to the conditions stated in the accreditation.

### **5—Accreditation body under food safety scheme for dairy produce**

Regulations establishing a food safety scheme relating to the production of dairy produce may provide that—

- (a) a body corporate established by the regulations as an accreditation body is to be taken to be the same body corporate as the Dairy Authority of South Australia established under the *Dairy Industry Act 1992*; and
- (b) a reference in an Act or instrument to the Dairy Authority of South Australia is, so far as the context permits, to be taken to be a reference to the body corporate established by the regulations.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2004	20	<i>Primary Produce (Food Safety Schemes) Act 2004</i>	1.7.2004	1.8.2005 ( <i>Gazette 14.7.2005 p2374</i> ) except Sch 1 cl 2, 3(2) & 4(1)(b)—uncommenced
<b>2005</b>	<b>11</b>	<b><i>Primary Produce (Food Safety Schemes) (Miscellaneous) Amendment Act 2005</i></b>	<b>21.4.2005</b>	<b>21.4.2005</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 3		
s 17		
s 17(1)	substituted by 11/2005 s 3(1)	21.4.2005
s 17(2)	amended by 11/2005 s 3(2)	21.4.2005
Pt 6		
s 46		
s 46(3)	amended by 11/2005 s 4	21.4.2005
Sch 1		
cl 4		
<i>cl 4(3)</i>	<i>deleted by 11/2005 s 5</i>	21.4.2005