

South Australia

# Food Act 2001

An Act to provide for the safety and suitability of food; and for other purposes.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Objects of Act
- 4 Definitions
- 5 Meaning of food
- 6 Meaning of food business
- 7 Meaning of primary food production
- 8 Meaning of unsafe food
- 9 Meaning of unsuitable food
- 10 Application of Act to primary food production
- 11 Application of Act to water suppliers
- 12 Act binds Crown

### Part 2—Offences relating to food

#### Division 1—Serious offences relating to food

- 13 Handling of food in unsafe manner
- 14 Sale of unsafe food
- 15 False description of food

#### Division 2—Other offences relating to food

- 16 Handling and sale of unsafe food
- 17 Handling and sale of unsuitable food
- 18 Misleading conduct relating to sale of food
- 19 Sale of food not complying with purchaser's demand
- 20 Sale of unfit equipment or packaging or labelling material
- 21 Compliance with Food Standards Code
- 22 False descriptions of food
- 23 Application of provisions outside jurisdiction

#### Division 3—Defences and nature of offences

- 24 Defence relating to publication of advertisements
- 25 Defence in respect of food for export
- 26 Defence of due diligence
- 27 Defence in respect of handling food
- 28 Defence in respect of sale of unfit equipment or packaging or labelling material
- 29 Nature of offences

30 Alternative verdicts for serious food offences

### Part 3—Emergency powers

- 31 Making of order
- 32 Nature of order
- 33 Special provisions relating to recall orders
- 34 Manner of making orders
- 35 Review of order
- 36 Failure to comply with emergency order

### Part 4—Inspection and seizure powers

#### Division 1—Inspection

- 37 Powers of authorised officers
- 38 Search warrants
- 39 Failure to comply with requirements of authorised officers
- 40 False information
- 41 Obstructing or impersonating authorised officers

#### Division 2—Seizure

- 42 Seizure

### Part 5—Improvement notices and prohibition orders

- 43 Unclean or unfit premises, vehicles or equipment
- 44 Improvement notice
- 45 Compliance with improvement notice
- 46 Prohibition order
- 47 Scope of notices and orders
- 48 Notices and orders to contain certain information
- 49 Request for re-inspection
- 50 Contravention of improvement notice or prohibition order
- 51 Review of decision to refuse certificate of clearance
- 52 Review of order

### Part 6—Taking and analysis of samples

#### Division 1—Taking of samples

- 53 Proprietor to be informed
- 54 Payment for sample
- 55 Samples from vending machines
- 56 Packaged food
- 57 Procedure to be followed
- 58 Samples to be submitted for analysis

#### Division 2—Procedures relating to analyses

- 59 Compliance with Food Standards Code
- 60 Certificate of analysis

#### Division 3—Approval of laboratories

- 61 Approval of laboratories
- 62 Term of approval

- 63 Approved laboratory to give notice of certain interests
- 64 Variation of conditions or suspension or cancellation of approval of laboratory
- 65 Review of decisions relating to approval
- 66 List of approved laboratories to be maintained

#### Division 4—Approval of analysts

- 67 Approval of persons to carry out analyses
- 68 Term of approval
- 69 Approved analyst to give notice of certain interests
- 70 Variation of conditions or suspension or cancellation of approval of analyst
- 71 Review of decisions relating to approval
- 72 List of approved analysts to be maintained

### Part 7—Auditing

#### Division 1—Approval of food safety auditors

- 73 Approval of food safety auditors
- 74 Term of approval
- 75 Food safety auditor to give notice of certain interests
- 76 Variation of conditions or suspension or cancellation of approval of auditor
- 77 Review of decisions relating to approvals

#### Division 2—Auditing and reporting requirements

- 78 Food safety programs and auditing requirements
- 79 Priority classification system and frequency of auditing
- 80 Duties of food safety auditors
- 81 Reporting requirements
- 82 Redetermination of frequency of auditing
- 83 Certificates of authority of food safety auditors
- 84 List of food safety auditors to be maintained
- 85 Obstructing or impersonating food safety auditors

### Part 8—Notification of food businesses

- 86 Notification of food businesses

### Part 9—Administration

#### Division 1—Relevant authority

- 87 Provision relating to functions
- 88 Delegations by relevant authority

#### Division 2—Functions of enforcement agencies

- 89 Functions of enforcement agencies in relation to this Act
- 90 Conditions on exercise of functions by enforcement agencies
- 91 Delegations by enforcement agency
- 92 Exercise of functions by enforcement agencies
- 93 Reports by enforcement agencies

#### Division 3—Appointment of authorised officers

- 94 Appointment of authorised officers
- 95 Certificates of authority

## Division 4—Agreement and consultation with local government sector on administration and enforcement of Act

96 Agreement and consultation with local government sector

### Part 10—Procedural and evidentiary provisions

- 97 Offences by employers
- 98 Offences by bodies corporate
- 99 Liability of employees and agents
- 100 No defence to allege deterioration of sample
- 101 Onus to prove certain matters on defendant
- 102 Presumptions
- 103 Certificate evidence and evidence of analysts
- 104 Power of court to order further analysis
- 105 Court may order costs and expenses
- 106 Court may order forfeiture
- 107 Court may order corrective advertising

### Part 11—Miscellaneous

- 108 Special power of exemption
- 109 Annual report
- 110 Protection from liability
- 111 Disclosure of certain confidential information
- 112 Disclosure of certain information
- 113 Regulations
- 115 Savings and transitional regulations

## Legislative history

---

## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Food Act 2001*.

#### 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—Definitions

- (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 enforcement agency** means, in relation to the provision in which the expression is used, the enforcement agency prescribed by the regulations for the purposes of that provision;
- appropriate review body** means the Administrative and Disciplinary Division of the District Court;
- approved analyst** means a person approved under Division 4 of Part 6;
- approved form** means the form approved from time to time by the relevant authority;
- approved laboratory** means a laboratory approved under Division 3 of Part 6;
- Australia New Zealand Food Authority** means the Australia New Zealand Food Authority constituted by the *Australia New Zealand Food Authority Act 1991* of the Commonwealth;
- authorised officer** means a person appointed under Division 3 of Part 9;
- business day** means a day that is not a Saturday, Sunday or Public Holiday;
- council** means—
- (a) a council under the *Local Government Act 1999*; or
  - (b) a body established by a council or councils under the *Local Government Act 1999*;
- enforcement agency** means—
- (a) the relevant authority; or
  - (b) any person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of this definition;
- 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 7;
- 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;

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

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

**this jurisdiction** means the State of South Australia;

**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;

**LGA** means the Local Government Association of South Australia;

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

**premises** includes—

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

**primary food production** has the meaning given by section 7;

**prohibition order** means a prohibition order made 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 an institution, or an institution within a class of institutions, prescribed by the regulations for the purposes of this definition;

**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);

**relevant authority** means the Minister and includes, if the regulations so provide in relation to a provision in which the expression is used, a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of that provision;

**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;

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

## 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 *Australian 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.

**Note—**

Section 7(2)(d) enables regulations to be made prescribing food production activities that are not included in the definition of primary food production. Such a regulation might be made, for example, to prescribe a food production activity in relation to which significant and unmanaged food safety hazards have been identified.

## **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) For the purposes of this Act (and without limiting subsection (1)), food will be regarded as having been *unsafe* at the time of its sale for consumption if—
- (a) after that time and before being consumed by a person, it was properly subjected to all processes (if any) that were relevant to its reasonable intended use; and
  - (b) nothing happened to it after the time of its sale 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; and
  - (d) the person suffered physical harm that is reasonably attributable to the food.
- (3) 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.
- (4) In subsections (1) and (2)—  
*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, 7 and 8 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 the regulations; or
  - (b) in connection with the making or enforcement of emergency orders under Part 3.

### Note—

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

## 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, 7 and 8.
- (2) In this section—

*water supplier* means—

  - (a) a body that is constituted by or under an Act and that has as or as one of its functions the supply of water for human consumption; or
  - (b) a person that is employed or engaged by such a body to supply water for human consumption; or
  - (c) any body or person prescribed by the regulations for the purposes of this section.

## 12—Act binds Crown

- (1) This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.
- (2) No criminal liability attaches to the Crown itself (as distinct from its agencies, instrumentalities, officers and employees) under this Act.

## 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.

Maximum penalty:

- (a) If the offender is a body corporate—\$500 000.

- (b) If the offender is a natural person—\$100 000 or imprisonment for four years.
- (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.

Maximum penalty:

- (a) If the offender is a body corporate—\$375 000.
- (b) If the offender is a natural person—\$75 000.

#### **14—Sale of unsafe food**

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

Maximum penalty:

- (a) If the offender is a body corporate—\$500 000.
- (b) If the offender is a natural person—\$100 000 or imprisonment for four years.

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

Maximum penalty:

- (a) If the offender is a body corporate—\$375 000.
- (b) If the offender is a natural person—\$75 000.

#### **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.

Maximum penalty:

- (a) If the offender is a body corporate—\$500 000.
- (b) If the offender is a natural person—\$100 000 or imprisonment for four years.

- (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.

Maximum penalty:

- (a) If the offender is a body corporate—\$375 000.
- (b) If the offender is a natural person—\$75 000.

- (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.

Maximum penalty:

- (a) If the offender is a body corporate—\$500 000.
- (b) If the offender is a natural person—\$100 000 or imprisonment for four years.

- (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.

Maximum penalty:

- (a) If the offender is a body corporate—\$375 000.
- (b) If the offender is a natural person—\$75 000.

**Note—**

Examples of food that is falsely described are contained in section 22.

## **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.

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.
- (b) If the offender is a natural person—\$50 000.

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

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.
- (b) If the offender is a natural person—\$50 000.

### **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.

Maximum penalty:

- (a) If the offender is a body corporate—\$200 000.
- (b) If the offender is a natural person—\$40 000.

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

Maximum penalty:

- (a) If the offender is a body corporate—\$200 000.
- (b) If the offender is a natural person—\$40 000.

- (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.

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.
- (b) If the offender is a natural person—\$50 000.

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

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.  
(b) If the offender is a natural person—\$50 000.

**Note—**

Examples of food that is falsely described are contained in section 22.

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

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.  
(b) If the offender is a natural person—\$50 000.

**Note—**

Examples of food that is falsely described are contained in section 22.

- (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.

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.  
(b) If the offender is a natural person—\$50 000.

- (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.

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.  
(b) If the offender is a natural person—\$50 000.

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

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.

- (b) If the offender is a natural person—\$50 000.

## 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.

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.  
(b) If the offender is a natural person—\$50 000.

- (2) A person must not sell any food that does not comply with any requirement of the Food Standards Code that relates to the food.

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.  
(b) If the offender is a natural person—\$50 000.

- (3) A person must not sell or advertise any food that is packaged or labelled in a manner that contravenes a provision of the Food Standards Code.

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.  
(b) If the offender is a natural person—\$50 000.

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

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.  
(b) If the offender is a natural person—\$50 000.

## 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.

**Note—**

See section 25 for a defence in relation to food intended for export.

## **Division 3—Defences and nature of offences**

### **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 relevant authority that publication of such an advertisement would constitute an offence; or
  - (c) is the proprietor of a food business or is otherwise engaged in the conduct of a food business for which the advertisements concerned were published.

### **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 or the regulations.
- (3) In subsection (2)(a)—

**another person** does not include a person who was—

  - (a) an employee or agent of the defendant; or
  - (b) in the case of a defendant that is a body corporate, a director, employee or agent of the defendant.
- (4) Without limiting the ways in which a person may satisfy the requirements of subsection (1) or (2)(b)(i), a person may satisfy those requirements by proving that—
  - (a) in the case of an offence relating to a food business for which a food safety program is required to be prepared in accordance with the regulations, the person complied with a food safety program for the food business that complies with the requirements of the regulations; or
  - (b) in any other case, the person complied with a scheme (for example, a quality assurance program or an industry code of practice) that was—
    - (i) designed to manage food safety hazards and based on Australian national or international standards, codes or guidelines designed for that purpose; and
    - (ii) documented in some manner.

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

In any proceedings for an offence under sections 13, 16(1) or 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—Nature of offences**

- (1) Subject to this section, offences against this Part are minor indictable offences.
- (2) The prosecution may elect to charge a person who is alleged to have committed an offence against Division 2 with a summary offence.
- (3) An offence against Division 2 is an expiable offence.  
Expiation fee:
  - (a) If the offender is a body corporate—\$2 500.
  - (b) If the offender is a natural person—\$500.
- (4) If a person who is alleged to have committed an offence against Division 2 is given an expiation notice in respect of the offence and the person does not expiate the offence, then any prosecution of the person for the offence must be brought as a summary offence.
- (5) If proceedings for a summary offence are brought under this section—
  - (a) it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence; and
  - (b) the maximum penalty that the court may impose for the relevant offence is \$10 000 (despite any higher maximum penalty provided in respect of the offence under the relevant provision).
- (6) Subsection (5)(a) does not operate so as to exclude the defence under section 26 or 28.

### **30—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**

### **31—Making of order**

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

### **32—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 in the same manner as the order was made.

### **33—Special provisions relating to recall orders**

- (1) A recall order may require the person, or the persons of a class, that is bound by the order to disclose to the public or to a class of persons specified in the order, in a manner so specified, any one or more of the following:
  - (a) the particular food or type of food to be recalled or disposed of;
  - (b) the reasons why the food is considered to be unsafe;
  - (c) the circumstances in which the consumption of the food is unsafe;

- (d) procedures for disposing of the food.
- (2) A person who is required by a recall order to conduct a recall of any food must give written notice to the relevant authority of the completion of the recall as soon as practicable after that completion.
- (3) A person who is bound by a recall order is liable for any cost incurred by or on behalf of the relevant authority in connection with the recall order and any such cost is taken to be a debt due to the relevant authority from that person.
- (4) In any proceedings for the recovery of the debt, a certificate signed by the relevant authority stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

### **34—Manner of making orders**

- (1) An order under this Part—
  - (a) may be made in writing addressed to the person or persons intended to be bound by it, and served on that person or each of those persons, as the case requires; or
  - (b) may be addressed to several persons, to a class of persons, or to all persons.
- (2) Notice of an order addressed as referred to in subsection (1)(b) setting out the terms of the order and the persons to be bound by the order must, as soon as practicable after the order is made, be published in a newspaper that, in the opinion of the relevant authority, will be most likely to bring the order to the attention of the persons bound by it.
- (3) An order under this Part, when it takes effect, is binding on the person or persons to whom it is addressed.
- (4) An order that is served on a person takes effect when it is served.
- (5) An order, notice of which is published under subsection (2), takes effect at the beginning of the first day on which the notice was published.
- (6) An order ceases to have effect at the expiration of 90 days after the day on which it takes effect unless it is sooner revoked.
- (7) Subsection (6) does not prevent a further order being made in the same terms as an order that has expired.

### **35—Review of order**

- (1) A person bound by an order under this Part who suffers loss as a result of the making of the order may apply to the relevant authority for compensation if the person considers that there were insufficient grounds for the making of the order.
- (2) If there were insufficient grounds for the making of the order, the relevant authority is to pay such compensation to the applicant as is just and reasonable.
- (3) The relevant authority is to send written notification of its determination as to the payment of compensation under this section to each applicant for the payment of such compensation.
- (4) If the relevant authority has not determined an application for compensation under this section within 28 days of receiving the application, the relevant authority is taken to have refused to pay compensation.

- (5) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the relevant authority as to the refusal to pay compensation or as to the amount of compensation may apply to the appropriate review body for a review of the determination—
- (a) within 28 days after the day on which notification of the determination was received; or
  - (b) in a case to which subsection (4) applies, within 28 days of the 28-day period referred to in that subsection.

### **36—Failure to comply with emergency order**

A person must not, without reasonable excuse—

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

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.
- (b) If the offender is a natural person—\$50 000.

## **Part 4—Inspection and seizure powers**

### **Division 1—Inspection**

#### **37—Powers of authorised officers**

- (1) For the purposes of this Act, an authorised officer may, at any reasonable time, do any one or more of the following:
- (a) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any premises that the authorised officer reasonably believes are used in connection with the handling of any food intended for sale or the sale of food or any food transport vehicle;
  - (b) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any premises or food transport vehicle, in which the authorised officer reasonably believes that there are any records or documents that relate to the handling of any food intended for sale or the sale of food;
  - (c) examine any food intended for sale;
  - (d) open and examine any package that the authorised officer reasonably believes contains any food intended for sale or any equipment;
  - (e) open and examine any equipment;
  - (f) subject to Division 1 of Part 6, for the purpose of analysing any food sold or intended for sale or for carrying out any other examination in order to determine whether the provisions of this Act or the regulations are being complied with, demand, select and obtain samples of any food;

- (g) for the purpose of analysis, take samples of water or soil or any other thing that is part of the environment in which any food is handled to determine whether that environment poses a risk to the safety of the food for human consumption;
  - (h) take samples of any thing, other than for the purpose of analysis, that the authorised officer reasonably believes may be used as evidence that an offence has been, or is being, committed under this Act or the regulations;
  - (i) seize and retain, or issue a seizure order in respect of, anything that the authorised officer reasonably believes has been used in, or may be used as evidence of, a contravention of this Act or the regulations;
  - (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 or the regulations 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 39, 40 or 41.

### **38—Search warrants**

- (1) An authorised officer may apply to a magistrate for a search warrant if the authorised officer has reasonable grounds to believe that a provision of this Act or the regulations has been, is being, or is about to be, contravened on premises.
- (2) A magistrate to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant, when accompanied by a police officer, and such other person (if any) as is named in the warrant—
- (a) to enter the premises concerned (using such force as is necessary for the purposes); and
  - (b) to search the premises, and to break open and search anything in the premises, for evidence of a contravention of this Act or the regulations.
- (3) This section does not limit the operation of section 37(1).

### **39—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.

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.
- (b) If the offender is a natural person—\$50 000.

### **40—False information**

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

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.
- (b) If the offender is a natural person—\$50 000.

### **41—Obstructing or impersonating authorised officers**

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

Maximum penalty: \$50 000.

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

Maximum penalty: \$10 000.

## Division 2—Seizure

### 42—Seizure

- (1) A seizure order under this Part—
  - (a) must be in the form of a written notice served on the owner or person in control of the thing to which the order relates; and
  - (b) may be varied or revoked by further such written notice.
- (2) If a seizure order is issued under this Part, a person who removes or interferes with the thing to which the order relates without the approval of an enforcement agency before an order is made under subsection (3)(b) in respect of the thing or the seizure order is discharged under subsection (3)(c) is guilty of an offence.  
Maximum penalty: \$20 000.
- (3) If a thing has been seized or made subject to a seizure order under this Part, 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 enforcement agency—
    - (i) on application, authorises its release to the person from whom it was seized or any person who had a right to possession of it at the time of its seizure subject to such conditions as the enforcement agency thinks fit, including conditions as to the giving of security for satisfaction of an order under paragraph (b)(i)(B); or
    - (ii) in the case of food or any other perishable thing, orders that it be forfeited to the enforcement agency; and
  - (b) if proceedings for an offence against this Act related to the thing are instituted within the prescribed time of its seizure or the issuing of the seizure order and the person charged is found guilty of the offence, the court must consider the question of forfeiture and may—
    - (i) if the thing seized has not been forfeited by order of an enforcement agency under paragraph (a)(ii)—
      - (A) order that it be forfeited to an enforcement agency; or
      - (B) if it has been released pursuant to paragraph (a)(i), order that it be forfeited to an enforcement agency or order that the person to whom it was released pay an amount equal to its market value at the time of its seizure, as the court thinks fit; or
      - (C) make no order for forfeiture; or
    - (ii) if the thing seized has been forfeited by order of an enforcement agency under paragraph (a)(ii)—
      - (A) confirm the order for forfeiture; or
      - (B) quash the order for forfeiture,



as the court considers appropriate in the circumstances; and

- (c) if—
  - (i) the thing has not been released pursuant to paragraph (a)(i); and
  - (ii) proceedings for an offence against this Act related to the thing—
    - (A) are not instituted within the prescribed time after its seizure or the issuing of the seizure order; or
    - (B) are so instituted and the person charged is not found guilty of the offence; or
    - (C) are so instituted and the person charged is found guilty of the offence but either no order for forfeiture is made under paragraph (b)(i) or an order is made under paragraph (b)(ii) quashing the order for forfeiture,

the person from whom the thing was seized or any person who had a right to possession of it at the time of its seizure is entitled to recover, by action in any court of competent jurisdiction—

- (iii) if the thing seized has not been forfeited by order under paragraph (a)(ii)—the thing itself, or, if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure; or
- (iv) if the thing seized has been forfeited by order under paragraph (a)(ii)—compensation of an amount equal to its market value at the time of its seizure or, if it has been sold, the amount realised by its sale,

and any seizure order is discharged; and

- (d) despite paragraph (c), if any food or other perishable thing is seized in relation to an expiable offence and the offence is expiated—
  - (i) the food or other perishable must, if it has not already been forfeited by order of an enforcement agency under paragraph (a)(ii), be dealt with in accordance with any determination of the Minister (which may include a determination that it be forfeited to the Crown or to an enforcement agency); and
  - (ii) no compensation may be recovered in respect of the food or other perishable thing by any person; and
- (e) if the thing seized is forfeited under this section, it may be disposed of by sale, destruction or otherwise as an enforcement agency directs.

- (4) In this section—

***prescribed time*** means the period of six months, or such longer period as a magistrate may allow.

## Part 5—Improvement notices and prohibition orders

### 43—Unclean or unfit premises, vehicles or equipment

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

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

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

### 44—Improvement notice

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

#### **45—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.

#### **46—Prohibition order**

- (1) If a relevant authority or the head of an enforcement agency believes, on reasonable grounds—
  - (a) that any of the circumstances specified in section 43 exist; and
  - (b) that—
    - (i) the proprietor of a food business has not complied with an improvement notice within the time required for compliance; or
    - (ii) the issue of the order is necessary to prevent or mitigate a serious danger to public health,

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

- (2) A prohibition order is to take the form of an order that—
  - (a) no food intended for sale is to be handled on specified premises or a specified part of specified premises; or
  - (b) no food intended for sale is to be conveyed in a specified vehicle; or
  - (c) specified equipment is not to be used in connection with food intended for sale; or
  - (d) no food intended for sale is to be handled by a food business in a specified way or for a specified purpose; 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 relevant authority or person that made the order must give a certificate of clearance if, after an inspection of the premises, part of the premises, vehicle or equipment, or the way of handling food, specified in the prohibition order, the relevant authority or person finds, by the relevant authority's or person's own inspection or the report of an authorised officer, that—
- (a) the premises, part of the premises, vehicle or equipment, or the handling of food by the food business in the specified way or for the specified purpose, is not a serious danger to public health; and
  - (b) the person on whom the prohibition order was served has complied with the prohibition order and any improvement notices served on the person.

#### **47—Scope of notices and orders**

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

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

#### **48—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.

#### **49—Request for re-inspection**

- (1) The proprietor of the food business whose premises (other than a vehicle) are affected by a prohibition order may at any time after the order has been served make a written request to the relevant authority or person who made the order to cause the premises to be inspected by an authorised officer.
- (2) The proprietor of the food business whose vehicle or equipment is affected by a prohibition order may at any time after the order has been served make a written request to the relevant authority or person who made the order to cause the vehicle or equipment to be inspected by an authorised officer—
  - (a) at the place where it was originally inspected; or
  - (b) if it is not convenient for it to be inspected at that place, at some other place that the relevant authority or person who made the order has agreed to.

- (3) If a request for inspection is made under this section and the premises, vehicle or equipment concerned, through no fault of the proprietor of the food business, is not inspected by an authorised officer within the period of two clear business days after the receipt of the request by the relevant authority or person, a certificate of clearance is taken to have been given to the proprietor of the food business under section 46.

## **50—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.

Maximum penalty:

- (a) If the offender is a body corporate—\$250 000.
- (b) If the offender is a natural person—\$50 000.

Expiation fee: In the case of an improvement notice—\$750.

## **51—Review of decision to refuse certificate of clearance**

- (1) A person aggrieved by a decision of a relevant authority or person 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.

## **52—Review of order**

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

## **Part 6—Taking and analysis of samples**

### **Division 1—Taking of samples**

#### **53—Proprietor to be informed**

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

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

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

#### **54—Payment for sample**

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

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

to the person from whom the sample is obtained.

#### **55—Samples from vending machines**

Sections 53 and 54 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.

#### **56—Packaged food**

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

#### **57—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.

### **58—Samples to be submitted for analysis**

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

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

### **59—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.

### **60—Certificate of analysis**

- (1) This section applies to an analysis that is carried out—
- (a) by an approved laboratory; or
  - (b) by an approved analyst; or

- (c) under the supervision of an approved analyst,  
for the purposes of this Act.
- (2) On completion of an analysis to which this section applies—
  - (a) the person in charge of the laboratory at which the analysis was carried out;  
or
  - (b) the approved analyst who carried out the analysis; or
  - (c) the approved analyst who supervised the carrying out of the analysis,is to give the person who requested the analysis, or an agent of the person, a certificate of analysis, in the approved form, that complies with the requirements of subsection (3).
- (3) The certificate of analysis must—
  - (a) be dated and signed by the person in charge of the laboratory at which the analysis was carried out or by the approved analyst who carried out the analysis or who supervised the carrying out of the analysis; and
  - (b) contain a written report of the analysis that sets out the findings; and
  - (c) specify the requirements, if any, of the Food Standards Code relating to the carrying out of the analysis and certify that the analysis was carried out in accordance with those requirements.

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

### **61—Approval of laboratories**

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

### **62—Term of approval**

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



### **63—Approved laboratory to give notice of certain interests**

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

Maximum penalty: \$10 000.

### **64—Variation of conditions or suspension or cancellation of approval of laboratory**

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

## **65—Review of decisions relating to approval**

- (1) A person aggrieved by a decision of the relevant authority relating to any of the following may apply to the appropriate review body for a review of the decision:
  - (a) the grant or refusal of an application for approval of a laboratory under this Division;
  - (b) the imposition of conditions on an approval;
  - (c) the variation of conditions of an approval;
  - (d) the suspension or cancellation of an approval.
- (2) An application under this section 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.

## **66—List of approved laboratories to be maintained**

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

## **Division 4—Approval of analysts**

### **67—Approval of persons to carry out analyses**

- (1) The relevant authority may approve natural persons for the purposes of carrying out analyses under this Act.
- (2) A natural person may make an application, in the approved form, to the relevant authority for an approval under this Division.
- (3) The application is to be accompanied by—
  - (a) such information as the relevant authority requires to determine the application; and
  - (b) the fee, if any, prescribed by the regulations.
- (4) The relevant authority may, after considering an application for approval—
  - (a) grant the application, with or without conditions; or
  - (b) refuse the application.
- (5) If the relevant authority grants an application for approval, it must issue the applicant with a written approval that sets out the conditions to which the approval is subject.
- (6) If the relevant authority refuses an application for approval, the relevant authority must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

### **68—Term of approval**

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

### **69—Approved analyst to give notice of certain interests**

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

Maximum penalty: \$10 000.

### **70—Variation of conditions or suspension or cancellation of approval of analyst**

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

### **71—Review of decisions relating to approval**

- (1) A person aggrieved by a decision of the relevant authority relating to any of the following may apply to the appropriate review body for a review of the decision:
  - (a) the grant or refusal of an application for approval under this Division;
  - (b) the imposition of conditions on an approval;

- (c) the variation of conditions of an approval;
  - (d) the suspension or cancellation of an approval.
- (2) An application under this section 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.

## **72—List of approved analysts to be maintained**

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

## **Part 7—Auditing**

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

#### **73—Approval of food safety auditors**

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

#### **74—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.

### **75—Food safety auditor to give notice of certain interests**

- (1) A food safety auditor must notify the relevant authority of any direct or indirect interest in any food business that the auditor has as soon as possible after becoming aware of that interest.  
Maximum penalty: \$10 000.
- (2) Payment to an auditor for carrying out the functions of an auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (1).

### **76—Variation of conditions or suspension or cancellation of approval of auditor**

- (1) The relevant authority may vary the conditions of, or suspend or cancel, an approval under this Part.
- (2) An approval of a person may be suspended or cancelled on one or more of the following grounds:
  - (a) if the relevant authority is satisfied that the person has contravened any provision of this Act or the regulations;
  - (b) if the relevant authority is satisfied that the person has contravened a condition to which the approval is subject;
  - (c) if the relevant authority is satisfied that the person has not competently carried out any duty of an auditor under this Act;
  - (d) if the relevant authority is satisfied that the person has a direct or indirect interest in any food business that, in the opinion of the relevant authority, could affect the performance of the person's duties under this Act;
  - (e) at the request of the person;
  - (f) for any other reason that the relevant authority considers appropriate.
- (3) Payment to an auditor for performing the duties of an auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (2)(d).
- (4) The relevant authority may only vary the conditions of, or suspend or cancel, the approval of a person—
  - (a) after having given the person—
    - (i) written reasons of its intention to vary, suspend or cancel; and
    - (ii) an opportunity to make submissions; and
  - (b) after having considered any submissions made by the person.
- (5) Subsection (4) does not apply to the cancellation of an approval at the request of the person to whom the approval relates.
- (6) A variation of the conditions of, or the suspension or cancellation of, the approval of a person under this Part—
  - (a) must be by notice in writing; and
  - (b) must be served on the person to whom the approval relates; and

- (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

### **77—Review of decisions relating to approvals**

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

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

### **78—Food safety programs and auditing requirements**

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

Maximum penalty:

- (a) If the offender is a body corporate—\$120 000.
- (b) If the offender is a natural person—\$25 000.

Expiation fee:

- (a) If the offender is a body corporate—\$2 500.
- (b) If the offender is a natural person—\$750.

- (2) The proprietor of a food business must ensure that any food safety program required to be prepared by the regulations in relation to the food business is audited at least as frequently as is determined under section 79(1), or as redetermined under section 82, in relation to the food business.

Maximum penalty:

- (a) If the offender is a body corporate—\$120 000.
- (b) If the offender is a natural person—\$25 000.

Expiation fee:

- (a) If the offender is a body corporate—\$2 500.
- (b) If the offender is a natural person—\$750.

### **79—Priority classification system and frequency of auditing**

- (1) The appropriate enforcement agency must determine—
  - (a) the priority classification of individual food businesses for the purposes of the application of any requirements of the regulations relating to food safety programs; and

- (b) the frequency of auditing of any food safety programs required to be prepared by the regulations in relation to the food businesses.
- (2) The determination must be made having regard to a priority classification system for types of food businesses approved by the relevant authority.
- (3) The appropriate enforcement agency must provide written notification to the proprietor of a food business of—
  - (a) the priority classification it has determined for the food business; and
  - (b) the frequency of auditing of any food safety programs required to be prepared by the regulations in relation to the food business; and
  - (c) the date by which the food business must have implemented any food safety program required to be prepared by the regulations in relation to the food business.
- (4) The appropriate enforcement agency may change the priority classification of an individual food business if the appropriate enforcement agency believes that the classification is inappropriate for any reason, including as a result of changes made to the conduct of the food business.
- (5) The appropriate enforcement agency must provide written notification to the proprietor of a food business of any change in priority classification of the food business under subsection (4).

### **80—Duties of food safety auditors**

A food safety auditor has the following duties:

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

### **81—Reporting requirements**

- (1) A food safety auditor must report in writing to the appropriate enforcement agency 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 prescribed form; and
  - (b) be submitted to the appropriate enforcement agency within 21 days after the completion of the audit or assessment; and
  - (c) take account of any action taken before the submission of the report to remedy any deficiency identified by the food safety auditor.

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

## **82—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 under this Division.
- (2) A food safety auditor must have regard to the following matters in making such a determination:
  - (a) the compliance history of the food business concerned in relation to any requirements of the regulations regarding food safety programs and the requirements of the Food Safety Standards;
  - (b) the audit compliance history (if any) established before the commencement of the Food Safety Standards.



**83—Certificates of authority of food safety auditors**

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

**84—List of food safety auditors to be maintained**

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

**85—Obstructing or impersonating food safety auditors**

- (1) A person must not, without reasonable excuse, resist, obstruct or attempt to obstruct, a food safety auditor in the exercise of the food safety auditor's functions under this Act.  
Maximum penalty: \$50 000.
- (2) A person who impersonates a food safety auditor is guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$250.

**Part 8—Notification of food businesses****86—Notification of food businesses**

- (1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted.  
Maximum penalty:
  - (a) If the offender is a body corporate—\$120 000.
  - (b) If the offender is a natural person—\$25 000.Expiation fee:
  - (a) If the offender is a body corporate—\$1 500.
  - (b) If the offender is a natural person—\$300.

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

Maximum penalty:

- (a) If the offender is a body corporate—\$120 000.
- (b) If the offender is a natural person—\$25 000.

Expiation fee:

- (a) If the offender is a body corporate—\$1 500.
- (b) If the offender is a natural person—\$300.

- (3) If—

- (a) a food business is transferred to another person; or
- (b) there is a change in the name or address of a food business,

the proprietor of the food business (being, in the case where paragraph (a) applies, the new proprietor) must give written notice, in the approved form and within the prescribed period, of the transfer or change (as the case may be) to the enforcement agency that would be the appropriate enforcement agency if the notification were an initial notification under subsection (1) or (2).

Maximum penalty: \$5 000.

Expiation fee: \$250.

- (4) This section does not apply to a food business that is not required by the Food Safety Standards to notify the information referred to in subsection (1) or (2).

## **Part 9—Administration**

### **Division 1—Relevant authority**

#### **87—Provision relating to functions**

- (1) The relevant authority has such functions in relation to the administration of this Act as are conferred or imposed on the relevant authority by or under this Act.
- (2) The relevant authority may take such measures as the relevant authority considers appropriate to ensure the effective administration and enforcement of this Act.

#### **88—Delegations by relevant authority**

- (1) The relevant authority may delegate a power or function vested or conferred under this Act—
  - (a) to a particular person or body; or
  - (b) to the person for the time being occupying a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.
- (4) In any legal proceedings an apparently genuine certificate, purportedly given by the relevant authority, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.
- (5) A power must not be delegated under this section to an enforcement agency or the head of an enforcement agency without the consent in writing of the enforcement agency or the head of the enforcement agency.

## **Division 2—Functions of enforcement agencies**

### **89—Functions of enforcement agencies in relation to this Act**

An enforcement agency has such functions in relation to the administration of this Act as are conferred or imposed on it by or under this Act or are delegated to it under this Act.

### **90—Conditions on exercise of functions by enforcement agencies**

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

### **91—Delegations by enforcement agency**

- (1) Subject to any direction, condition or limitation given, specified or imposed by the relevant authority, an enforcement agency, or the head of an enforcement agency, may delegate a power or function vested or conferred under this Act—
  - (a) to a particular person or body; or
  - (b) to the person for the time being occupying a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.
- (4) In any legal proceedings an apparently genuine certificate, purportedly given by the enforcement agency, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

## **92—Exercise of functions by enforcement agencies**

- (1) The relevant authority may adopt national guidelines relating to the exercise of its functions under this Act and may require other enforcement agencies and authorised officers to adopt those guidelines in the carrying out of their functions under this Act.
- (2) In this section—

*national guidelines* means guidelines prepared for the purposes of this section by the Australia New Zealand Food Authority.

## **93—Reports by enforcement agencies**

- (1) The head of an enforcement agency (other than the relevant authority) is to report to the relevant authority, at such intervals as the relevant authority requires, on the performance of functions under this Act by persons employed or engaged by the agency.
- (2) In addition to any report required under subsection (1), the head of an enforcement agency is to forward to the relevant authority details of any proceedings for an offence under this Act or the regulations taken by an officer of the agency within one month of the proceedings being finally dealt with.

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

### **94—Appointment of authorised officers**

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

### **95—Certificates of authority**

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

## **Division 4—Agreement and consultation with local government sector on administration and enforcement of Act**

### **96—Agreement and consultation with local government sector**

- (1) The Minister must take reasonable steps to consult with the LGA from time to time in relation to the administration and enforcement of this Act.

- 
- (2) If the Minister and the LGA enter into an agreement with respect to the exercise of functions under this Act by councils, then the Minister must prepare a report on the matter and cause copies of the report to be laid before both Houses of Parliament.
  - (3) A report under subsection (2) must be accompanied by a copy of any relevant written agreement between the Minister and the LGA.
  - (4) The Minister must consult with the LGA before a regulation that confers any function on councils is made under this Act.
  - (5) The annual report of the Minister under this Act must include a specific report on—
    - (a) the outcome of any consultation undertaken under subsection (1) or (4); and
    - (b) the operation of any agreement referred to in subsection (2).

## **Part 10—Procedural and evidentiary provisions**

### **97—Offences by employers**

- (1) If an employee contravenes any provision of this Act or the regulations, the employer is taken to have contravened the same provision.
- (2) It is a defence in proceedings against an employer for such a contravention if it is 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.

### **98—Offences by bodies corporate**

- (1) If a body corporate contravenes, whether by act or omission, any provision of this Act or the regulations, 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 or the regulations.

### **99—Liability of employees and agents**

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

### **100—No defence to allege deterioration of sample**

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

### **101—Onus to prove certain matters on defendant**

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

### **102—Presumptions**

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

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

### 103—Certificate evidence and evidence of analysts

- (1) A certificate of the result of an analysis obtained by the defendant or the prosecution in proceedings for an offence under this Act or the regulations is admissible in any such proceedings and evidence of the facts stated in it if—
  - (a) the certificate was issued in accordance with this Act; and
  - (b) a copy of the certificate is served by the person who obtained it on the other party to the proceedings—
    - (i) in the case of a certificate obtained by the prosecution—at least 14 days before the hearing;
    - (ii) in any other case—at least 7 days before the hearing.
- (2) An analyst who carried out an analysis in relation to which a certificate is produced as evidence in proceedings as referred to in subsection (1) need not be called as a witness in the proceedings by the party producing the certificate unless the court hearing the proceedings so orders (whether on application made to it or by any other means).
- (3) In any proceedings for an offence under this Act or the regulations, the prosecution cannot rely on an analysis as evidence for the purposes of those proceedings unless the person who carried out the analysis—
  - (a) is employed or engaged by an approved laboratory; or
  - (b) is an approved analyst; or
  - (c) was acting under the supervision of an approved analyst.
- (4) In any proceedings for an offence under this Act or the regulations—
  - (a) a document purporting to be a copy of any 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 head of the relevant authority certifying that at a specified time or during a specified period—
    - (i) there was or was not in force any approval, order, notice or authority in relation to a specified person or persons; and
    - (ii) that 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 head of the relevant authority certifying—
    - (i) as to the receipt or otherwise of any notice, application or payment; or
    - (ii) that any amount of fees or other money is payable under this Act by a specified person and has not been paid at the date of the certificate,is evidence of the matters contained in the document.

### **104—Power of court to order further analysis**

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

### **105—Court may order costs and expenses**

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

### **106—Court may order forfeiture**

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

### **107—Court may order corrective advertising**

A court by which a person is convicted of an offence under Part 2, may make one or both of the following orders:

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

## **Part 11—Miscellaneous**

### **108—Special power of exemption**

- (1) The Minister may, by notice in the Gazette, confer exemptions from this Act or specified provisions of this Act on specified persons or persons of a specified class.
- (2) An exemption under subsection (1) may be granted by the Minister on such conditions as the Minister thinks fit.
- (3) The Minister may, by further notice in the Gazette—
  - (a) vary or revoke an exemption;
  - (b) vary or revoke a condition of an exemption.



- (4) A person must not contravene or fail to comply with a condition of an exemption.  
Maximum penalty: \$10 000.

### **109—Annual report**

- (1) The Minister must, on or before 30 September in each year, prepare a report on the operation of this Act for the financial year ending on the preceding 30 June.
- (2) The Minister must, within six sitting days after completing a report under this section, cause copies of the report to be laid before both Houses of Parliament.

### **110—Protection from liability**

No liability attaches to—

- (a) the Crown, the relevant authority, 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.

### **111—Disclosure of certain confidential information**

- (1) A person who has, in connection with the administration or execution of this Act, obtained information relating to manufacturing secrets or commercial secrets or working processes must not disclose that information unless the disclosure is made—
- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed by or under this Act or any other law; or
- (e) to a person administering or enforcing a law of another jurisdiction that corresponds to this Act or any other law prescribed by the regulations; or
- (f) to the Australia New Zealand Food Authority; or
- (g) to a law enforcement authority; or
- (h) with other lawful excuse.

Maximum penalty: \$50 000.

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

### **112—Disclosure of certain information**

- (1) A person who is carrying on business as part of a multiple-site food business at which standardised food that is unpackaged, or packaged at the point of sale, is sold directly to the public must ensure that information relating to—
- (a) any ingredient or additive of a prescribed class in that food; and

- (b) any modification of a prescribed class that has occurred to any material contained in that food; and
  - (c) any other matter of a prescribed class,
- that complies with the requirements of the regulations is available for persons who may order or purchase that food.
- (2) The regulations may—
- (a) prescribe the manner in which the information required under subsection (1) is to be made available to members of the public;
  - (b) exclude certain classes of food business, or certain classes of food, from the operation of subsection (1).

- (3) A person must not, without reasonable excuse, fail to comply with a requirement imposed by or under this section.

Maximum penalty: \$2 500.

Expiation fee: \$125.

- (4) In this section—

***multiple-site food business*** means a food business that is carried on at five or more separate locations (including where the business is carried on under one or more franchise agreements);

***standardised food***—standardised food is food sold as part of a multiple-site food business that is intended to be the same (or substantially the same) when purchased at any location where the multiple-site food business is carried on.

## 113—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those 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;
  - (b) regulate, restrict or prohibit the use or sale of specified substances or things (or substances or things of a specified class) as food, or as an ingredient or additive in food;
  - (c) require persons selling specified kinds of food to provide specified information in relation to the food to purchasers;
  - (d) impose requirements with regard to the packaging and labelling of food generally, or specified kinds of food;
  - (e) provide for the regular analysis, examination or testing of food by specific classes of persons;
  - (f) provide for the keeping of records by specified classes of persons and for the inspection of those records;
  - (g) regulate the form and content of advertisements relating to food;

- (h) regulate or restrict the use of automatic food vending machines;
  - (i) fix, or provide for the imposition of, 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;
  - (j) fix, regulate or restrict the imposition of fees or charges for or in connection with audits or other activities carried out by food safety auditors for the purposes of this Act;
  - (k) provide for the payment to an enforcement agency of part of any fee or charge of a prescribed kind paid or recovered in connection with audits or other activities carried out by food safety auditors for the purposes of this Act (being a payment of an amount prescribed by the regulations, or an amount expressed as a prescribed percentage of the relevant fee or charge, which is to be paid to the enforcement agency at the time that a report of a prescribed kind is provided to the enforcement agency, or at some other time prescribed by the regulations);
  - (l) fix, or provide for the imposition of, fees for the making of applications or the giving of notifications under this Act, or in connection with any other matter;
  - (m) impose requirements for the notification by food businesses of information relating to the conduct of those food businesses;
  - (n) make provision with respect to administrative procedures for the purposes of this Act;
  - (o) require the provision of information, returns or reports to the Minister or any other prescribed authority;
  - (p) provide that a specified provision of this Act does not apply, or applies with prescribed variations, in any circumstance or situation (or circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject;
  - (q) determine that specified offences under this Act or the regulations are expiable and fix expiation fees, not exceeding \$500, with respect to those offences;
  - (r) prescribe fines, not exceeding \$2 500 in cases involving natural persons and \$5 000 in cases involving bodies corporate, for contravention of a regulation.
- (3) The regulations may apply, wholly or partially and with or without modification, a code, standard, rule or other document prepared or published by a body referred to in the regulation (as in force from time to time or as in force at a particular time), as regulations applying under this Act (and, in so applying such code, standard, rule or other document, may provide for their citation for the purposes of the law of this State).
- (4) The regulations may adopt or incorporate, wholly or partially and with or without modification, a code, standard, rule or other document prepared or published by a body referred to in the regulation (as in force from time to time or as in force at a particular time).

- (5) Any regulations applying, adopting or incorporating a code, standard, rule or other document may contain such incidental, supplementary or transitional provisions as appear to the Governor to be necessary.
- (6) The regulations, or a code, standard, rule or other document applied, adopted or incorporated by the regulations, may—
  - (a) refer to or incorporate, wholly or partially and with or without modification, a code, standard, rule or other document prepared or published by a particular body (as in force from time to time or as in force at a particular time); and
  - (b) be of general or limited application; and
  - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or any other prescribed authority.
- (7) If—
  - (a) a code, standard, rule or other document is applied, adopted or incorporated by the regulations; or
  - (b) the regulations, or a standard, rule or other document applied, adopted or incorporated by the regulations, refers to a code, standard, rule or other document prepared or published by a particular body,then—
  - (c) a copy of the code, standard, rule or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified by notice in the Gazette; and
  - (d) in any legal proceedings, evidence of the contents of the code, standard, rule or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard, rule or other document.

### **115—Savings and transitional regulations**

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

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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).

### Legislation repealed by principal Act

The *Food Act 2001* repealed the following:

*Food Act 1985*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2001	44	<i>Food Act 2001</i>	9.8.2001	1.12.2002 except s 86—1.9.2003 ( <i>Gazette</i> 21.11.2002 p4224)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 35 (s 128)—4.9.2006 ( <i>Gazette</i> 17.8.2006 p2831)

### Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Pt 11		
s 114	<i>omitted under Legislation Revision and Publication Act 2002</i>	