

Western Australia

Food Act 2008

As at 05 Nov 2010

Version 00-h0-02

Extract from www.slp.wa.gov.au, see that website for further information

Food Act 2008

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Objects of Act	2
4.	Application of Act to primary food production	2
5.	Application of Act to water suppliers	3
6.	Application of Act to prescribed community activities	3
7.	Act to bind Crown	4

Part 2 — Interpretation

8.	Terms used in this Act	5
9.	Meaning of “food”	9
10.	Meaning of “food business”	10
11.	Meaning of “primary food production”	10
12.	Meaning of “unsafe” in relation to food	11
13.	Meaning of “unsuitable” in relation to food	12

Part 3 — Offences relating to food

Division 1 — Serious offences relating to food

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

Division 2 — Other offences relating to food

17.	Handling and sale of unsafe food	15
18.	Handling and sale of unsuitable food	15
19.	Misleading conduct relating to sale of food	16

Contents

20.	Sale of food not complying with purchaser's demand	16
21.	Sale of unfit equipment or packaging or labelling material	17
22.	Compliance with Food Standards Code	17
23.	False description of food	18
24.	Application of provisions outside Western Australia	19
	Division 3 — Defences	
25.	Defence relating to publication of advertisements	19
26.	Defence in respect of food for export	20
27.	Defence of due diligence	20
28.	Defence in respect of handling food	22
29.	Defence in respect of sale of unfit equipment or packaging or labelling material	22
	Division 4 — Alternative verdicts	
30.	Alternative verdicts for serious food offences	23
	Part 4 — Emergency powers	
31.	Making of emergency order	24
32.	Nature of emergency order	24
33.	Special provisions relating to recall orders	25
34.	Manner of making orders	26
35.	Compensation	26
36.	Failure to comply with emergency order	27
37.	Limitation on stay of operation of emergency orders	28
	Part 5 — Powers of entry, inspection and seizure	
38.	Powers of authorised officers	29
39.	Self-incrimination not an excuse	31
40.	Power of seizure	31
41.	Application for warrant to enter premises	31
42.	Issue of warrant	33
43.	Duration of warrant	33
44.	Execution of warrant	34
45.	Failure to comply with requirements of authorised officers	34
46.	Interfering with seized items	35

47.	False information	35
48.	Obstructing, impersonating or threatening authorised officers	35
	Division 2 — Items seized by authorised officers	
49.	Seized items	36
50.	Notification of seizure	36
51.	Destruction of filthy, decomposed or putrid matter	37
52.	Return of seized item	37
53.	Forfeiture of item	37
54.	Cost of destruction or disposal of forfeited item	38
55.	Return of forfeited item	38
56.	Compensation to be paid in certain circumstances	39
57.	Application for order disallowing seizure	40
58.	Enforcement agency entitled to answer application	40
59.	Order disallowing seizure of item	40
60.	Ancillary orders	41
61.	Adjournment pending hearing of other proceedings	41
	Part 6 — Improvement notices and prohibition orders	
	Division 1 — Improvement notices	
62.	Grounds for serving improvement notice	42
63.	Improvement notice may require certain action to be taken	42
64.	Compliance with improvement notice	43
	Division 2 — Prohibition orders	
65.	Prohibition order	44
66.	Certificate of clearance to be given in certain circumstances	45
67.	Request for re-inspection	46
68.	Contravention of prohibition order	46
69.	Review of decision to refuse certificate of clearance	47
70.	Compensation	47
	Division 3 — Other matters	
71.	Scope of notices and orders	48
72.	Notices and orders to contain certain information	48

Part 7 — Taking and analysis of samples

Division 1 — Taking of samples

73.	Application of Division	49
74.	Proprietor to be informed	49
75.	Payment for sample	49
76.	Samples from vending machines	49
77.	Packaged food	50
78.	Procedures to be followed	50
79.	Samples to be submitted for analysis	51

Division 2 — Procedures relating to analyses

80.	Compliance with Food Standards Code	51
81.	Certificate of analysis	52

Division 3 — Approval of laboratories

82.	Approval of laboratories	53
83.	Term of approval	53
84.	Person in charge of approved laboratory to give notice of certain interests	53
85.	Variation of conditions or suspension or cancellation of approval of laboratory	54
86.	Review of decisions relating to approval	55
87.	List of approved laboratories to be maintained	56

Division 4 — Approval of analysts

88.	Approval of persons to carry out analyses	56
89.	Term of approval	56
90.	Approved analyst to give notice of certain interests	57
91.	Variation of conditions or suspension or cancellation of approval of analyst	57
92.	Review of decisions relating to approval	58
93.	List of approved analysts to be maintained	58

Part 8 — Auditing

Division 1 — Approval of food safety auditors

94.	Approval of food safety auditors	60
95.	Term of approval	61
96.	Food safety auditor to give notice of certain interests	61
97.	Variation of conditions or suspension or cancellation of approval of auditor	61

98.	Review of decisions relating to approvals	62
	Division 2 — Auditing and reporting requirements	
99.	Food safety programs and auditing requirements	63
100.	Priority classification system and frequency of auditing	64
101.	Duties of food safety auditors	65
102.	Reporting requirements	65
103.	Redetermination of frequency of auditing	67
	Division 3 — Other matters relating to food safety auditors	
104.	Certificates of authority of food safety auditors	68
105.	List of food safety auditors to be maintained	68
106.	Obstructing, impersonating or threatening food safety auditors	69
	Part 9 — Registration of food businesses	
107.	Notification of conduct of food businesses	70
108.	Exemption in relation to notification of information	70
109.	Conduct of unregistered food businesses	71
110.	Registration of food businesses	71
111.	Term of approval	73
112.	Variation of conditions or cancellation of registration of food businesses	73
113.	Notification of certain changes to registered food businesses	75
114.	Review of decisions relating to registration	75
115.	Register of food businesses to be maintained	76
	Part 10 — Administration	
	Division 1 — CEO	
116.	Functions of the CEO	77
117.	CEO may delegate	77
	Division 2 — Functions of enforcement agencies	
118.	Functions of enforcement agencies and delegation	78
119.	Conditions on performance of functions by enforcement agencies	79

Contents

120.	Performance of functions by enforcement agencies and authorised officers	80
121.	Reports by and about enforcement agencies	80
	Division 3 — Appointment of authorised officers	
122.	Appointment of authorised officers	81
123.	Certificates of authority	81
	Division 4 — Advisory committees	
124.	Establishment and functions of advisory committees	82
	Part 11 — Procedural and evidentiary provisions	
125.	Institution of proceedings	83
126.	Infringement notices	83
127.	Offences by employees — liability of employer	85
128.	Offences by bodies corporate — liability of directors and others	85
129.	Liability of employees and agents	86
130.	No defence to allege deterioration of sample	87
131.	Onus to prove certain matters on accused person	87
132.	Presumption	87
133.	Certificate evidence and evidence of analysts	88
134.	Documentary evidence of certain matters	89
135.	Power of court to order further analysis	90
136.	Disclosure by witnesses	90
137.	Court may order costs and expenses	91
138.	Court may order forfeiture	91
139.	Court may order corrective advertising	91
	Part 12 — Miscellaneous	
140.	Fees and charges may be imposed and recovered by local governments that are enforcement agencies	93
141.	Protection from liability for wrongdoing	93
142.	Certain confidential information not to be disclosed	94
143.	Publication of names of offenders	95
144.	Regulations	95

145.	Temporary emergency regulations modifying the Food Standards Code	97
146.	Minister to review and report on Act	98

Part 13 — Consequential amendments

147.	<i>Health Act 1911</i> amended	99
148.	<i>Liquor Control Act 1988</i> amended	101
149.	<i>Volunteers and Food and Other Donors (Protection from Liability) Act 2002</i> amended	102

Part 14 — Transitional provisions

150.	Definition	103
151.	<i>Interpretation Act 1984</i> not affected	103
152.	Orders under <i>Health Act 1911</i> section 246W	103
153.	Orders under <i>Health Act 1911</i> section 246Y	103
154.	Transitional regulations	103

Notes

	Compilation table	105
	Provisions that have not come into operation	105

Defined Terms

Western Australia

Food Act 2008

An Act providing for the safety and suitability of food for human consumption, and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Food Act 2008*.

2. Commencement

- (1) This Act comes into operation as follows:
 - (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
 - (b) the rest of the Act — on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1)(b) for different provisions.

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 State of the Food Standards Code.

4. Application of Act to primary food production

- (1) Parts 6, 8 and 9 do not apply to or in respect of primary food production.
- (2) The functions conferred on authorised officers by Parts 5 and 7 may be performed in respect of primary food production only —
 - (a) to enable the investigation and prosecution of offences against this Act; or
 - (b) in connection with making or enforcing emergency orders.

5. Application of Act to water suppliers

- (1) The following provisions of this Act do not apply to a water supplier in respect of the supply of water for human consumption through a reticulated water system —
 - (a) sections 14, 16, 17(1), 18(1), 19, 20, 21 and 22 (but only to the extent to which section 22 requires compliance with the requirements of the Food Safety Standards);
 - (b) Parts 6, 8 and 9.
- (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;
 - (b) a person who 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 definition.

6. Application of Act to prescribed community activities

- (1) In subsection (2) —
prescribed means prescribed by the regulations for the purposes of that subsection.
- (2) The regulations may exempt from all or any provisions of this Act a prescribed activity of a charitable or community nature relating to food or an activity within a prescribed class of activities of a charitable or community nature relating to food.
- (3) An exemption may be expressed to apply —
 - (a) generally;
 - (b) for a specified period; or
 - (c) in specified circumstances or for the purposes of a specified occasion or event.

s. 7

- (4) The regulations may provide —
- (a) for conditions and restrictions subject to which an exemption is to apply; and
 - (b) that an exemption is of no effect at any time when any condition or restriction to which the exemption is subject is not being complied with.

7. Act to bind Crown

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

Part 2 — Interpretation

8. Terms used in this Act

In this Act, unless the contrary intention appears —

advertisement means —

- (a) any words, whether written or spoken;
- (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
and reptile;

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

approved analyst means a person approved under Part 7
Division 4;

approved form means the form approved from time to time by
the CEO;

approved laboratory means a laboratory approved under Part 7
Division 3;

authorised officer means a person appointed under Part 10
Division 3;

CEO means the chief executive officer of the department of the
Public Service principally assisting in the administration of this
Act;

court means the Magistrates Court;

emergency order means an order under Part 4;

enforcement agency means —

- (a) the CEO;

s. 8

- (b) a local government; or
- (c) a 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 and measure;

food has the meaning given by section 9;

food business has the meaning given by section 10;

food safety auditor means a person approved under Part 8 Division 1;

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

Food Standards Australia New Zealand has the same meaning as it has in the Commonwealth *Food Standards Australia New Zealand Act 1991*;

Food Standards Code means the Australia New Zealand Food Standards Code as defined in the Commonwealth *Food Standards Australia New Zealand Act 1991* and as adopted or incorporated by the regulations;

food transport vehicle means a vehicle used for the transport of food for sale;

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

improvement notice means an improvement notice issued under Part 6 Division 1;

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;

member of staff means an officer of the department of the Public Service principally assisting in the administration of this Act;

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);
- (b) the whole or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature);
- (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 11;

prohibition order means a prohibition order under Part 6 Division 2;

proprietor, of a food business, means —

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

public institution means —

- (a) a prison as defined in the *Prisons Act 1981*;
- (b) a detention centre as defined in the *Young Offenders Act 1994*;

s. 8

- (c) a public hospital as defined in the *Hospitals and Health Services Act 1927*; or
- (d) an institution, or an institution within a class of institutions, prescribed by the regulations for the purposes of this definition;

recall order means an emergency order requiring the recall or disposal, or both, of any food;

remote communication means any way of communicating at a distance, including by telephone, fax, email and radio;

sell includes —

- (a) barter, offer or attempt to sell;
- (b) receive for sale;
- (c) have in possession for sale;
- (d) display for sale;
- (e) cause or permit to be sold or offered for sale;
- (f) send, forward or deliver for sale;
- (g) dispose of by any method for valuable consideration;
- (h) dispose of to an agent for sale on consignment;
- (i) provide under a contract of service;
- (j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work;
- (k) dispose of by way of raffle, lottery or other game of chance;
- (l) offer as a prize or reward;
- (m) give away for the purpose of advertisement or in furtherance of trade or business;
- (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;

- (o) supply food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions; and
- (p) sell for the purpose of resale;

unsafe, in relation to food, has the meaning given by section 12;

unsuitable, in relation to food, has the meaning given by section 13;

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

[Section 8 amended by No. 42 of 2009 s. 18.]

9. 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);
- (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);
- (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;
- (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; and
- (e) any substance or thing declared to be a food under a declaration in force under the Commonwealth Food *Standards Australia New Zealand Act 1991* section 6,

s. 10

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 *Commonwealth Therapeutic Goods Act 1989*.
- (3) To avoid doubt, **food** may include live animals and plants.

10. 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, subject to section 6, 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.

11. 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 —
 - (a) the transportation or delivery of food on, from or between the premises on which it was grown, raised, cultivated, picked, harvested, collected or caught;
 - (b) the packing, treating (for example, washing) or storing of food on the premises on which it was grown, raised, cultivated, picked, harvested, collected or caught;
 - (c) the storage of food in a silo that is not connected with a food processing operation and the transportation or delivery of food from, between or to such silos;
 - (d) the sale of livestock at saleyards and the transportation of livestock to and from saleyards; and

- (e) any other food production activity that is regulated by or under an Act prescribed by the regulations for the purposes of this subsection.
- (2) However, **primary food production** does not include —
 - (a) any process involving the substantial transformation of food (for example, manufacturing or canning), regardless of whether the process is carried out on the premises on which the food was grown, cultivated, picked, harvested, collected or caught;
 - (b) the sale or service of food directly to the public; or
 - (c) any other food production activity that is prescribed by the regulations for the purposes of this subsection.

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

s. 13

13. Meaning of “unsuitable” in relation to 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;
 - (b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use;
 - (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;
 - (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;
 - (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.

Part 3 — Offences relating to food

Division 1 — Serious offences relating to food

14. Handling of food in unsafe manner

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

Penalty:

- (a) for an individual — a fine of \$100 000 and imprisonment for 2 years;
- (b) for a body corporate — a fine of \$500 000.

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

Penalty:

- (a) for an individual — a fine of \$75 000;
- (b) for a body corporate — a fine of \$375 000.

15. Sale of unsafe food

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

Penalty:

- (a) for an individual — a fine of \$100 000 and imprisonment for 2 years;
- (b) for a body corporate — a fine of \$500 000.

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

Penalty:

- (a) for an individual — a fine of \$75 000;
- (b) for a body corporate — a fine of \$375 000.

16. False description of food

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

Penalty:

- (a) for an individual — a fine of \$100 000 and imprisonment for 2 years;
- (b) for a body corporate — a fine of \$500 000.

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

Penalty:

- (a) for an individual — a fine of \$75 000;
- (b) for a body corporate — a fine of \$375 000.

- (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.

Penalty:

- (a) for an individual — a fine of \$100 000 and imprisonment for 2 years;
- (b) for a body corporate — a fine of \$500 000.

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

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

Penalty:

- (a) for an individual — a fine of \$75 000;
- (b) for a body corporate — a fine of \$375 000.

Division 2 — Other offences relating to food

17. Handling and sale of unsafe food

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

Penalty:

- (a) for an individual — a fine of \$50 000;
 - (b) for a body corporate — a fine of \$250 000.
- (2) A person must not sell food that is unsafe.

Penalty:

- (a) for an individual — a fine of \$50 000;
 - (b) for a body corporate — a fine of \$250 000.

18. Handling and sale of unsuitable food

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

Penalty:

- (a) for an individual — a fine of \$40 000;
 - (b) for a body corporate — a fine of \$200 000.
- (2) A person must not sell food that is unsuitable.

Penalty:

- (a) for an individual — a fine of \$40 000;
 - (b) for a body corporate — a fine of \$200 000.
- (3) For the purposes of this section, it is immaterial whether the food concerned is safe.

19. Misleading conduct relating to sale of food

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

Penalty:

- (a) for an individual — a fine of \$50 000;
- (b) for a body corporate — a fine of \$250 000.

- (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.

Penalty:

- (a) for an individual — a fine of \$50 000;
- (b) for a body corporate — a fine of \$250 000.

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

Penalty:

- (a) for an individual — a fine of \$50 000;
- (b) for a body corporate — a fine of \$250 000.

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

20. Sale of food not complying with purchaser's demand

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

Penalty:

- (a) for an individual — a fine of \$50 000;
- (b) for a body corporate — a fine of \$250 000.

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

21. Sale of unfit equipment or packaging or labelling material

- (1) A person must not sell equipment that, if used for the purposes for which it was designed or intended to be used —
- (a) would render or be likely to render food unsafe; or
 - (b) would put other equipment, or would be likely to put other equipment, in such a condition that, if the other equipment were used for the purposes for which it was designed or intended to be used, it would render, or be likely to render, food unsafe.

Penalty:

- (a) for an individual — a fine of \$50 000;
 - (b) for a body corporate — a fine of \$250 000.
- (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.

Penalty:

- (a) for an individual — a fine of \$50 000;
- (b) for a body corporate — a fine of \$250 000.

22. Compliance with Food Standards Code

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

Penalty:

- (a) for an individual — a fine of \$50 000;
 - (b) for a body corporate — a fine of \$250 000.
- (2) A person must not sell any food that does not comply with a requirement of the Food Standards Code that relates to the food.

Penalty:

- (a) for an individual — a fine of \$50 000;
- (b) for a body corporate — a fine of \$250 000.

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

Penalty:

- (a) for an individual — a fine of \$50 000;
- (b) for a body corporate — a fine of \$250 000.

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

Penalty:

- (a) for an individual — a fine of \$50 000;
- (b) for a body corporate — a fine of \$250 000.

23. False description 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) to section 16(3) or (4), food is falsely described for the purposes of section 16(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.

24. Application of provisions outside Western Australia

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 State.

Division 3 — Defences

25. 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) ought reasonably to have known that the publication of the advertisement was an offence;
 - (b) had previously been informed in writing by the CEO 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.

26. 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 State.

27. 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;
 - (b) that —
 - (i) the person carried out all the checks of the food concerned that 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;
 - (c) that the person did not import the food into this State from another country; and
 - (d) in the case of an offence involving the sale of food, that —
 - (i) the person sold the food in the same condition as when the person purchased it; or
 - (ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in any contravention of this Act.
- (3) In subsection (2)(a) —
- another person*** does not include a person who was —
- (a) an employee or agent of the accused person; or
 - (b) in the case of an accused person that is a body corporate — a director, employee or agent of the accused person.

- (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.

28. Defence in respect of handling food

In any proceedings for an offence under section 14(1) or (2), 17(1) or 18(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 rendered it, or was likely to render it, unsafe or unsuitable.

29. Defence in respect of sale of unfit equipment or packaging or labelling material

In any proceedings for an offence under section 21, 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.

Division 4 — Alternative verdicts

30. Alternative verdicts for serious food offences

- (1) If, on the trial of a person charged with an offence against section 14, the court is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 17(1), the court may find the person not guilty of the offence charged but guilty of an offence against section 17(1), and the person is liable to be punished accordingly.
- (2) If, on the trial of a person charged with an offence against section 15, the court is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 17(2), the court may find the person not guilty of the offence charged but guilty of an offence against section 17(2), and the person is liable to be punished accordingly.

Part 4 — Emergency powers

31. Making of emergency order

An order may be made under this Part by the CEO if the CEO has reasonable grounds to believe that making the emergency 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 emergency order

An emergency order may do any one or more of the following —

- (a) require the publication of warnings, in the approved form, 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 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.

33. Special provisions relating to recall orders

- (1) A recall order may require the person, or the persons of a class, 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 notification to the CEO 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 reasonable costs incurred by or on behalf of the CEO in connection with the recall order, and any such costs are taken to be a debt due to the CEO from that person and are recoverable in a court of competent jurisdiction.
- (4) In any proceedings for the recovery of the debt, a certificate signed by the CEO stating the amount of reasonable costs and the manner in which they were incurred is evidence of the matters certified.

s. 34

34. Manner of making orders

- (1) An emergency order —
 - (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) if notified in accordance with subsection (2) — may be addressed to several persons, to a class of persons, or to all persons.
- (2) Notice of an emergency 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 CEO, will be most likely to bring the order to the attention of the persons bound by it.
- (3) An emergency order, when it takes effect, is binding on the person or persons to whom it is addressed.
- (4) An emergency order that is served on a person takes effect when it is served.
- (5) An emergency 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 emergency order ceases to have effect on the expiry of 90 days after the day on which it takes effect unless it is sooner revoked.
- (7) Subsection (6) does not prevent a further emergency order being made in the same terms as an emergency order that has ceased to have effect.
- (8) An emergency order may be varied or revoked by the CEO in the same manner as the order was made.

35. Compensation

- (1) A person bound by an emergency order who —

- (a) suffers loss as a result of the making of the order; and
- (b) considers that there were insufficient grounds for making the order,

may apply to the CEO for compensation.

- (2) If there were insufficient grounds for making the emergency order, the CEO must pay the compensation to the applicant that is just and reasonable.
- (3) The CEO must give each applicant for the payment of compensation written notification of —
 - (a) the determination to pay or to refuse to pay compensation under this section; and
 - (b) if compensation is to be paid — the determination as to the amount of compensation that is just and reasonable.
- (4) If the CEO has not determined an application for compensation under this section within 28 days after receiving the application, the CEO is taken to have refused to pay any compensation.
- (5) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the CEO as to the refusal to pay compensation or as to the amount of compensation may apply to the State Administrative Tribunal for a review of the determination —
 - (a) within 28 days after the day on which notification of the determination was received; or
 - (b) in a case to which subsection (4) applies — within 28 days after the expiry 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 emergency order;

s. 37

- (b) neglect or refuse to comply with a direction given by an emergency order; or
- (c) fail to comply with a condition specified in an emergency order.

Penalty:

- (a) for an individual — a fine of \$50 000;
- (b) for a body corporate — a fine of \$250 000.

37. Limitation on stay of operation of emergency orders

In any proceedings for judicial review or in any other proceedings, a court or tribunal is not authorised to make an interlocutory order that has the effect of staying the operation of an emergency order.

Part 5 — Powers of entry, inspection and seizure

Division 1 — Entry, inspection and seizure

38. 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 the police officers or other persons 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 the police officers or other persons 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) examine any labelling or advertising material that appears to the authorised officer to be intended for use in connection with any food intended for sale or any equipment;
 - (g) subject to Part 7 Division 1, for the purpose of analysing any food sold or intended for sale or for carrying out any other examination to determine whether the provisions of this Act are being complied with — demand, select and obtain samples of any food;
 - (h) 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;

- (i) take samples of anything, 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;
- (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 any time that may be reasonably necessary) any of those 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 any photographs, films or audio or visual recordings that 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 any investigations and inquiries that may be necessary to ascertain whether an offence under this Act has been or is being committed.

- (2) This section does not authorise entry into any part of premises being used solely for residential purposes, except —
 - (a) with the consent of the occupier of the premises;
 - (b) under the authority of a warrant issued under section 42; or
 - (c) if that part of the premises is being used for the preparation or service of meals provided with paid accommodation.
- (3) With respect to powers of entry, inspection and seizure by and pursuant to section 38, the exercise of all such powers of the authorised officer must be reasonable under the circumstances.

39. Self-incrimination not an excuse

- (1) A person is not excused from a requirement under section 38 to provide information or answer questions, or to produce any record, document or thing, on the ground that the information, answer, record, document or thing might incriminate the person or make the person liable to a penalty.
- (2) However, any information or answer provided, or record, document or thing produced, by an individual 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 45, 46, 47 or 48.

40. Power of seizure

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

41. Application for warrant to enter premises

- (1) A reference in this section to making an application includes a reference to giving information in support of the application.

- (2) An authorised officer may apply to a magistrate for a warrant in respect of any premises if the authorised officer has reasonable grounds for believing that a provision of this Act has been or is being contravened on the premises.
- (3) The application must be made by the authorised officer in person unless —
- (a) the warrant is needed urgently; and
 - (b) the applicant reasonably believes that a magistrate is not available within a reasonable distance of the applicant,
- in which case —
- (c) the application may be made to a magistrate by remote communication; and
 - (d) the magistrate may grant the application only if satisfied about the matters in paragraphs (a) and (b).
- (4) The application must be made in writing unless —
- (a) the application is made by remote communication; and
 - (b) it is not practicable to send the magistrate written material,
- in which case —
- (c) the application may be made orally; and
 - (d) the magistrate must make a written record of the application and any information given in support of it.
- (5) The application must be made on oath unless —
- (a) the application is made by remote communication; and
 - (b) it is not practicable for the magistrate to administer an oath to the applicant,
- in which case —
- (c) the application may be made in unsworn form; and
 - (d) if the magistrate issues a warrant, the applicant is as soon as practicable to send the magistrate an affidavit

verifying the application and any information given in support of it.

- (6) If, on an application made by remote communication under this section, a magistrate issues a warrant, the magistrate must send, if practicable, a copy of the original warrant to the applicant by remote communication, but otherwise —
- (a) the magistrate must send the applicant by remote communication any information that is to be set out in the warrant;
 - (b) the applicant must complete a form of a warrant with that information and give the magistrate a copy of the form as soon as practicable after doing so; and
 - (c) the magistrate must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.
- (7) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (6) has the same force and effect as the original warrant.
- (8) If an applicant contravenes subsection (5)(d) or (6)(b), any evidence obtained under the warrant is not admissible in proceedings in a court.

42. Issue of warrant

- (1) The magistrate may, if satisfied that there are reasonable grounds for doing so, issue a warrant to the authorised officer.
- (2) The magistrate must cause a record to be made (on the warrant or otherwise) of the matters of fact on which the magistrate has relied to justify the issue of the warrant.

43. Duration of warrant

A warrant remains in force —

- (a) for the period specified in the warrant as the period during which it remains in force; or
- (b) if no period is so specified — for one month from the date of its issue.

44. Execution of warrant

- (1) A warrant may be executed only by the authorised officer to whom it was issued.
- (2) A warrant authorises the authorised officer to whom it was issued —
 - (a) to enter the premises concerned using any force that is reasonably necessary to do so; and
 - (b) to search those premises for evidence of a contravention of this Act.
- (3) An authorised officer executing a warrant —
 - (a) may be accompanied by a police officer if necessary for the effective exercise of the powers conferred by the warrant and this section; and
 - (b) must produce the warrant for inspection by a person occupying the premises concerned if asked by the person to do so.
- (4) This section does not limit the operation of any other provision of this Part.

45. Failure to comply with requirements of authorised officers

- (1) A person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer under this Division.
Penalty:
 - (a) for an individual — a fine of \$10 000;
 - (b) for a body corporate — a fine of \$50 000.
- (2) Subsection (1) does not apply unless, when the authorised officer makes the requirement, the authorised officer informs

the person that a failure to comply with the requirement may constitute an offence.

46. Interfering with seized items

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

Penalty:

- (a) for an individual — a fine of \$10 000;
- (b) for a body corporate — a fine of \$50 000.

47. 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.

Penalty:

- (a) for an individual — a fine of \$10 000;
- (b) for a body corporate — a fine of \$50 000.

48. Obstructing, impersonating or threatening authorised officers

- (1) A person must not resist, obstruct or attempt to obstruct an authorised officer in the performance of the authorised officer's functions under this Act.

Penalty: a fine of \$10 000.

- (2) A person must not falsely represent, by words or conduct, that the person is an authorised officer.

Penalty: a fine of \$10 000.

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

Penalty: a fine of \$10 000.

Division 2 — Items seized by authorised officers

49. Seized items

- (1) Any item seized under this Part may, at the option of the authorised officer who seized the item or of any authorised officer acting in his or her place, be detained in the premises where it was found or be removed to another place and detained there.
- (2) If the item is to be detained in the premises where it was found, the authorised officer —
- (a) may place it in a room, compartment or cabinet in those premises;
 - (b) may mark, fasten and seal the door or opening providing access to that room, compartment or cabinet; and
 - (c) must ensure that it is marked in a way that indicates that it has been seized under this Act.

50. Notification of seizure

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

- (a) a description of the item seized;
- (b) the reason for the seizure;
- (c) an explanation of the person's right to make an application to the court under section 57 for an order disallowing the seizure;

- (d) the address of the place where the item is held if the item has been removed from the premises where it was seized; and
- (e) the name of the enforcement agency to whom the authorised officer reports.

51. Destruction of filthy, decomposed or putrid matter

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

52. Return of seized item

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

- (a) the person from whom it was seized; or
- (b) any other person who appears to the enforcement agency to be entitled to it.

53. Forfeiture of item

- (1) An item seized under this Part is forfeited to the State —
 - (a) on the expiry of the period allowed by section 57 for lodging an application for an order disallowing the seizure if the item has not been dealt with under section 52 and no application under section 57 has been lodged within that period; or
 - (b) if an application for an order disallowing the seizure has been lodged under section 57 within that period but the application has been refused or has been withdrawn before a decision on the application has been made —

on the date on which the application is refused or withdrawn.

- (2) An item forfeited to the State under this section may be destroyed, sold or otherwise disposed of as the enforcement agency concerned may, generally or in a particular case, direct.

54. Cost of destruction or disposal of forfeited item

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

55. Return of forfeited item

- (1) An item seized under this Part that —
 - (a) is forfeited under this Division; and
 - (b) has not been destroyed or otherwise disposed of in a manner that would prevent its return,

must, as soon as practicable, be delivered to the person from whom it was seized, or any other person who appears to the enforcement agency concerned to be entitled to it, if the enforcement agency becomes satisfied that no contravention of this Act has been committed in relation to the item.

- (2) On being so delivered, any proprietary and other interests in the item that existed immediately before its forfeiture are restored.

56. Compensation to be paid in certain circumstances

- (1) A person may apply for compensation for an item seized under this Part to the enforcement agency that appointed the authorised officer who seized the item, but only if —
 - (a) the period allowed by section 57 for lodging an application for an order disallowing the seizure has expired and no application has been lodged; or
 - (b) any application for such an order lodged within that period has been refused or has been withdrawn before a decision on the application has been made.
- (2) On an application made in accordance with this section, an enforcement agency must pay the compensation that is just and reasonable in relation to any item seized under this Part by an authorised officer appointed by it if —
 - (a) no contravention of this Act has been committed in relation to the item; and
 - (b) the item cannot be returned or has in consequence of the seizure depreciated in value.
- (3) An enforcement agency required to make a determination under subsection (2) as to the payment of compensation must give written notification of its determination to the person from whom the item was seized and any person seeking compensation under this section.
- (4) If an enforcement agency determines to pay compensation under this section in relation to an item, the compensation must be paid to the person from whom the item was seized, or any other person who appears to the enforcement agency to be entitled to it.
- (5) A person from whom an item was seized under this Part, or any other person who has sought compensation under this section, who is dissatisfied with a determination by an enforcement agency under this section as to the refusal to pay compensation or as to the amount of compensation may apply to the State

Administrative Tribunal for a review of the determination within 28 days after the date on which notification of the determination was received.

57. Application for order disallowing seizure

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

58. Enforcement agency entitled to answer application

The enforcement agency concerned is entitled to appear as respondent at the hearing of an application under section 57.

59. Order disallowing seizure of item

- (1) The court, on the hearing of an application under section 57, must make an order disallowing the seizure of an item if —
 - (a) it is proved that the applicant would, but for the seizure, be entitled to the item and it is not proved that an offence under this Act was being, or had been, committed, being an offence of which the item was evidence; or
 - (b) in the opinion of the court, there are exceptional circumstances justifying the making of such an order.
- (2) If neither subsection (1)(a) or (b) applies, the court must refuse the application.

60. Ancillary orders

- (1) If the court makes an order disallowing the seizure of any item seized under this Part, it must also make one or both of the following orders —
 - (a) an order directing the respondent to cause the item to be delivered to the applicant or to any other person who appears to the court to be entitled to it;
 - (b) if the item cannot for any reason be so delivered or has in consequence of the seizure depreciated in value — an order directing the enforcement agency concerned to pay to the applicant the amount by way of compensation that the court considers to be just and reasonable.
- (2) Despite subsection (1), the court is not to award an amount of compensation that exceeds the jurisdictional limit defined in the *Magistrates Court (Civil Proceedings) Act 2004* section 4.
- (3) The award of costs with respect to the hearing of the application lies in the discretion of the court.
- (4) If the court makes an order for the payment of any amount as compensation or awards any amount as costs, the order or award is enforceable as a judgment of the court.

61. Adjournment pending hearing of other proceedings

If, on the hearing of an application made under section 57, it appears to the court that the item that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence under this Act or any other written law, the court, on the application of the respondent or on its own motion, may adjourn the hearing until the conclusion of those proceedings.

Part 6 — Improvement notices and prohibition orders

Division 1 — Improvement notices

62. Grounds for serving improvement notice

An authorised officer may serve an improvement notice on the proprietor of a food business in accordance with this Division if the authorised officer believes, on reasonable grounds, that —

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

63. Improvement notice may require certain action to be taken

- (1) An improvement notice must take the form of an order that, within the period of 24 hours (or any longer period that is

specified in the notice) after the service of the notice on the proprietor of the food business —

- (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;
 - (b) equipment or a vehicle be replaced;
 - (c) a food safety program be prepared if required by the regulations;
 - (d) a food safety program required by the regulations be revised so as to comply with the requirements of the regulations;
 - (e) in relation to the handling of food intended for sale — measures be taken to implement the provisions of any relevant food safety program required by the regulations to be prepared; or
 - (f) in relation to the handling of food intended for sale — measures be taken to implement the requirements of the Food Safety Standards.
- (2) Before the end of the period specified in the improvement notice, the authorised officer who issued the notice may, on his or her own motion or on the application of the proprietor of the food business, extend the period within which the proprietor of the food business is to take action in accordance with the notice.
- (3) An improvement notice must state that it is issued under this section.
- (4) An improvement notice may include ancillary or incidental directions.

64. Compliance with improvement notice

- (1) If an improvement notice is complied with, an authorised officer must note the date of compliance on a copy of the notice.
- (2) If asked to do so by the person, 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.

Division 2 — Prohibition orders

65. Prohibition order

- (1) If the CEO or another enforcement agency believes on reasonable grounds —
 - (a) that any of the circumstances specified in section 62(a), (b), (c) or (d) exist; and
 - (b) that —
 - (i) the proprietor of a food business has not complied with an improvement notice within the time required by section 63 for compliance; or
 - (ii) the issue of the order is necessary to prevent or mitigate a serious danger to public health,

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

- (2) A prohibition order must 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;
 - (b) no food intended for sale is to be conveyed in a specified vehicle;
 - (c) specified equipment is not to be used in connection with food intended for sale;
 - (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) no other specified activities in relation to food intended for sale are to be carried out on specified premises or a specified part of specified premises,

until the proprietor of the food business has been given a certificate of clearance under section 66 stating that —

- (f) the premises, part of the premises, vehicle or equipment may be used for the handling or conveyance of food intended for sale, or in connection with such food;
- (g) food intended for sale may be handled in the specified way or for the specified purpose; or
- (h) the specified activities in relation to food intended for sale may be carried out,

as the case may be.

- (3) A prohibition order must state that it is issued under this section.
- (4) A prohibition order may include ancillary or incidental directions.

66. Certificate of clearance to be given in certain circumstances

The CEO or other enforcement agency that made the prohibition order must give a certificate of clearance if, after an inspection of the premises, part of the premises, vehicle or equipment, or the handling of food in the way or for the purpose, or the activities, specified in the order, the CEO or agency finds, by the CEO's or agency's own inspection or the report of an authorised officer, that —

- (a) the premises are not, or the 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, or the carrying out of the specified activities 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.

67. 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 CEO or other enforcement agency 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 CEO or other enforcement agency 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 CEO or other enforcement agency 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, are or is not inspected by an authorised officer within the period of 48 hours after the receipt of the request by the CEO or other enforcement agency, a certificate of clearance is taken to have been given to the proprietor of the food business under section 66.
- (4) The CEO or other enforcement agency must give written notification to the proprietor of a food business on whom a prohibition order has been served of the decision not to give a certificate of clearance after an inspection under this section or section 66.

68. Contravention of prohibition order

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

Penalty:

- (a) for an individual — a fine of \$50 000;

(b) for a body corporate — a fine of \$250 000.

69. Review of decision to refuse certificate of clearance

- (1) The proprietor of a food business on whom a prohibition order has been served may apply to the State Administrative Tribunal for a review of a decision of the CEO or other enforcement agency who made the order to refuse to give a certificate of clearance under section 66 to the proprietor.
- (2) An application under subsection (1) must be made within 28 days after the day on which notification of the decision was received.

70. Compensation

- (1) A person on whom a prohibition order is served who —
 - (a) suffers loss as a result of the making of the order; and
 - (b) considers that there were insufficient grounds for making the order,may apply to the CEO or other enforcement agency who made the order for compensation.
- (2) If there were insufficient grounds for making the prohibition order, the CEO or other enforcement agency must pay the compensation to the applicant that is just and reasonable.
- (3) The CEO or other enforcement agency must give each applicant for the payment of compensation written notification of —
 - (a) the determination to pay or to refuse to pay compensation under this section; and
 - (b) if compensation is to be paid — the determination as to the amount of compensation that is just and reasonable.
- (4) If the CEO or other enforcement agency has not determined an application for compensation under this section within 28 days after receiving the application, the CEO or other enforcement agency is taken to have refused to pay any compensation.

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

Division 3 — Other matters

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

72. Notices and orders to contain certain information

An improvement notice or a 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.

Part 7 — Taking and analysis of samples

Division 1 — Taking of samples

73. Application of Division

This Division applies only to the taking of samples by an authorised officer in the exercise of powers under Part 5.

74. Proprietor to be informed

An authorised officer who obtains a sample of food for the purposes of analysis 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.

75. Payment for sample

When an authorised officer obtains a sample of food for the purposes of analysis, the authorised officer 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.

76. Samples from vending machines

Sections 74 and 75 do not apply if the authorised officer —

- (a) obtains a sample of food from a vending machine by making proper payment for the sample; and

- (b) cannot identify anyone who at the time appears to be in charge of the vending machine.

77. Packaged food

An authorised officer who takes a sample of food for the purposes of this Act that is contained in a closed package intended for retail sale must take the whole of the package unless the package contains 2 or more smaller packages of the same food.

78. Procedures 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) Subject to subsections (3) and (4), an authorised officer who obtains a sample of food for the purposes of analysis must —
 - (a) divide the sample into 3 separate parts and mark and seal or fasten each part in the manner that its nature will permit;
 - (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 an employee or agent of that proprietor or other person;
 - (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;
 - (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 the manner that 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;
 - (b) divides the number so taken into the required 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 this section.

79. 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

80. Compliance with Food Standards Code

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

81. Certificate of analysis

- (1) This section applies to an analysis that is carried out for the purposes of this Act —
 - (a) by an approved laboratory;
 - (b) by an approved analyst; or
 - (c) under the supervision of an approved analyst.
- (2) On the completion of an analysis to which this section applies —
 - (a) the person in charge of the laboratory at which the analysis was carried out;
 - (b) the approved analyst who carried out the analysis; or
 - (c) the approved analyst who supervised the carrying out of the analysis,

must give the person who asked for the analysis, or an agent of the person, a certificate of analysis that complies with the requirements of subsection (3).

- (3) The certificate of analysis must —
 - (a) be in the approved form;
 - (b) 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;
 - (c) contain a written report of the analysis that sets out the findings; and
 - (d) 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

82. Approval of laboratories

- (1) The CEO 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 apply, in the approved form, to the CEO for an approval of the laboratory under this Division.
- (3) The application must be accompanied by —
 - (a) any information that the CEO requires to determine the application; and
 - (b) the fee, if any, prescribed by the regulations.
- (4) The CEO may after considering an application for approval —
 - (a) grant the application, with or without conditions; or
 - (b) refuse the application.
- (5) If the CEO grants an application for approval, the CEO must issue the applicant with a written approval that sets out any conditions to which the approval is subject.
- (6) If the CEO refuses an application for approval, the CEO must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

83. Term of approval

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

84. Person in charge of approved laboratory to give notice of certain interests

The person in charge of an approved laboratory must notify the CEO of any direct or indirect interest in any food business that a person concerned in the management of, or an employee of, the

approved laboratory has as soon as possible after becoming aware of that interest.

Penalty: a fine of \$5 000.

85. Variation of conditions or suspension or cancellation of approval of laboratory

- (1) The CEO may vary the conditions of, suspend or cancel the approval of a laboratory under this Division.
- (2) The approval of a laboratory may be suspended or cancelled on one or more of the following grounds —
 - (a) if the CEO is satisfied that a person providing services at the laboratory has wilfully or negligently contravened or failed to comply with any provision of this Act;
 - (b) if the CEO is satisfied that a person providing services at the laboratory has contravened a condition to which the approval is subject;
 - (c) if the CEO 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 CEO, 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 CEO considers appropriate.
- (3) The CEO may vary the conditions of, suspend or cancel the approval of a laboratory only —
 - (a) after having given the person in charge of the laboratory —
 - (i) written reasons for the CEO's intention to vary, suspend or cancel; and
 - (ii) an opportunity to make submissions;and

- (b) after having considered any submissions duly 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, the approval of a laboratory —
 - (a) must be made by notice in writing;
 - (b) must be served on the person in charge of the laboratory; and
 - (c) takes effect at the time at which the notice is served or at a later time specified in the notice.

86. Review of decisions relating to approval

- (1) An applicant for the approval of a laboratory under this Division, or the holder of such an approval, may apply to the State Administrative Tribunal for a review of a decision of the CEO that relates to any of the following —
 - (a) the grant or refusal of the application for the approval of a laboratory under this Division;
 - (b) the imposition of conditions on the approval;
 - (c) the variation of conditions of the approval;
 - (d) the suspension or cancellation of the approval.
- (2) An application under this section may only be made within 28 days after service of —
 - (a) in the case of an application for the review of a decision referred to in subsection (1)(a) or (b) — the relevant written approval or notice of refusal under section 82; or
 - (b) in the case of an application for the review of a decision referred to in subsection (1)(c) or (d) — the relevant notice of the variation, suspension or cancellation under section 85.

87. List of approved laboratories to be maintained

- (1) The CEO must prepare and maintain a list of approved laboratories.
- (2) The list must be made publicly available and must be revised at least annually.

Division 4 — Approval of analysts

88. Approval of persons to carry out analyses

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

89. Term of approval

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

90. Approved analyst to give notice of certain interests

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

Penalty: a fine of \$5 000.

91. Variation of conditions or suspension or cancellation of approval of analyst

- (1) The CEO may vary the conditions of, suspend or cancel the approval of a person under this Division.
- (2) The approval of a person under this Division may be suspended or cancelled on one or more of the following grounds —
 - (a) if the CEO is satisfied that the person has wilfully or negligently contravened any provision of this Act;
 - (b) if the CEO is satisfied that the person has contravened a condition to which the approval is subject;
 - (c) if the CEO is satisfied that the person has a direct or indirect interest in any food business that, in the opinion of the CEO, 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 CEO considers appropriate.
- (3) The CEO may vary the conditions of, suspend or cancel the approval of a person under this Division only —
 - (a) after having given the person —
 - (i) written reasons for the CEO's intention to vary, suspend or cancel; and
 - (ii) an opportunity to make submissions;and
 - (b) after having considered any submissions duly 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, the approval of a person under this Division —
 - (a) must be made by notice in writing;
 - (b) must be served on the person; and
 - (c) takes effect at the time at which the notice is served or at a later time specified in the notice.

92. Review of decisions relating to approval

- (1) An applicant for an approval under this Division, or the holder of such an approval, may apply to the State Administrative Tribunal for a review of a decision of the CEO that relates to any of the following —
 - (a) the grant or refusal of the application for the approval under this Division;
 - (b) the imposition of conditions on the approval;
 - (c) the variation of conditions of the approval;
 - (d) the suspension or cancellation of the approval.
- (2) An application under this section may only be made within 28 days after service of —
 - (a) in the case of an application for the review of a decision referred to in subsection (1)(a) or (b) — the relevant written approval or notice of refusal under section 88; or
 - (b) in the case of an application for the review of a decision referred to in subsection (1)(c) or (d) — the relevant notice of the variation, suspension or cancellation under section 91.

93. List of approved analysts to be maintained

- (1) The CEO must prepare and maintain a list of approved analysts.

- (2) The list must be made publicly available and must be revised at least annually.

Part 8 — Auditing

Division 1 — Approval of food safety auditors

94. Approval of food safety auditors

- (1) The CEO may authorise a person who is a member of staff, or approve any other individual, to be a food safety auditor for the purposes of this Act if the CEO 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 CEO.
- (2) An individual may apply, in the approved form, to the CEO for an approval under this Division.
- (3) The application must be accompanied by —
 - (a) any information that the CEO requires to determine the application; and
 - (b) the fee, if any, prescribed by the regulations.
- (4) The CEO may after considering an application for approval —
 - (a) grant the application, with or without conditions; or
 - (b) refuse the application.
- (5) If the CEO grants an application for approval, the CEO must issue the applicant with a written approval that sets out any conditions to which the approval is subject.
- (6) If the CEO refuses an application for approval, the CEO must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

95. Term of approval

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

96. Food safety auditor to give notice of certain interests

- (1) A food safety auditor must notify the CEO of any direct or indirect interest in any food business that the food safety auditor has as soon as possible after becoming aware of that interest.
Penalty: a fine of \$5 000.
- (2) Payment to a food safety auditor for performing the functions of a food safety auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (1).

97. Variation of conditions or suspension or cancellation of approval of auditor

- (1) The CEO may vary the conditions of, suspend or cancel the approval of a person under this Division.
- (2) The approval of a person may be suspended or cancelled on one or more of the following grounds —
 - (a) if the CEO is satisfied that the person has wilfully or negligently contravened any provision of this Act;
 - (b) if the CEO is satisfied that the person has contravened a condition to which the approval is subject;
 - (c) if the CEO is satisfied that the person has not competently carried out any duty of a food safety auditor under this Act;
 - (d) if the CEO is satisfied that the person has a direct or indirect interest in any food business that, in the opinion of the CEO, could affect the performance of the person's functions under this Act;
 - (e) at the request of the person;
 - (f) for any other reason that the CEO considers appropriate.

- (3) Payment to a food safety auditor for performing the functions of a food safety auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (2)(d).
- (4) The CEO may vary the conditions of, suspend or cancel the approval of a person under this Division only —
 - (a) after having given the person —
 - (i) written reasons for the CEO's intention to vary, suspend or cancel; and
 - (ii) an opportunity to make submissions;
 - and
 - (b) after having considered any submissions duly 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 Division —
 - (a) must be by notice in writing;
 - (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.

98. Review of decisions relating to approvals

- (1) An applicant for an approval under this Division, or the holder of such an approval, may apply to the State Administrative Tribunal for a review of a decision of the CEO that relates to any of the following —
 - (a) the grant or refusal of the application for the approval under this Division;
 - (b) the imposition of conditions on the approval;
 - (c) the variation of conditions of the approval;
 - (d) the suspension or cancellation of the approval.

- (2) Without limiting subsection (1), an applicant for an approval under this Division, or the holder of such an approval, may apply to the CEO for a review of a decision of a person or body acting under a delegation given by the CEO, if the decision relates to any of the following —
 - (a) the grant or refusal of the application for the approval under this Division;
 - (b) the imposition of conditions on the approval;
 - (c) the variation of conditions of the approval;
 - (d) the suspension or cancellation of the approval.
- (3) An application under this section may only be made within 28 days after service of —
 - (a) in the case of an application for the review of a decision referred to in subsection (1)(a) or (b) or (2)(a) or (b) — the relevant written approval or notice of refusal under section 94; or
 - (b) in the case of an application for the review of a decision referred to in subsection (1)(c) or (d) or (2)(c) or (d) — the relevant notice of the variation, suspension or cancellation under section 97.

Division 2 — Auditing and reporting requirements

99. Food safety programs and auditing requirements

- (1) The proprietor of a food business must ensure that any requirement imposed by the regulations in relation to the preparation, implementation, maintenance or monitoring of a food safety program for the food business is complied with.
Penalty:
 - (a) for an individual — a fine of \$20 000;
 - (b) for a body corporate — a fine of \$100 000.
- (2) The proprietor of a food business must ensure that any food safety program required by the regulations to be prepared in

relation to the food business is audited at least as frequently as is determined under section 100(1), or as redetermined under section 103, in relation to the food business.

Penalty:

- (a) for an individual — a fine of \$20 000;
- (b) for a body corporate — a fine of \$100 000.

100. 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 by the regulations to be prepared 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 CEO.
- (3) The appropriate enforcement agency must give written notification to the proprietor of a food business of —
 - (a) the priority classification it has determined for the food business;
 - (b) the frequency of auditing of any food safety programs required by the regulations to be prepared in relation to the food business; and
 - (c) the date by which the food business must have implemented any food safety program required by the regulations to be prepared in relation to the food business.
- (4) The appropriate enforcement agency may change the priority classification of an individual food business if the 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 give written notification to the proprietor of a food business of any change in the priority classification of the food business under subsection (4).

101. Duties of food safety auditors

A food safety auditor has the following duties —

- (a) having regard to the requirements of the regulations, to carry out audits of any food safety programs required by the regulations to be prepared in relation to food businesses;
- (b) to carry out any necessary follow-up action, including further audits, if necessary, to determine whether action has been taken to remedy any deficiencies of any such food safety program identified in an audit;
- (c) to carry out assessments of food businesses to ascertain their compliance with requirements of the Food Safety Standards;
- (d) to report in accordance with section 102.

102. 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 approved form;
 - (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 to the appropriate enforcement agency 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.

- (6) A report under subsection (5) must be made as soon as possible but in any event within 24 hours after the contravention comes to the food safety auditor's attention.
- (7) 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.
- (8) 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.

103. Redetermination of frequency of auditing

- (1) In this section —
current audit frequency, of a food safety program for a food business, means the initial audit frequency applicable to a food business within the relevant priority classification or, if the initial audit frequency has been changed under this section, the most recent audit frequency applicable under this section;
food safety program, for a food business, means the food safety program required by the regulations to be prepared for the food business;
priority classification means a priority classification set out in the priority classification system referred to in section 100.
- (2) A food safety auditor may determine that the audit frequency of a food safety program for a food business that has been audited by a food safety auditor be changed from the current audit frequency applicable to a food business within the relevant priority classification to another audit frequency.
- (3) The audit frequency to which the current audit frequency may be changed must be within the range of audit frequencies appropriate for food businesses within the relevant priority classification referred to in subsection (2).

- (4) 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) any audit compliance history relevant to food safety programs established by the food business concerned before the commencement of this subsection.

Division 3 — Other matters relating to food safety auditors

104. Certificates of authority of food safety auditors

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

105. List of food safety auditors to be maintained

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

106. Obstructing, impersonating or threatening food safety auditors

- (1) A person must not resist, obstruct or attempt to obstruct a food safety auditor in the performance of the food safety auditor's functions under this Act.
Penalty: a fine of \$10 000.
- (2) A person must not falsely represent, by words or conduct, that the person is a food safety auditor.
Penalty: a fine of \$10 000.
- (3) A person must not threaten or intimidate a food safety auditor in the performance of the food safety auditor's functions under this Act.
Penalty: a fine of \$10 000.

Part 9 — Registration of food businesses

107. Notification of conduct of food businesses

- (1) The proprietor of a food business must not conduct the food business at any premises unless the proprietor has given written notification in respect of those premises to the appropriate enforcement agency, in the approved form, of the specified information.

Penalty:

- (a) for an individual — a fine of \$10 000;
 - (b) for a body corporate — a fine of \$50 000.
- (2) In subsection (1) —
specified information means the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the food business is conducted.
- (3) Subject to subsection (4), the notification must be accompanied by the fee, if any, prescribed by the regulations.
- (4) If the appropriate enforcement agency is a local government —
- (a) any fee prescribed by the regulations for the purposes of subsection (3) does not apply to notification given to the agency under this section; and
 - (b) the fee for notification given to the agency under this section may be imposed and recovered by the agency under the *Local Government Act 1995* Part 6 Division 5 Subdivision 2.

108. Exemption in relation to notification of information

Section 22 (to the extent to which it requires notification of the information referred to in section 107) and section 107 do not apply to the conduct at any premises of the following food businesses —

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

109. Conduct of unregistered food businesses

- (1) The proprietor of a food business, other than an exempted food business, must not conduct the food business at any premises unless the food business is registered in respect of those premises under this Part.

Penalty:

- (a) for an individual — a fine of \$10 000;
 - (b) for a body corporate — a fine of \$50 000.
- (2) In subsection (1) —
exempted food business means a food business, or a food business within a class of food businesses, prescribed by the regulations for the purposes of this section.

110. Registration of food businesses

- (1) The appropriate enforcement agency may register a food business in respect of any premises for the purposes of this Part.
- (2) The proprietor of a food business may apply, in the approved form, to the appropriate enforcement agency for the registration of the food business in respect of any premises under this Part.
- (3) The application must be accompanied by —
 - (a) if required by the appropriate enforcement agency — the design and fit-out specifications, in a form approved by the appropriate enforcement agency, of the premises, if food is to be handled in the course of conducting the food business at those premises;

s. 111

- (b) any other information that the appropriate enforcement agency requires to determine the priority classification of the food business; and
 - (c) subject to subsection (4), the fee, if any, prescribed by the regulations.
- (4) If the appropriate enforcement agency is a local government —
 - (a) any fee prescribed by the regulations for the purposes of subsection (3)(c) does not apply to an application to the agency under this section; and
 - (b) the fee for an application to the agency under this section may be imposed and recovered by the agency under the *Local Government Act 1995* Part 6 Division 5 Subdivision 2.
- (5) The appropriate enforcement agency may, after considering an application for registration —
 - (a) grant the application, with or without conditions; or
 - (b) refuse the application.
- (6) If the appropriate enforcement agency grants an application for registration, the appropriate enforcement agency must issue the applicant with a certificate of registration, in the approved form, that specifies the premises in respect of which the registration is granted and sets out any conditions to which the registration is subject.
- (7) A condition to which the registration is subject may relate only to compliance with this Act.
- (8) If the appropriate enforcement agency refuses an application for the registration of a food business in respect of any premises, the appropriate enforcement agency must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

111. Term of approval

The registration of a food business in respect of any premises under this Part remains in force until cancelled.

112. Variation of conditions or cancellation of registration of food businesses

- (1) The appropriate enforcement agency may vary the conditions of, or cancel, the registration of a food business in respect of any premises under this Part.
- (2) The registration of a food business in respect of any premises may be cancelled on one or more of the following grounds —
 - (a) any annual or other fee —
 - (i) prescribed by the regulations in relation to the registration of the food business in respect of those premises has not been paid by the time the regulations require the payment to be made; or
 - (ii) if subsection (3) applies — imposed by the appropriate enforcement agency in relation to the registration of the food business in respect of those premises has not been paid by the time the agency requires the payment to be made;
 - (b) the food business has ceased to be conducted at those premises;
 - (c) at the request of the holder of the certificate of registration that specifies those premises.
- (3) If the appropriate enforcement agency is a local government, then for the purposes of subsection (2)(a) in relation to the registration of a food business in respect of any premises —
 - (a) any annual or other fee prescribed by the regulations for the purposes of that provision does not apply to the registration of the food business in respect of those premises by the agency; and

s. 113

- (b) an annual or other fee in relation to the registration of the food business in respect of those premises by the agency —
 - (i) may be imposed and recovered by the agency under the *Local Government Act 1995* Part 6 Division 5 Subdivision 2; and
 - (ii) must be paid by the time the agency requires the payment to be made.
- (4) The appropriate enforcement agency may vary the conditions of, or cancel, the registration of a food business in respect of any premises only —
 - (a) after having given the holder of the certificate of registration that specifies those premises —
 - (i) written reasons for the agency's intention to vary or cancel; and
 - (ii) an opportunity to make submissions;and
 - (b) after having considered any submissions duly made by that person.
- (5) Subsection (4) does not apply to the cancellation of the registration at the request of the holder of the certificate of registration that specifies the relevant premises.
- (6) A variation of the conditions of, or the cancellation of, the registration of a food business in respect of any premises —
 - (a) must be by notice in writing;
 - (b) must be served on the holder of the certificate of registration that specifies those premises; and
 - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

113. Notification of certain changes to registered food businesses

- (1) The proprietor of a food business that is registered in respect of any premises under this Part must give written notification, in the approved form, to the appropriate enforcement agency of any of the following changes to the food business at those premises —
 - (a) the food business ceases to be conducted at those premises;
 - (b) the food business is sold;
 - (c) any change is made to the activities carried out for the purposes of the food business that is likely to affect its priority classification.
- (2) The proprietor must give the notification required under subsection (1) within 7 days after the relevant change takes place.

Penalty:

 - (a) for an individual — a fine of \$20 000;
 - (b) for a body corporate — a fine of \$100 000.

114. Review of decisions relating to registration

- (1) An applicant for the registration of a food business in respect of any premises under this Part, or the holder of a certificate of registration that specifies any premises, may apply to the State Administrative Tribunal for a review of a decision of the appropriate enforcement agency that relates to any of the following —
 - (a) the grant or refusal of the application for registration of the food business in respect of those premises under this Part;
 - (b) the imposition of conditions on the registration in respect of those premises;
 - (c) the variation of conditions of the registration in respect of those premises;

s. 115

- (d) the cancellation of the registration in respect of those premises.
- (2) An application under this section may only be made within 28 days after service of —
 - (a) in the case of an application for the review of a decision referred to in subsection (1)(a) or (b) — the relevant certificate of registration or notice of refusal under section 110; or
 - (b) in the case of an application for the review of a decision referred to in subsection (1)(c) or (d) — the relevant notice of the variation or cancellation under section 112.

115. Register of food businesses to be maintained

Each enforcement agency must prepare and maintain a list of —

- (a) food businesses notified to the agency in respect of any premises under section 107; and
- (b) food businesses registered by the agency in respect of any premises under section 110.

Part 10 — Administration

Division 1 — CEO

116. Functions of the CEO

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

117. CEO may delegate

- (1) Subject to subsection (2), the CEO may delegate any power or duty of the CEO under another provision of this Act to —
 - (a) a member of staff;
 - (b) an authorised officer;
 - (c) a local government; or
 - (d) the holder of an office prescribed by the regulations.
- (2) The CEO may delegate a power or duty of the CEO under the following provisions of this Act only to a member of staff —
 - (a) section 119;
 - (b) section 122(2);
 - (c) section 123;

- (d) Part 4;
 - (e) Part 7 Division 3;
 - (f) Part 7 Division 4;
 - (g) Part 8.
- (3) A delegation must be in writing signed by the CEO.
 - (4) A delegation may expressly authorise the delegate to further delegate the power or duty to another person referred to in subsection (1).
 - (5) Subsection (4) does not apply to a power or duty referred to in subsection (2).
 - (6) A power or duty of the CEO must not be delegated under this section to another enforcement agency without the written consent of the enforcement agency.
 - (7) A person exercising or performing a power or duty as authorised under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
 - (8) Nothing in this section limits the ability of the CEO to act through a member of staff or agent.

Division 2 — Functions of enforcement agencies

118. Functions of enforcement agencies and delegation

- (1) An enforcement agency has the functions in relation to the administration of this Act that are conferred or imposed on the agency by or under this Act or are delegated to the agency under this Act.
- (2) A function conferred or imposed on an enforcement agency may be delegated —
 - (a) if the enforcement agency is the CEO — in accordance with section 117; or

- (b) if the enforcement agency is a local government or a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations — subject to subsections (3) and (4), in accordance with the regulations.
- (3) Without limiting the *Interpretation Act 1984* section 59, the performance by a delegate of an enforcement agency of a function delegated under subsection (2)(b) is subject to —
 - (a) any condition or limitation imposed under section 119 on the performance by the enforcement agency of the function; and
 - (b) any guidelines that the enforcement agency is required to adopt under section 120 in performing the function.
- (4) If —
 - (a) regulations referred to in subsection (2)(b) expressly authorise a delegated function of an enforcement agency to be further delegated; and
 - (b) the delegated function is further delegated to a person or body in accordance with those regulations,

subsection (3) applies to the performance by the person or body of that function as if the function were performed and delegated as described in that subsection.

119. Conditions on performance of functions by enforcement agencies

The CEO, after consultation with an enforcement agency (other than the CEO), may, in writing, impose conditions or limitations on the performance of functions under this Act by the enforcement agency.

120. Performance of functions by enforcement agencies and authorised officers

- (1) The CEO may adopt guidelines, including national guidelines, relating to the performance of the CEO's functions under this Act and may require other enforcement agencies and authorised officers to adopt the guidelines adopted by the CEO in performing their functions under this Act.
- (2) Without limiting subsection (1), guidelines may be adopted by the CEO under that subsection with modifications made by the CEO.
- (3) In subsection (1) —
national guidelines means guidelines prepared for the purposes of this section by Food Standards Australia New Zealand.

121. Reports by and about enforcement agencies

- (1) An enforcement agency (other than the CEO) must report to the CEO, at the intervals that the CEO 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), an enforcement agency must forward to the CEO details of any proceedings for an offence under this Act taken by an officer of the agency within one month after the proceedings have been finally dealt with.
- (3) The accountable authority of the department of the Public Service principally assisting in the administration of this Act must include in the annual report submitted under the *Financial Management Act 2006* Part 5 a report on the performance by enforcement agencies (including the CEO) of functions under this Act.

Division 3 — Appointment of authorised officers

122. Appointment of authorised officers

- (1) An enforcement agency may appoint a person to be an authorised officer for the purposes of this Act if —
 - (a) the enforcement agency, having regard to any guidelines issued by the CEO under subsection (2), considers the person has appropriate qualifications and experience to perform the functions of an authorised officer; or
 - (b) the person holds office as an environmental health officer under the *Health Act 1911*.
- (2) The CEO may issue guidelines that describe the qualifications and experience that are appropriate for a person to be appointed as an authorised officer.
- (3) Each enforcement agency must prepare and maintain a list of authorised officers appointed by the agency.

123. Certificates of authority

- (1) An enforcement agency must provide each authorised officer appointed by the agency with a certificate of authority as an authorised officer.
- (2) The certificate of authority must —
 - (a) state that it is issued under this Act;
 - (b) state the name of the person to whom it is issued and bear a photograph or digital image of that person and the person's signature;
 - (c) state the date, if any, on which it expires;
 - (d) specify any conditions or limitations to which the person's authority is subject; and
 - (e) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

- (3) An authorised officer is required to produce the certificate of authority —
 - (a) if asked to do so by the proprietor of a food business whose premises are entered by the authorised officer; or
 - (b) if asked to do so by a person whom the authorised officer requires to produce anything or to answer any question.

Division 4 — Advisory committees

124. Establishment and functions of advisory committees

- (1) The Minister may establish advisory committees to assist the CEO in the performance of the CEO's functions under this Act.
- (2) The Minister may determine —
 - (a) the term of office of members of an advisory committee;
 - (b) the procedure of an advisory committee; and
 - (c) after consultation with the Minister for Public Sector Management — the remuneration and allowances to be paid to the members of an advisory committee.
- (3) An advisory committee is to consist of members appointed from persons having expertise in one or more of the following areas —
 - (a) the food industry;
 - (b) public health;
 - (c) the interests of consumers;
 - (d) the enforcement of food legislation.
- (4) In addition the Minister may appoint as members of an advisory committee persons having expertise in nutrition, toxicology, microbiology, and food technology and such other persons as the Minister considers have appropriate expertise, qualification or experience as will enable them to make a valuable contribution to the advisory committee.

Part 11 — Procedural and evidentiary provisions

125. Institution of proceedings

- (1) Proceedings for an offence under this Act may only be instituted —
 - (a) unless paragraph (b) applies — within 12 months after the date on which the offence is alleged to have been committed; or
 - (b) if the proceedings are in respect of a sample of food — within 6 months after the date on which the sample was obtained.
- (2) The court may extend the time referred to in subsection (1) for the institution of proceedings.

126. Infringement notices

- (1) In this section —

designated officer means an authorised officer designated by an enforcement agency under subsection (13) to be a designated officer;

prescribed means prescribed by the regulations.
- (2) A designated officer who has reason to believe that a person has committed a prescribed offence under this Act may, within 28 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (3) An infringement notice must be in the prescribed form and must —
 - (a) contain a description of the alleged offence;
 - (b) advise that, if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to a designated officer within a period of 28 days after the giving of the notice; and

- (c) inform the alleged offender as to who are designated officers for the purposes of receiving payment of modified penalties.
- (4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice must be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (5) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.
- (6) A designated officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid, and the extension may be allowed whether or not the period of 28 days has elapsed.
- (7) A designated officer may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (8) If an infringement notice is withdrawn after the modified penalty has been paid, the amount paid must be refunded.
- (9) Subsection (10) applies if the modified penalty specified in an infringement notice has been paid within 28 days or any further time that is allowed and the notice has not been withdrawn.
- (10) If this subsection applies, it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (11) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

- (12) Unless subsection (8) requires it to be refunded, an amount paid as a modified penalty must be dealt with as if it were a penalty imposed by a court as a penalty for an offence.
- (13) An enforcement agency may, in writing, designate authorised officers appointed by the agency under Part 10 Division 3 to be designated officers for the purposes of subsection (2), (3), (6) or (7) or for the purposes of 2 or more of those subsections, but a person who is a designated officer for the purposes of giving infringement notices under subsection (2) is not eligible to be a designated officer for the purposes of any of the other subsections.

127. Offences by employees — liability of employer

- (1) If an employee contravenes any provision of this Act, the employer is taken to have contravened the same provision whether or not the employee contravened the provision —
 - (a) without the employer's authority; or
 - (b) contrary to the employer's orders or instructions.
- (2) It is a defence in proceedings against an employer for such a contravention if it is established that the employer —
 - (a) had no knowledge of the contravention; and
 - (b) could not, by the exercise of due diligence, have prevented the contravention.
- (3) An employer may be proceeded against and convicted under a provision in accordance with this section whether or not the employee has been proceeded against or convicted under that provision.

128. Offences by bodies corporate — liability of directors and others

- (1) In this section —
offence means an offence under this Act;
officer, of a body corporate, means a person who —

- (a) is a director of the body corporate; or
 - (b) is concerned in its management.
- (2) If a body corporate is charged with an offence, each person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence.
- (3) If a body corporate and an officer are charged as permitted by subsection (2) and the body corporate is found guilty of the offence, the officer is taken to have also committed the offence, subject to subsection (6).
- (4) If a body corporate commits an offence, then although the body corporate is not charged with the offence, each person who was an officer of the body corporate at the time of the offence may be charged with the offence.
- (5) If an officer is charged as permitted by subsection (4) and it is proved that the body corporate committed the offence, the officer is taken to have committed the offence, subject to subsection (6).
- (6) If under this section an officer is charged with an offence, it is a defence to prove that —
 - (a) the offence was committed without the officer's consent or connivance; and
 - (b) the officer took all measures to prevent the commission of the offence that he or she could reasonably be expected to have taken, having regard to the officer's functions and to all the circumstances.

129. Liability of employees and agents

- (1) Except as provided by subsection (2), it is not a defence in proceedings for an offence under this Act that the accused person was, at the time of the commission of the offence, an employee or agent of another person.

- (2) In any proceedings for an offence under this Act, it is a defence for the accused person to prove that the accused person was under the personal supervision of —
- (a) 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
 - (b) another person representing that proprietor, owner or person in charge.

130. No defence to allege deterioration of sample

In any proceedings for an offence under this Act, 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.

131. Onus to prove certain matters on accused person

- (1) In any proceedings for an offence under this Act against an accused person who was responsible for making a false 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 food, the onus of proving the correctness of the statement is on the accused person.
- (2) In subsection (1) —
false statement means a statement that is alleged to have caused the food to be falsely described.

132. Presumption

In any proceedings for an offence under this Act, 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;
- (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;
 - (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;
 - (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;
 - (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;
 - (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;
 - (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 CEO, a member of staff, an authorised officer, the person in charge of an approved laboratory or an approved analyst is that signature.

133. Certificate evidence and evidence of analysts

- (1) A certificate of the result of an analysis obtained by the accused person or the prosecution in proceedings for an offence under this Act is admissible in any such proceedings and evidence of the facts stated in it if —

- (a) the certificate was issued in accordance with section 81; and
 - (b) a copy of the certificate is served by the person who obtained it on the other party to the proceedings at least 7 days before the hearing.
- (2) An analyst who carried out an analysis in relation to which a certificate is produced as evidence in proceedings as referred to in subsection (1) need not be called as a witness in the proceedings by the party producing the certificate unless the court hearing the proceedings so orders (whether on application made to it or otherwise).
- (3) In any proceedings for an offence under this Act, 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;
 - (b) is an approved analyst; or
 - (c) was acting under the supervision of an approved analyst.

134. Documentary evidence of certain matters

In any proceedings for an offence under this Act —

- (a) a document purporting to be a copy of any registration, approval, order, notice or authority under this Act is evidence of that registration, approval, order, notice or authority;
- (b) a document purporting to be signed by the CEO certifying that at a specified time or during a specified period —
 - (i) there was or was not in force any registration, approval, order, notice or authority in relation to a specified person or persons or specified premises; or

- (ii) that a registration, approval, order, notice or authority was or was not subject to specified conditions,
is evidence of the matters contained in the document;
and
- (c) a document purporting to be signed by the CEO 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.

135. Power of court to order further analysis

- (1) If in any proceedings for an offence under this Act the court is satisfied that there is a disagreement between the evidence of the analysts for the parties to the proceedings, the court may order that the part or parts of any sample retained under section 78 be sent by the enforcement agency concerned to an analyst specified by the court or agreed to by the parties.
- (2) An order may be made under subsection (1) at the request of any party to the proceedings or on the court's own motion.
- (3) An analyst who is sent a part or parts of a sample for analysis under this section must make an analysis of that part or those parts for the information of the court.
- (4) Subject to section 137, the cost of an analysis under this section must be borne by the enforcement agency concerned.

136. Disclosure by witnesses

- (1) In any proceedings for an offence under this Act, a witness for the prosecution is not compelled to disclose the fact that the witness received information, the nature of the information

received or the name of the person from whom the information was received.

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

137. Court may order costs and expenses

Without affecting any other power of a court to award costs, a court that hears proceedings for an offence under this Act has power to make the orders that 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 anything the subject of those proceedings.

138. Court may order forfeiture

A court that convicts a person of an offence under this Act may order the forfeiture to the State of anything that was used in the commission of the offence.

139. Court may order corrective advertising

A court that convicts a person (in this section called the ***convicted person***) of an offence under Part 3, 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 12 — Miscellaneous

140. Fees and charges may be imposed and recovered by local governments that are enforcement agencies

- (1) Without limiting sections 107(4)(b), 110(4)(b) or 112(3)(b), a local government that is an enforcement agency may impose and recover under the *Local Government Act 1995* Part 6 Division 5 Subdivision 2 a fee or charge for the performance of a function as an enforcement agency under this Act.
- (2) Without limiting subsection (1), a fee or charge may be imposed and recovered by a local government as provided for by that subsection for the provision of information or for the carrying out of any inspection (whether or not the inspection is asked for or agreed to).

141. Protection from liability for wrongdoing

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

- (g) a person employed by the Crown to carry out analyses for the purposes of this Act or a person carrying out analyses under the supervision of such a person.

142. Certain confidential information not to be disclosed

- (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 confidential processes must not disclose that information unless the disclosure is made —
 - (a) with the consent of the person from whom the information was obtained;
 - (b) in connection with the administration or execution of this Act;
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
 - (d) in accordance with a requirement imposed by or under this Act or any other law;
 - (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;
 - (f) to Food Standards Australia New Zealand;
 - (g) to a law enforcement authority; or
 - (h) with other lawful excuse.

Penalty: a fine of \$50 000.

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

- (3) In subsection (1)(g) —

law enforcement authority means a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of this subsection.

143. Publication of names of offenders

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

144. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are

necessary or convenient to be prescribed for giving effect to the purposes of this Act.

- (2) Without limiting subsection (1), the regulations may —
- (a) require the preparation, implementation, maintenance and monitoring of food safety programs for food businesses to ensure that the provisions of this Act and the Food Standards Code are complied with;
 - (b) prescribe fees or charges for the purposes of this Act, including (but not limited to) —
 - (i) fees for the making of applications under this Act; and
 - (ii) 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 is asked for or agreed to), or in connection with the notification of the conduct of a food business;
 - (c) prescribe marks or brands that are to be applied to meat inspected for the purposes of this Act;
 - (d) prohibit the sale or supply of meat, or any food that consists wholly or partly of meat, that has not been marked or branded as required by regulations made for the purposes of paragraph (c);
 - (e) impose requirements for the notification by food businesses of information relating to the conduct of those food businesses; or
 - (f) regulate or prohibit any activity relating to —
 - (i) the handling or sale of food; or
 - (ii) for the purpose of preventing risks to the safety of food for human consumption — the handling or sale of any substance or thing of a kind used, or represented as being for use, as food for animal consumption.

- (3) The Minister must ensure that consultation with the relevant industry or sector of industry is undertaken before a regulation is made under subsection (2)(a) imposing a requirement relating to a food safety program.
- (4) A failure to comply with subsection (3) does not affect the validity of the regulation concerned.
- (5) The regulations may provide that contravention of a regulation or a provision of a regulation constitutes an offence and may provide for penalties not exceeding \$5 000.
- (6) Except as provided in subsection (7), the regulations may apply, adopt or incorporate, whether wholly or in part or with or without modification, any standard, code or other document as in force from time to time or as in force at a particular time.
- (7) The regulations may adopt or incorporate the Food Standards Code, but only wholly, without modification and as in force from time to time.

145. Temporary emergency regulations modifying the Food Standards Code

- (1) Regulations may be made for the purposes of this section that contain provisions that are in addition to, or in substitution for, one or more of the provisions of the Food Standards Code as those provisions of that Code apply in this State.
- (2) A regulation must not be made for the purposes of this section unless the Minister has certified to the Governor that the regulation is necessary because it relates to an issue of public health and safety.
- (3) A regulation made for the purposes of this section continues in force for the period not exceeding 12 months specified in the regulations.

146. Minister to review and report on Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as practicable after the fifth anniversary of the commencement of this section.
- (2) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared, must cause it to be laid before each House of Parliament.

Part 13 — Consequential amendments

147. *Health Act 1911* amended

- (1) The amendments in this section are to the *Health Act 1911*.
- (2) Section 3(1) is amended as follows:
 - (a) by deleting the definition of “food” and inserting the following definition instead —

food has the meaning given to that term in the *Food Act 2008* section 9;
 - (b) in the definition of “premises”, by deleting “, except in Part VIII,”;
 - (c) by deleting the definition of “the Food Advisory Committee”;
 - (d) in the definition of “trade description” by deleting “food or”.
- (3) Section 3(1a) is repealed.
- (4) Section 134(49) and (52a) are deleted.
- (5) Part V Division 3 is repealed.
- (6) Section 199(14) is deleted.
- (7) The heading to Part VIIA is amended by deleting “Animal produce, drugs,” and inserting instead —

“ Drugs, ”.
- (8) Part VIIA Divisions 2, 2A, 3, 3A and 4 are repealed.
- (9) Section 246D(2) is repealed.
- (10) Section 246E is repealed.
- (11) Section 246F is repealed.

- (12) Section 246FA is repealed.
- (13) Section 246FB is repealed.
- (14) Part VIII and Schedule 3 are repealed.
- (15) Section 344C is amended in the Table as follows:
 - (a) by deleting “172(3),”;
 - (b) by deleting “, 220(1)(l)”.
- (16) Section 360(4) is amended as follows:
 - (a) in paragraph (a), by deleting “as read with section 172, 207(1) or (3) or 220(1)”;
 - (b) in paragraph (b), by deleting “section 207D, 212B, 220(2), 246C, 246D(1) or (2) or 247.” and inserting instead —
“ section 246C or 246D(1). ”.
- (17) Section 377(5) is deleted.
- (18) Schedule 5 Part I is amended as follows:
 - (a) by deleting “217(1) and (2),”;
 - (b) by deleting “246X(1),”.
- (19) Schedule 5 Part II is amended as follows:
 - (a) by deleting “162(4),”;
 - (b) by deleting “246ZK,”.
- (20) Schedule 5 Part III is amended by deleting “246O(2), 246P, 246Q(3) and (4), 246Z(5) and (6), 246ZH(2), 246ZM(1),”.
- (21) Schedule 5 Part IV is amended as follows:
 - (a) by deleting “207B(3), 207C, 209(1) and (2), 210, 211(1), (2), (3), (4) and (5),”;
 - (b) by deleting “246L, 246N(1), 246O(1), 246Q(2), 246T, 246X(2),”.
- (22) Schedule 5 Part V is amended as follows:

- (a) by deleting “171(2),”;
 - (b) by deleting “246M(2), 246N(2), 246Q(1), 246R(1),”.
- (23) Schedule 5 Part VI is amended as follows:
 - (a) by deleting “205(6), 212, 214(1), 216(2),”;
 - (b) by deleting “246M(1), 246S, 246W(2), 246Y(10), 246ZD,”.
- (24) Schedule 5 Part VII is amended by deleting “, 246E”.

148. *Liquor Control Act 1988* amended

- (1) The amendments in this section are to the *Liquor Control Act 1988*.
- (2) After section 39(2)(a)(i) the following subparagraph is inserted —
 - (ia) the *Food Act 2008*;
- (3) After section 69(8)(a) the following paragraph is inserted —
 - (aa) the *Food Act 2008*;
- (4) After section 95(4)(f)(i) the following subparagraph is inserted —
 - (ia) an offence under the *Food Act 2008* in relation to the licensed premises;

149. *Volunteers and Food and Other Donors (Protection from Liability) Act 2002* amended

Section 3(1) is amended in the definition of “food” by deleting “section 3(1) of the *Health Act 1911*,” and inserting instead —

“ the *Food Act 2008* section 9; ”.

Part 14 — Transitional provisions

150. Definition

In this Part —

commencement day means the day on which this Part comes into operation.

151. *Interpretation Act 1984* not affected

Nothing in this Part is to be construed so as to limit the operation of the *Interpretation Act 1984*.

152. Orders under *Health Act 1911* section 246W

An order under the *Health Act 1911* section 246W(1) that is in force immediately before the commencement day has effect on and after that day as if it were an emergency order made under section 32(b).

153. Orders under *Health Act 1911* section 246Y

- (1) An order under the *Health Act 1911* section 246Y(1) that is in force immediately before the commencement day has effect on and after that day as if it were an improvement notice.
- (2) An order under the *Health Act 1911* section 246Y(2) that is in force immediately before the commencement day has effect on and after that day as if it were a prohibition order.

154. Transitional regulations

- (1) If this Act does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the amendment of an Act by this Act or the coming into operation of this Act, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for that matter or issue.
- (2) If regulations made under subsection (1) provide that a specified state of affairs is taken to have existed, or not to have existed,

on and from a day that is earlier than the day on which the regulations are published in the Gazette but not earlier than the commencement day, the regulations have effect according to their terms.

- (3) In subsection (2) —

specified means specified or described in the regulations.

- (4) If regulations contain a provision referred to in subsection (2), 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 day of 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 day of publication.

Notes

- ¹ This is a compilation of the *Food Act 2008* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Food Act 2008</i>	43 of 2008	8 Jul 2008	s. 1 and 2: 8 Jul 2008 (see s. 2(1)(a)); s. 3-7, Pt. 2-7 and 9-14: 24 Oct 2009 (see s. 2(1)(b) and (2) and <i>Gazette</i> 23 Oct 2009 p. 4157); Pt. 8 Div. 1 and 3: 23 Apr 2010 (see s. 2(1)(b) and (2) and <i>Gazette</i> 23 Oct 2009 p. 4157) Pt 8 Div. 2: 23 Oct 2010 (see s. 2(1)(b) and (2) and <i>Gazette</i> 23 Oct 2009 p. 4157)
<i>Police Amendment Act 2009</i> s. 18	42 of 2009	3 Dec 2009	13 Mar 2010 (see s. 2(b) and <i>Gazette</i> 12 Mar 2010 p. 941)

- ^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Public Sector Reform Act 2010</i> s. 89 ²	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)

- ² On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

89. Various references to “Minister for Public Sector Management” amended

- (1) This section amends the Acts listed in the Table.

- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

Table

<i>Food Act 2008</i>	s. 124(2)(c)
----------------------	--------------

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
advertisement	8
analysis.....	8
animal	8
another person.....	27(3)
appropriate enforcement agency	8
approved analyst	8
approved form.....	8
approved laboratory	8
authorised officer	8
CEO	8
commencement day	150
convicted person	139
court	8
designated officer.....	126(1)
emergency order.....	8
enforcement agency	8
equipment.....	8
examine	8
exempted food business	109(2)
false statement.....	131(2)
food	8, 9(1), 9(2), 9(3)
food business.....	8, 10
food safety auditor	8
Food Safety Standards	8
Food Standards Australia New Zealand.....	8
Food Standards Code	8
food transport vehicle	8
handling	8
improvement notice	8
label.....	8
law enforcement authority	142(3)
member of staff.....	8
national guidelines	120(3)
offence	128(1)
officer.....	128(1)
package	8
premises	8
prescribed.....	6(1), 126(1)
primary food production	8, 11(1), 11(2)

Defined Terms

processes	12(3)
prohibition order	8
proprietor	8
protected person	141(2)
public institution	8
recall order	8
remote communication.....	8
sell.....	8
slaughter.....	13(3)
specified	154(3)
specified information	107(2)
unsafe	8, 12(1), 12(2)
unsuitable	8, 13(1), 13(2)
vehicle	8
water supplier.....	5(2)