

Version No. 080

Food Act 1984

No. 10082 of 1984

Version incorporating amendments as at 1 July 2010

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No. 10082 of 1984

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An Act to consolidate and amend the Law relating to the Preparation and Sale of Food, to make Provision for securing the Wholesomeness and Purity of and fixing Standards for Food, to prevent false or misleading packaging and labelling of Food and false or misleading advertising in connexion with Food, to amend the **Health Act 1958**, the **Magistrates (Summary Proceedings) Act 1975** and the **Health Commission Act 1977** and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART I—PRELIMINARY

1 Short title

This Act may be cited as the **Food Act 1984**.

2 Commencement

The several provisions of this Act shall come into operation on a day or on the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the Government Gazette.

s. 3

S. 3
amended by
Nos 95/1986,
s. 4(1)(2),
97/1987
s. 179(1),
42/1993
s. 64(a),
13/1994
s. 10(a),
20/1995
s. 4(1),
substituted by
No. 14/2001
s. 3.

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 Victoria of the Food Standards Code.

4 Definitions

S. 4(1)
substituted.¹

(1) In this Act—

advertisement means—

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

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

analysis includes any examination or testing of food or any other thing;

analyst means a person authorized under section 30 to carry out analyses for the purposes of this Act;

animal includes an amphibian, bird, crustacean, fish, mollusc or reptile;

approved food safety auditor means a person holding a current certificate issued under section 19P;

article means—

- (a) any food; or
- (b) any equipment; or
- (c) a package; or
- (d) any labelling or advertising material used or capable of being used in or in connection with the sale of any food;

authorized officer means—

- (a) a person who is authorised by the Secretary or appointed by a council to be an authorized officer under section 20; or
- (b) an environmental health officer appointed under section 29 of the **Public Health and Wellbeing Act 2008**; or
- (c) for the purposes of enforcing the provisions of this Act in relation to any dairy premises, milk or dairy food within the meaning of the **Dairy Act 2000**, a person who is an authorised officer appointed under section 43 of the **Dairy Act 2000**; or
- (d) a person who, under the **Meat Industry Act 1993**, is appointed as, or has the powers of, an inspector or is a person authorised to be an inspector by an inspection service approved under section 7 of that Act; or
- (e) in relation to a food premises on land that is not part of a municipal district, the Secretary; or

S. 4(1) def. of *authorized officer* amended by Nos 46/2008 s. 251, 42/2009 s. 3(a).

s. 4

(f) a person to whom, under section 19 of the **Public Health and Wellbeing Act 2008**, the Secretary delegates any of the functions or powers of an authorized officer under this Act;

books includes any register or other record of information and accounts or financial records (within the meaning of the Corporations Act), however compiled, recorded or stored, and also includes any document;

S. 4(1) def. of *chief executive officer* inserted by No. 42/2009 s. 3(g).

chief executive officer, of a council, means the person appointed by the council to be its chief executive officer or any person acting in that position;

corresponding law means a law of another State or a Territory which the Governor in Council by Order declares to be a law that makes provision substantially similar to a provision of this Act;

council has the same meaning as in the **Local Government Act 1989**, and *the council* means the council of the municipal district to which the provision in which the term is used applies;

S. 4(1) def. of *declared premises* repealed by No. 42/2009 s. 3(b).

* * * * *

S. 4(1) def. of *Department* amended by No. 29/2010 s. 56(1)(a).

Department means the Department of Health;

Director of Consumer Affairs means the person who, for the time being, is employed as Director of Consumer Affairs Victoria under the **Public Administration Act 2004**;

S. 4(1) def. of *Director of Consumer Affairs* inserted by No. 42/2009 s. 3(g).

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 4A;

food business has the meaning given by section 4B;

food premises means any premises at, on or from which food is sold, or handled with the intention that it be sold, but does not include—

- (a) any premises used solely for the purposes of a primary food production business, enterprise or activity; or
- (b) any premises or other place declared by an Order made under section 5(3) not to be a food premises;

s. 4

S. 4(1) def. of
*food safety
assessment*
inserted by
No. 42/2009
s. 3(g).

food safety assessment has the meaning given by
section 19HA(1);

S. 4(1) def. of
*food safety
audit*
inserted by
No. 42/2009
s. 3(g).

food safety audit has the meaning given by
section 19HA(2);

Food Safety Council means the Food Safety
Council established under section 60;

food safety program has the meaning given by
section 19D;

S. 4(1) def. of
*food safety
program audit*
repealed by
No. 42/2009
s. 3(c).

* * * * *

S. 4(1) def. of
*food safety
program
template*
substituted by
No. 42/2009
s. 3(d).

food safety program template means a written
document that contains a set of instructions
to enable the proprietor of a food business to
create a food safety program that complies
with section 19D;

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

food safety supervisor has the meaning given by
section 19G;

Food Standards Code means the Australia New
Zealand Food Standards Code as defined in
the Australia New Zealand Food Authority
Act 1991 of the Commonwealth;

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

food vending machine means a machine or mechanical device used or capable of being used for selling food without any intervention or attention by or on behalf of the seller at the time of the sale;

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

hazard means a biological, chemical, radiological or physical agent or factor that may adversely affect the health of any person;

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

mobile food premises means a food premises that is a vehicle;

S. 4(1) def. of *mobile food premises* inserted by No. 42/2009 s. 3(g).

non-standard food safety program means a food safety program that is not a standard food safety program;

S. 4(1) def. of *non-standard food safety program* inserted by No. 42/2009 s. 3(g).

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;

person includes a body or association (corporate or unincorporate) and a partnership;

premises includes—

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

prepare includes manufacture, process and treat;

prescribed means prescribed by this Act, the regulations or a prescribed food standard;

prescribed food standard has the meaning given by section 63A;

primary food production has the meaning given by section 4C;

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 statutory body means any body created by, or under the authority of, an Act of the Commonwealth or of a State or Territory for a public purpose;

QA food safety program has the meaning given by section 19DD(2);

S. 4(1) def. of
QA food
safety
program
inserted by
No. 42/2009
s. 3(g).

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

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 4(1) def. of *registered medical practitioner* amended by No. 97/2005 s. 182(Sch. 4 item 21), substituted by No. 13/2010 s. 51(Sch. item 24).

registration authority means the relevant registration authority, as determined under section 35;

S. 4(1) def. of *registration authority* amended by No. 42/2009 s. 3(e).

sample includes part of a sample;

Secretary means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

S. 4(1) def. of *Secretary* substituted by No. 29/2010 s. 56(1)(b).

sell includes—

- (a) barter, offer or attempt to sell; and
- (b) receive for sale; and
- (c) have in possession for sale; and
- (d) display for sale; and
- (e) cause or permit to be sold or offered for sale; and
- (f) send, forward or deliver for sale; and
- (g) dispose of by any method for valuable consideration; and
- (h) dispose of to an agent for sale on consignment; and

- (i) provide under a contract of service; and
- (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; and
- (k) dispose of by way of raffle, lottery or other game of chance; and
- (l) offer as a prize or reward; and
- (m) give away for the purpose of advertisement or in furtherance of trade or business; and
- (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; and
- (o) supply food (whether or not for consideration) in the course of providing services to patients in hospitals or prisoners in prisons; and
- (p) sell for the purpose of resale;

service, in relation to a food vending machine, means stock or replenish that machine with food;

standard food safety program has the meaning given by section 19DC(1);

S. 4(1) def. of
*standard food
safety
program*
amended by
No. 42/2009
s. 3(f).

substance includes a mixture or compound;

temporary food premises means a food premises that is—

S. 4(1) def. of *temporary food premises* inserted by No. 42/2009 s. 3(g).

- (a) a tent, stall or other structure that is not permanently fixed to a site; or
- (b) a permanent structure not owned or leased by the food business that operates the premises and in which food is handled for sale or from which food is sold by that business on an occasional basis only;

therapeutic good has the same meaning as it has in the Therapeutic Goods Act 1989 of the Commonwealth;

this Act includes the regulations;

unsafe has the meaning given by section 4D;

unsuitable has the meaning given by section 4E;

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

- (1A) If under the **Public Administration Act 2004** the name of the Department of Health is changed, a reference in the definition of *Department* in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

S. 4(1A) inserted by No. 46/1998 s. 7(Sch. 1, amended by Nos 108/2004 s. 117(1) (Sch. 3 item 81.1), 29/2010 s. 56(2).

* * * * *

S. 4(2) amended by No. 36/1991 s. 4(c), repealed by No. 14/2001 s. 4(2).

(3) For the purposes of this Act—

S. 4(3)(a)
substituted by
No. 14/2001
s. 4(3).

(a) food or equipment that is displayed for the purpose of being offered as a prize or reward or given away for the purpose of advertisement or in the furtherance of trade or business is taken to have been displayed for sale by the owner of the food or equipment;

S. 4(3)(b)
repealed by
No. 14/2001
s. 4(3),
new s. 4(3)(b)
inserted by
No. 49/2002
s. 13.

(b) food that is donated to a person who distributes food for a charitable or benevolent purpose is not to be taken to be food that was given away for the purpose of advertisement or in furtherance of trade or business;

S. 4(3)(c)
amended by
No. 14/2001
s. 4(4).

(c) food which is exposed or deposited in any premises for the purpose of being so offered as a prize or reward or given away is taken to have been exposed for sale by the occupier of the premises.

- (4) Where a word or phrase is given a particular meaning in this Act, other parts of speech and grammatical forms of that word or phrase have, unless the contrary intention appears, corresponding meanings.
- (5) Where a provision of this Act is with respect to a particular subject-matter inconsistent with a provision of any other Act, the provision of this Act shall prevail and the provision of that other Act is, to the extent of the inconsistency, of no force or effect.
- (6) Where a provision of a regulation made under this Act is with respect to a particular subject-matter inconsistent with a provision of a regulation, rule or by-law made under any other Act, the provision of the regulation made under this Act shall prevail

and that other provision is, to the extent of the inconsistency, of no force or effect.

4A Meaning of *food*

S. 4A
inserted by
No. 14/2001
s. 5.

- (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;
 - (e) any substance or thing declared to be a food under a declaration in force under section 3B of the Australia New Zealand Food Authority Act 1991 of the Commonwealth.
- (2) A substance, thing, chewing gum or ingredient or additive in chewing gum described in subsection (1) is food regardless of whether or not it is in a condition fit for human consumption.
- (3) However, food does not include a therapeutic good.
- (4) To avoid doubt, *food* may include live animals and plants.

s. 4B

S. 4B
inserted by
No. 14/2001
s. 5.

4B Meaning of *food business*

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

- (a) the handling of food intended for sale; or
- (b) the sale of food, regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.

S. 4C
inserted by
No. 14/2001
s. 5.

4C Meaning of *primary food production*

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

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

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

Note

Section 4C(2)(c) enables regulations to be made prescribing food production activities that are not included in the definition of primary food production. Such a regulation might be made, for example, to prescribe a food production activity in relation to which significant and unmanaged food safety hazards have been identified.

4D Meaning of *unsafe* food

- (1) For the purposes of this Act, food is *unsafe* at a particular time if it would be likely to cause physical harm to a person who might later consume it, assuming—
- (a) it was, after that particular time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use; and
 - (b) nothing happened to it after that particular time and before being consumed by the person that would prevent it being used for its reasonable intended use; and

S. 4D
inserted by
No. 14/2001
s. 5.

s. 4E

- (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. 4E
inserted by
No. 14/2001
s. 5.

4E Meaning of *unsuitable* food

- (1) For the purposes of this Act, food is *unsuitable* if it is food that—
 - (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use; or
 - (b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use; or
 - (c) is the product of a diseased animal, or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption; or
 - (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.
- (2) However, food is not unsuitable for the purposes of this Act merely because—
 - (a) at any particular time before it is sold for human consumption it contains an agricultural or veterinary chemical; or

- (b) when it is sold for human consumption it contains an agricultural or veterinary chemical, so long as it does not contain the chemical in an amount that contravenes the Food Standards Code; or
 - (c) it contains a metal or non-metal contaminant (within the meaning of the Food Standards Code) in an amount that does not contravene the permitted level for the contaminant as specified in the Food Standards Code; or
 - (d) it contains any matter or substance that is permitted by the Food Standards Code.
- (3) In this section, *slaughter* of an animal includes the killing of an animal in the process of capturing, taking or harvesting it for the purposes of preparing it for use as food.

4F Reference to proprietors of premises

A reference to the proprietor of a food premises or premises is a reference to the proprietor of the food business that operates at, on or from the premises.

S. 4F
inserted by
No. 14/2001
s. 5,
amended by
No. 42/2009
s. 4.

4G Sale of food through food vending machines

For the purposes of this Act, any food that is sold through a food vending machine is to be taken to be sold—

- (a) by the proprietor of the premises on which the machine is located; and
- (b) on the day when, and at the place where, the food is received by the purchaser.

S. 4G
inserted by
No. 14/2001
s. 5.

s. 4H

S. 4H
inserted by
No. 42/2009
s. 5.

4H Reference in Food Standards Code to appropriate enforcement agency

For the purposes of any provision of this Act which applies the Food Standards Code, a reference in Standard 3.1.1 of that code to an appropriate enforcement agency is taken to be a reference to the registration authority.

5 Orders

(1) The Governor in Council may by Order published in the Government Gazette—

(a) declare a law of a State or Territory of the Commonwealth of Australia to be a corresponding law for the purposes of this Act; and

S. 5(1)(b)
repealed by
No. 14/2001
s. 6.

* * * * *

(2) An Order made by the Governor in Council under subsection (1) may by like Order be amended, varied or revoked.

S. 5(3)
substituted by
No. 98/1997
s. 4(1).

(3) The Minister may make an order declaring—

(a) any premises or part of a premises or any other place not to be a food premises for the purposes of this Act.

S. 5(3)(b)
repealed by
No. 14/2001
s. 6.

* * * * *

S. 5(3A)
inserted by
No. 98/1997
s. 4(1).

(3A) The Minister may, by order published in the Government Gazette, exempt from this Act or any provision of this Act—

(a) any food premises or class of food premises.

* * * * *

S. 5(3A)(b)
repealed by
No. 14/2001
s. 6.

- (4) An order made by the Minister under subsection (3) or (3A)—
- (a) may be made so as to be limited in respect of time or circumstances; and
 - (b) may by like order be amended, varied or revoked.

S. 5(4)
amended by
No. 98/1997
s. 4(2).

6 Act binds the Crown

S. 6
substituted by
No. 46/2008
s. 252.

- (1) This Act binds the Crown—
- (a) in right of the State of Victoria; and
 - (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act.

6A Application of Act to primary food production

S. 6A
inserted by
No. 14/2001
s. 7.

- (1) Parts IV and VI do not apply to or in respect of primary food production.
- (2) The functions conferred on authorized officers by Part III and Part IIIB may only be exercised in respect of primary food production—
- (a) to enable the investigation and prosecution of offences against this Act or the regulations; or
 - (b) in connection with the making or enforcement of emergency orders under Part VII.

S. 6A(2)
amended by
No. 42/2009
s. 6.

Note

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

s. 6B

S. 6B
inserted by
No. 14/2001
s. 7,
substituted by
No. 46/2003
s. 58.

6B Application of Act to water suppliers and water storage managers

- (1) The following provisions of this Act do not apply to, or in relation to, a water supplier or water storage manager in respect of the supply of water for human consumption through a reticulated water system—
- (a) sections 8, 8A, 10, 10A, 11(1), 12(1), 13, 14 and 15;
 - (b) section 16 to the extent to which it requires compliance with the requirements of the Food Safety Standards;
 - (c) Parts III, IIIA, IIIB, IV and VI.
- (2) In this section—

water storage manager means—

- (a) a water storage manager within the meaning of section 3 of the **Safe Drinking Water Act 2003**; or
- (b) a person that is employed or engaged by such a body to supply water for human consumption;

water supplier means—

- (a) a water supplier within the meaning of section 3 of the **Safe Drinking Water Act 2003**; or
- (b) a body that is constituted by or under an Act and that has as one of its functions the supply of water for human consumption; or
- (c) a person that is employed or engaged by such a water supplier or body to supply water for human consumption; or

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- (d) any body or person prescribed by the regulations for the purposes of this section.

7 Extension to places outside municipal districts

- (1) All or any of the provisions of this Act may be extended by proclamation of the Governor in Council to any place not situated in a municipal district and in every such case the Secretary shall have and may exercise in respect of such place all the powers duties and authorities of councils under this Act.
- (2) A proclamation made by the Governor in Council under subsection (1) may by like proclamation be amended, varied or revoked.

S. 7(1)
amended by
Nos 10262
s. 4, 98/1997
s. 16(a).

Part 1A
(Heading and
ss 7A–7E)
inserted by
No. 42/2009
s. 7.

PART IA—ADMINISTRATION AND REPORTING

S. 7A
inserted by
No. 42/2009
s. 7.

7A Role of councils

The role of a council under this Act is to—

- (a) carry out the powers and functions vested in it under this Act in accordance with the requirements of this Act;
- (b) promote the objectives of this Act;
- (c) cooperate with other councils and the Department in relation to the administration of this Act;
- (d) ensure, to the extent appropriate, that the administration of this Act by the council is consistent with the administration of this Act throughout Victoria by other councils.

S. 7B
inserted by
No. 42/2009
s. 7.

7B Role of Department

The role of the Department under this Act is to—

- (a) facilitate the exercise of the powers and functions of the Secretary under this Act;
- (b) promote the objects of this Act and the consistent administration of this Act by providing information and guidance to councils, authorized officers and food safety auditors;
- (c) publish an annual report on food regulation.

S. 7C
inserted by
No. 42/2009
s. 7.

7C Annual report on food regulation

- (1) For each calendar year the Department must publish an annual report on food regulation.

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- (2) The annual report must contain the following information—
- (a) statistics relating to the registration of food premises under this Act by the Secretary and each council including—
 - (i) the number of newly registered food premises;
 - (ii) the number of food premises for which registration was renewed;
 - (iii) the number of registrations under each class of registration;
 - (iv) the number of food premises for which registration under this Act was revoked or suspended;
 - (b) statistics relating to the analysis of food samples submitted by each council under section 32;
 - (c) statistics relating to the enforcement action taken by the Secretary and each council under this Act including—
 - (i) the number and nature of infringement notices issued;
 - (ii) the number of prosecutions and the nature of the alleged offences;
 - (iii) the number of cases that resulted in either a conviction or a finding of guilt;
 - (iv) the nature of any sentences or other orders imposed by the court;
 - (d) a copy of any direction given by the Minister under section 7E and the action taken by councils in response to the direction.
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s. 7D

S. 7D
inserted by
No. 42/2009
s. 7.

7D Information required to be provided by councils

- (1) The Secretary may, by notice published in the Government Gazette, declare—
 - (a) the information that a council is required to provide to the Department relating to the administration of this Act; and
 - (b) the intervals at which the information is required to be provided; and
 - (c) the format or manner in which the information is required to be provided.
- (2) Before making a declaration under subsection (1), or making a substantial amendment to the declaration, the Secretary must consult with a body that represents local government.
- (3) A council must comply with a declaration made under subsection (1).

S. 7E
inserted by
No. 42/2009
s. 7.

7E Direction by the Minister

- (1) The Minister may give a written direction to a council, or the chief executive officer of the council, in relation to any matter concerning the administration of this Act by the council.
- (2) The Minister may give a written direction to a class of councils, or each chief executive officer of a class of councils, in relation to any matter concerning the administration of this Act by the councils.
- (3) The Minister may only give a direction under this section if the Minister considers that the direction—
 - (a) is in the public interest; and
 - (b) will promote the objectives of this Act or the consistent administration of this Act.

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- (4) A direction under subsection (1) must not be given in relation to the decision under this Act by a council or an authorized officer with respect to a particular food premises or a particular proprietor.
- (5) Unless the Minister considers that a direction is required as a matter of urgency, before giving a direction under this section, the Minister must ensure that—
- (a) if the direction is to be given under subsection (1), the council or the chief executive officer has been provided with a draft of the direction and been given an opportunity to comment; or
 - (b) if the direction is to be given under subsection (2), either—
 - (i) each council or chief executive officer has been provided with a draft of the direction and been given an opportunity to comment; or
 - (ii) a body that represents local government has been provided with a draft of the direction and been given an opportunity to comment.
- (6) If a council, or the chief executive officer of a council, is given a direction under subsection (1), a copy of the direction must be published in the annual report required to be published by the council under section 131 of the **Local Government Act 1989**.
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Pt 2 (Heading and ss 8–17) amended by Nos 95/1986 s. 6, 36/1991 s. 4(d)–(h), 40/1993(Sch. 2 item 4.1), 13/1994 s. 5, substituted as Pt 2 (Heading and ss 8–17H) by No. 14/2001 s. 8.

S. 8 substituted by No. 14/2001 s. 8.

S. 8A inserted by No. 14/2001 s. 8.

PART II—OFFENCES RELATING TO FOOD

Division 1—Serious offences relating to food

8 Knowingly handling 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.
- (2) A person who contravenes subsection (1) is guilty of an indictable offence and is liable to a penalty not exceeding—
 - (a) in the case of an individual, \$100 000 or imprisonment for 2 years, or both;
 - (b) in the case of a corporation, \$500 000.

8A Handling food in unsafe manner in other circumstances

- (1) 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.
- (2) A person who contravenes subsection (1) is guilty of an indictable offence and is liable to a penalty not exceeding—
 - (a) in the case of an individual, \$75 000;
 - (b) in the case of a corporation, \$375 000.

9 Knowingly selling unsafe food

S. 9
substituted by
No. 14/2001
s. 8.

- (1) A person must not sell food that the person knows is unsafe.
- (2) A person who contravenes subsection (1) is guilty of an indictable offence and is liable to a penalty not exceeding—
 - (a) in the case of an individual, \$100 000 or imprisonment for 2 years, or both;
 - (b) in the case of a corporation, \$500 000.

9A Sale of unsafe food in other circumstances

S. 9A
inserted by
No. 14/2001
s. 8.

- (1) A person must not sell food that the person ought reasonably to know is unsafe.
- (2) A person who contravenes subsection (1) is guilty of an indictable offence and is liable to a penalty not exceeding—
 - (a) in the case of an individual, \$75 000;
 - (b) in the case of a corporation, \$375 000.

10 Knowingly falsely describing food

S. 10
substituted by
No. 14/2001
s. 8.

- (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.

Note

Examples of food that is falsely described are contained in section 17A.

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

Note

Examples of food that is falsely described are contained in section 17A.

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- (3) A person who contravenes subsection (1) or (2) is guilty of an indictable offence and is liable to a penalty not exceeding—
- (a) in the case of an individual, \$100 000 or imprisonment for 2 years, or both;
 - (b) in the case of a corporation, \$500 000.

S. 10A
inserted by
No. 14/2001
s. 8.

10A Falsely describing food in other circumstances

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

Note

Examples of food that is falsely described are contained in section 17A.

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

Note

Examples of food that is falsely described are contained in section 17A.

- (3) A person who contravenes subsection (1) or (2) is guilty of an indictable offence and is liable to a penalty not exceeding—
- (a) in the case of an individual, \$75 000;
 - (b) in the case of a corporation, \$375 000.

Division 2—Other offences relating to food

11 Handling and sale of unsafe food

S. 11
substituted by
No. 14/2001
s. 8.

- (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: \$40 000 in the case of an individual and \$200 000 in the case of a corporation.

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

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

12 Handling and sale of unsuitable food

S. 12
substituted by
No. 14/2001
s. 8.

- (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: \$40 000 in the case of an individual and \$200 000 in the case of a corporation.

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

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

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

13 Misleading conduct relating to sale of food

S. 13
substituted by
No. 14/2001
s. 8.

- (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: \$40 000 in the case of an individual and \$200 000 in the case of a corporation.

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

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

Note

Examples of food that is falsely described are contained in section 17A.

- (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: \$40 000 in the case of an individual and \$200 000 in the case of a corporation.

Note

Examples of food that is falsely described are contained in section 17A.

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

14 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: \$40 000 in the case of an individual and \$200 000 in the case of a corporation.

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

S. 14
substituted by
No. 14/2001
s. 8.

15 Sale of unfit equipment or packaging or labelling material

S. 15
substituted by
No. 14/2001
s. 8.

- (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: \$40 000 in the case of an individual and \$200 000 in the case of a corporation.

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

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

16 Compliance with Food Standards Code

S. 16
substituted by
No. 14/2001
s. 8.

- (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: \$40 000 in the case of an individual and \$200 000 in the case of a corporation.

Note

Under section 37, a person complies with the requirements of the Food Standards Code relating to notification if an application for the registration of a food premises is made, or notification of its operation is given, in accordance with Part VI.

Note to
s. 16(1)
inserted by
No. 42/2009
s. 8.

s. 17

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

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

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

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

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

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

S. 17
substituted by
No. 14/2001
s. 8.

17 Proprietor's name to be affixed to premises

- (1) The proprietor of a food business must ensure that his, her or its name is prominently displayed on any food premises used in connection with the food business.

Penalty: 10 penalty units.

- (2) A person who sells any food from any premises on which the name of any other person appears under subsection (1) must be taken to have sold the food as the agent of that other person, unless the contrary is proved.

S. 17A
inserted by
No. 14/2001
s. 8.

17A False descriptions of food

- (1) For the purposes of this Part, food that is falsely described includes food to which any one or more of the following paragraphs applies—

- (a) the food is represented as being of a particular nature or substance for which there is a prescribed standard under the Food

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- Standards Code and the food does not comply with that prescribed standard;
- (b) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance in a quantity or proportion that significantly diminishes its food value or nutritive properties as compared with food of the represented nature or substance;
 - (c) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance of lower commercial value than food of the represented nature or substance;
 - (d) the food is represented as being of a particular nature or substance and a constituent of the food has been wholly or partly removed so that its properties are diminished as compared with food of the represented nature or substance;
 - (e) any word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression as to the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person;
 - (f) the food is not of the nature or substance represented by the manner in which it is packaged, labelled or offered for sale.
- (2) Without limiting the application of subsection (1) of this section to sections 10(2) and 10A(2), food is falsely described for the purposes of sections 10(2) and 10A(2) if it is supplied in response to a purchaser's request for a particular type of food, or a food that does not contain a particular
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s. 17B

ingredient, and the food is not of that type or contains that ingredient.

S. 17B
inserted by
No. 14/2001
s. 8.

17B Application of provisions outside jurisdiction

Except as provided in section 17D, for the purposes of a provision of this Part, it does not matter that the food concerned was sold or intended for sale outside Victoria.

Note

See section 17D for a defence in relation to food intended for export.

Division 3—Defences

S. 17C
inserted by
No. 14/2001
s. 8.

17C Defence relating to publication of advertisements

- (1) In any proceedings for an offence under this Part in relation to the publication of an advertisement, it is a defence for a person to prove that the person carried on the business of publishing or arranging for the publication of advertisements and that the person published or arranged for the publication of the advertisement in question in the ordinary course of that business.
- (2) Subsection (1) does not apply if the person—
 - (a) should reasonably have known that the publication of the advertisement was an offence; or
 - (b) had previously been informed in writing by the Secretary 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.

17D Defence in respect of food for export

S. 17D
inserted by
No. 14/2001
s. 8.

- (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 (if any) 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 Victoria.

17E Defence of due diligence

S. 17E
inserted by
No. 14/2001
s. 8.

- (1) In any proceedings for an offence under this Part, it is a defence if it is proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.
- (2) Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved—
 - (a) that the commission of the offence was due to—
 - (i) an act or default of another person; or
 - (ii) reliance on information supplied by another person; and

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- (b) that—
- (i) the person carried out all such checks of the food concerned as were reasonable in all the circumstances; or
 - (ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person; and
- (c) that the person did not import the food into the jurisdiction from another country; and
- (d) in the case of an offence involving the sale of food, that—
- (i) the person sold the food in the same condition as when the person purchased it; or
 - (ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in any contravention of this Act; and
- (e) that the person did not know and had no reason to suspect at the time of commission of the alleged offence that the person's act or omission would constitute an offence under the relevant section.
- (3) In subsection (2)(a), another person does not include a person who was—
- (a) an employee or agent of the accused; or
 - (b) in the case of an accused that is a body corporate, a director, employee or agent of the accused.

S. 17E(3)(a)
amended by
No. 68/2009
s. 97(Sch.
item 59.1(a)).

S. 17E(3)(b)
amended by
No. 68/2009
s. 97(Sch.
item 59.1).

- (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, the person complied with a food safety program for the food business; 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 was based on Australian national or international standards, codes or guidelines designed for that purpose; and
 - (ii) documented in some manner.

17F Defence of mistaken and reasonable belief not available

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

S. 17F
inserted by
No. 14/2001
s. 8,
amended by
No. 68/2009
s. 97(Sch.
item 59.2).

17G Defence in respect of handling food

In any proceedings for an offence under section 8, 8A, 11(1) or 12(1), it is a defence if it is proved that the person caused the food to which the offence relates to be destroyed or otherwise disposed of immediately after the food was handled in the manner that was likely to render it unsafe or unsuitable.

S. 17G
inserted by
No. 14/2001
s. 8.

s. 17H

S. 17H
inserted by
No. 14/2001
s. 8.

**17H Defence in respect of sale of unfit equipment or
packaging or labelling material**

In any proceedings for an offence under section 15(1) or (2), it is a defence if the person proves that the person reasonably believed that the equipment or material concerned was not intended for use in connection with the handling of food.

PART III—ORDERS

Pt 3 (Heading and ss 18, 19) amended by Nos 10262 s. 4, 16/1986 s. 30, 57/1989 s. 3(Sch. items 79.1, 79.2), 13/1994 s. 6, 20/1995 ss 6, 7, 98/1997 ss 16(a), 17(a)–(c), 18(1)(c)(d), 14/2001 s. 9(a)–(h), 24/2003 s. 91, substituted as Pt 3 (Heading and ss 19, 19A) by No. 42/2009 s. 9.

19 Orders relating to food premises

S. 19 substituted by No. 42/2009 s. 9.

- (1) This section applies if the relevant authority is satisfied from the report of an authorized officer that—
- (a) a food premises is in an unclean or unsanitary condition or in a state of disrepair; or
 - (b) food being prepared, sold or otherwise handled at a food premises is unsafe or unsuitable; or
 - (c) food is prepared, sold or otherwise handled at a food premises in a manner that makes it likely the food is unsafe or unsuitable.
- (2) The relevant authority may by written order direct that, within a specified time, either or both of the following things must be done—

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- (a) the food premises must be put into a clean and sanitary condition or be altered or improved to the satisfaction of an authorized officer;
 - (b) specified steps must be taken to ensure that food prepared, sold or otherwise handled at the food premises is safe and suitable.
- (3) The relevant authority may in an order made under subsection (2) or in a subsequent written order direct that until the matters referred to in subsection (2) are complied with—
- (a) the food premises must not be kept or used for the sale, or the handling for sale, of any food; or
 - (b) the food premises must not be kept or used for the preparation of food; or
 - (c) the food premises must not be used for a specified purpose or for the use of any specified equipment or a specified process.
- (4) If an order under this section includes a direction under subsection (3)(a) or (3)(b)—
- (a) in any case—
 - (i) the relevant authority may direct that a copy of the order be affixed to a conspicuous part of the premises in such a manner that the order can be read by a member of the public from outside the premises; and
 - (ii) the relevant authority may, by notice published in a newspaper or by any other means, inform the general public that the order has been made and the terms of the order;
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- (b) if the relevant authority is a council or a chief executive officer, the relevant authority must notify the Department of the making of the order;
 - (c) if the relevant authority is not the registration authority for the premises, the relevant authority must notify the registration authority of—
 - (i) the making of the order; and
 - (ii) any appeal made under section 19BA against the order and the outcome of the appeal.

Note

Under section 43(2) the record of registration maintained by the registration authority in respect of a food premises must include the details of any order in force under this section that includes a direction under subsection (3)(a) or (b) in relation to the premises.

- (5) An order under this section takes effect—
 - (a) when it is given to or served on the proprietor of the food premises; or
 - (b) if the name and address of the proprietor is unknown, when it is affixed to the premises.
- (6) If satisfied that an order made under this section has been complied with, the relevant authority must—
 - (a) revoke the order; and
 - (b) give written notice of the revocation of the order in the same manner in which the order was given or served.
- (7) A person must not contravene an order made under this section.

Penalty: 120 penalty units.

- (8) A person must not remove the copy of an order affixed to a food premises under subsection (4)(a)(i) while that order remains in force.

Penalty: 60 penalty units.

- (9) For the purposes of this section, *relevant authority* means any one of the following—
- (a) the Secretary;
 - (b) the council that is the registration authority for the premises;
 - (c) if the premises is a temporary food premises or a mobile food premises, the council of the municipal district in which the premises is being operated;
 - (d) the chief executive officer of a council referred to in paragraph (b) or (c).

New s. 19A
inserted by
No. 42/2009
s. 9.

19A Orders relating to food vending machines and other equipment

- (1) This section applies if an authorized officer is satisfied that a food vending machine or other equipment is in an unclean or unsanitary condition, or in a state of disrepair.
- (2) The authorized officer may by written order direct that, by a specified time, the food vending machine or other equipment be put into a clean and sanitary condition or be altered or improved to the satisfaction of the authorized officer.
- (3) An authorized officer may in an order made under subsection (2) or in a subsequent written order, direct that until the matters referred to in subsection (2) are complied with—
- (a) the food vending machine must not be kept or used for the sale or the storing, serving or supplying for sale of—

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- (i) any food; or
 - (ii) food specified in the order; or
 - (b) the equipment must not be used in or in connection with the sale, or the handling for sale, of any food or the cleaning of any other equipment.
- (4) If an authorized officer makes an order that includes a direction under subsection (3)(a)(i), the authorized officer—
- (a) may affix a copy of the order to a conspicuous part of the machine in such a manner that the order can be read by a member of the public; and
 - (b) must notify the registration authority of—
 - (i) the making of the order; and
 - (ii) any appeal made under section 19BA against the order and the outcome of the appeal.

Note

Under section 43(2), the record of registration maintained by the registration authority in respect of a food vending machine must include the details of any order in force under this section that includes a direction under subsection (3)(a)(i) in relation to the machine.

- (5) An order under this section takes effect—
- (a) when it is given to or served on the proprietor of the food vending machine or equipment; or
 - (b) if the name and address of the proprietor is unknown, when it is affixed to a conspicuous part of the machine or equipment.

s. 19A

- (6) If satisfied that an order made under this section has been complied with, the authorized officer must—
- (a) revoke the order; and
 - (b) give written notice of the revocation of the order in the same manner in which the order was given or served.
- (7) A person must not contravene an order made under this section.
- Penalty: 120 penalty units.
- (8) A person must not remove the copy of an order affixed to a food vending machine under subsection (4)(a) while that order remains in force.
- Penalty: 60 penalty units.
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Pt 3A
(Heading)
repealed by
No. 42/2009
s. 10.

Pt 3A
(Heading and
ss 19A, 19B)
inserted by
No. 20/1995
s. 8.

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S. 19A
inserted by
No. 20/1995
s. 8,
repealed by
No. 14/2001
s. 9(i).

19B Orders relating to food handlers

S. 19B
(Heading)
inserted by
No. 42/2009
s. 11(1).

S. 19B
inserted by
No. 20/1995
s. 8.

- (1) If an authorised officer is satisfied that there has been a contravention of this Act in relation to a person employed or engaged to handle unpackaged food, he or she may by order in writing direct that specified steps be taken—

S. 19B(1)
amended by
No. 14/2001
s. 9(j).

- (a) to ensure that that person or his or her clothing is put in a clean and sanitary condition; or
- (b) to alter or improve the method of handling of unpackaged food by that person; or
- (c) to ensure that that person ceases to handle unpackaged food until diagnosed by a registered medical practitioner as not suffering from a condition that is liable to

S. 19B(1)(c)
amended by
No. 14/2001
s. 9(k).

s. 19BA

render unpackaged food unsafe or unsuitable.

S. 19B(2)
amended by
No. 14/2001
s. 9(f).

- (2) An order under this section takes effect when it is given to or served on the proprietor of the food premises or food vending machine.
- (3) If the authorised officer is satisfied that an order made under this section with respect to a person has been complied with, he or she must—
 - (a) forthwith revoke the order; and
 - (b) give written notice of the revocation of the order in the same manner in which the order was given or served under this section.

S. 19B(4)–(6)
repealed by
No. 42/2009
s. 11(2).

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- (7) A person must not contravene an order made by an authorised officer under this section.

Penalty: For a first offence 25 penalty units, and for a second or subsequent offence 50 penalty units.

S. 19BA
inserted by
No. 42/2009
s. 12 (as
amended by
No. 69/2009
sl 54(Sch. Pt 1
item 25)).

19BA Appeals against orders

- (1) Any person who is aggrieved by an order made under this Part may, within 21 days after the order is made, appeal to the Magistrates' Court.
- (2) On an appeal under subsection (1), the court must—
 - (a) reconsider the decision of the person who made the order; and
 - (b) hear any relevant evidence tendered by—
 - (i) the person aggrieved; or
 - (ii) the person who made the order.

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- (3) If notice of an order has been published under section 19(4)(a)(ii) and the order is varied or revoked by the court, the person who made the order must give notice of the variation or revocation of the order to the general public in the same manner as the original notice.
 - (4) The costs of, and incidental to, an appeal under subsection (1) are in the discretion of the Magistrates' Court.
 - (5) Nothing in subsection (2)(b) prevents the application of Part 3.10 of the **Evidence Act 2008**.
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Pt 3B
(Heading and
ss 19C–19W)
inserted by
No. 98/1997
s. 5,
amended by
No. 14/2001
ss 10–19,
substituted by
No. 42/2009
s. 13.

PART IIIB—FOOD SAFETY

Division 1—Classification of food premises

S. 19C
substituted by
No. 42/2009
s. 13.

19C Declaration of classes of food premises

- (1) The Secretary may, by notice published in the Government Gazette, declare classes of food premises having regard to—
 - (a) the food handling activities undertaken at the premises and in particular the degree of risk associated with those activities;
 - (b) the nature of the food business operating from the premises;
 - (c) any other relevant considerations.
- (2) For each declared class of food premises, the Secretary may specify—
 - (a) whether food premises of that class are required—
 - (i) to keep the minimum records required under Division 2; or
 - (ii) to have a food safety program;
 - (b) whether food premises of that class are required to have a food safety supervisor;
 - (c) whether food premises of that class are exempt from the requirement under section 39 to be inspected annually.

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- (3) In addition, for any declared class of food premises required to have a food safety program, the Secretary must specify—
- (a) the type of food safety program or types of food safety program that may be used for the premises; and
 - (b) the requirements for the audit or assessment of the premises as provided in section 19H.
- (4) A declaration, or a variation to a declaration, under this section may only be made after the Secretary has complied with section 19CA.

19CA Notice of intention to make or vary declaration of classes of food premises

S. 19CA
inserted by
No. 42/2009
s. 13.

- (1) If the Secretary intends to make or vary a declaration under section 19C, notice of the Secretary's intention must be published in—
- (a) the Government Gazette; and
 - (b) a newspaper circulating generally in Victoria.
- (2) The notice must state—
- (a) the proposed declaration or variation to the declaration; and
 - (b) that submissions may be made to the Secretary regarding the proposed declaration or variation within a period of at least 60 days specified in the notice; and
 - (c) if subsection (4) applies, that the proposed declaration or variation takes effect immediately pending the consideration of submissions by the Secretary.

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- (3) After considering any submissions made in response to the notice, the Secretary must—
- (a) make the declaration or the variation to the declaration as originally notified or with any modifications the Secretary considers necessary; or
 - (b) state in a notice published in the Government Gazette that the Secretary will not be proceeding with the declaration or variation notified under subsection (2).
- (4) If the Secretary is satisfied that there are urgent reasons for making a declaration or variation to a declaration, a notice given under this section may specify that the proposed declaration or variation takes effect immediately.
- (5) If subsection (4) applies, the proposed declaration or variation remains in effect for 6 months unless, in the meantime, the Secretary—
- (a) makes a declaration under section 19C giving effect to the proposed declaration or variation as originally notified or with modifications; or
 - (b) gives notice under subsection (3)(b) that the declaration or variation is not proceeding.

Division 2—Minimum record keeping

S. 19CB
inserted by
No. 42/2009
s. 13.

19CB Minimum record keeping

- (1) The Secretary may declare, by notice published in the Government Gazette, the record keeping requirements for food premises that are required by a declaration under section 19C to keep minimum records.

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- (2) The notice must specify—
- (a) the records that must be kept; and
 - (b) the period for which the records must be kept.
- (3) The Secretary may specify in the notice different minimum record keeping requirements for different food premises depending on—
- (a) the declared class of food premises to which the premises belong;
 - (b) the food handling activities undertaken at the premises.
- (4) The proprietor of a food premises required to keep minimum records must—
- (a) maintain the records as required by the notice, including keeping the records for the duration required in the notice; and
 - (b) if requested to do so by the registration authority, provide to the registration authority a copy of the records within the time specified in the request.
- (5) A failure to comply with subsection (4) is a ground for—
- (a) the refusal of the registration, renewal of registration or transfer of registration of the premises;
 - (b) the revocation or suspension of registration of the premises.
- (6) The proprietor of a food premises required to keep minimum records must ensure that the required records are kept at the premises to which they relate.

Penalty: 20 penalty units for a natural person;
100 penalty units for a body corporate.

Division 3—Food safety programs

S. 19D
substituted
by
No. 42/2009
s. 13.

19D Food safety programs

A food safety program for a food premises is a written document that—

- (a) systematically identifies the potential hazards that may be reasonably expected to occur in each food handling operation that is to be, or that is being, conducted at the premises;
- (b) specifies where, in a food handling operation, each hazard identified under paragraph (a) can be controlled and the means of control;
- (c) provides for the systematic monitoring of those controls;
- (d) provides for appropriate corrective action when each hazard identified under paragraph (a) is found not to be under control;
- (e) provides for the regular review of the program by the proprietor of the food premises;
- (f) provides for appropriate records to be made and kept by the proprietor of the food premises demonstrating action taken in relation to, or in compliance with, the food safety program.

S. 19DB
substituted
by
No. 42/2009
s. 13.

19DB Registration of food safety program templates

- (1) The Secretary may register a food safety program template by publishing a notice in the Government Gazette—
 - (a) stating that the template is registered for use;
 - and

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- (b) specifying the classes or categories of food businesses in respect of which the template is suitable for use.
 - (2) The notice must contain sufficient detail to enable the food safety program template to which it refers to be readily identified.
 - (3) If the Secretary revokes the registration of a food safety program template, any standard food safety program that was created using the template before the template was revoked ceases to be a standard food safety program on the date of expiry of the registration of the premises to which the standard food safety program relates.

19DC Standard food safety programs

S. 19DC
substituted
by
No. 42/2009
s. 13.

- (1) A standard food safety program is a food safety program for a food premises that has been created using a registered food safety program template.
- (2) The standard food safety program must comply with the following conditions—
 - (a) the program must be created in accordance with the instructions set out in the food safety program template; and
 - (b) the food safety program template must be registered under section 19DB as suitable for use in respect of the class or category of food business that is being carried out at, on or from the food premises.

19DD QA food safety program

S. 19DD
inserted by
No. 42/2009
s. 13.

- (1) The Secretary may, by notice published in the Government Gazette, declare that a specified quality assurance system or code may be used to develop a food safety program.

s. 19E

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- (2) A QA food safety program is a food safety program for a food premises that has been issued with a certificate by an approved food safety auditor stating that the program—
- (a) has been developed—
 - (i) under a quality assurance system or code specified in a declaration under subsection (1); and
 - (ii) in accordance with the purpose and terms of that system or code; and
 - (b) meets all the requirements under section 19D.
- (3) A certificate under subsection (2) remains in force for the audit interval applying to the food premises under section 19H.

S. 19E
substituted
by
No. 42/2009
s. 13.

19E Requirement for food safety program

- (1) The proprietor of a food premises required by a declaration under section 19C to have a food safety program must—
- (a) ensure that there is a food safety program for the premises that meets the requirements of section 19D;
 - (b) ensure that the food safety program is of the type permitted by a declaration under section 19C to be used by the premises;
 - (c) comply with the food safety program;
 - (d) if requested to do so by the registration authority, provide to the registration authority a copy of the food safety program for the premises within the time specified in the request.

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- (2) The proprietor of a food premises complies with subsection (1)(a) if the proprietor uses—
 - (a) a standard food safety program for the premises that complies with section 19DC(2); or
 - (b) a QA food safety program for the premises.
 - (3) If a certificate issued by a food safety auditor states that at the date of the audit—
 - (a) a food safety program for a premises meets the requirements of section 19D; or
 - (b) a standard food safety program for a premises complies with section 19DC(2)—
the proprietor of the premises is taken to be complying with subsection (1)(a) on that date.
 - (4) A failure to comply with subsection (1) is a ground for—
 - (a) the refusal of the registration, renewal of registration or transfer of registration of the premises;
 - (b) the revocation or suspension of registration of the premises.

19EA Revision of food safety program

- (1) This section applies if there is a change in the activities carried out at a food premises required by a declaration under section 19C to have a food safety program.
- (2) The proprietor must ensure that the food safety program for the premises is reviewed and, if necessary, revised to enable it to continue to meet the requirements of section 19D.

S. 19EA
inserted by
No. 42/2009
s. 13.

s. 19F

- (3) If the proprietor of a food premises is required under section 38A(6) or 38A(7) to provide a food safety program to the registration authority with an application for registration or transfer of registration, the proprietor must give the registration authority a copy of any significant revision that is made to the food safety program within 14 days after the revision is made.
- (4) A failure to comply with subsection (2) or (3) is a ground for—
 - (a) the refusal of the renewal of the registration of the premises;
 - (b) the revocation or suspension of registration of the premises.

S. 19F
substituted
by
No. 42/2009
s. 13.

19F Food safety program must be kept at premises

The proprietor of a food premises required by a declaration under section 19C to have a food safety program must ensure that the food safety program is kept at the premises to which it relates.

Penalty: 20 penalty units for a natural person;
100 penalty units for a body corporate.

Division 4—Food safety supervisors

S. 19G
substituted
by
No. 42/2009
s. 13.

19G Food safety supervisors

- (1) A food safety supervisor is a person who, in relation to a food premises—
 - (a) knows how to recognise, prevent and alleviate the hazards associated with the handling of food at, or from, that premises; and
 - (b) has met an appropriate food safety competency standard for premises of the same nature as the premises; and

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- (c) has the ability and the authority to supervise other people handling food at, or from, the premises and to ensure that that handling is done safely.
 - (2) In this section, *food safety competency standard* means a food safety competency standard approved in writing by the Secretary or by a relevant State, national or international statutory or regulatory body.
 - (3) The regulations may specify who the relevant body is in a particular case or set of circumstances.

19GA Requirement for food safety supervisor

S. 19GA
substituted
by
No. 42/2009
s. 13.

- (1) Subject to subsection (2), the proprietor of a food premises required by a declaration under section 19C to have a food safety supervisor must ensure that there is a food safety supervisor for the premises.
- (2) A food safety supervisor is not required for a food premises for which a QA food safety program is used that includes competency based or accredited training for staff of the premises.
- (3) The food safety supervisor for a premises may be the proprietor of the premises.
- (4) A failure to comply with this section is a ground for—
 - (a) the refusal of the registration, renewal of registration or transfer of registration of the food premises;
 - (b) the revocation or suspension of registration of the food premises.

s. 19GB

S. 19GB
substituted
by
No. 42/2009
s. 13.

19GB Name of supervisor to be provided on request

The proprietor of a food premises that is required under section 19GA(1) to have a food safety supervisor must give the registration authority written details of the name and qualifications of the current food safety supervisor for the premises within 7 days of being asked in writing to do so by the registration authority.

Penalty: 20 penalty units for a natural person;
100 penalty units for a body corporate.

Division 5—Assessment and audit of food premises

S. 19H
substituted
by
No. 42/2009
s. 13.

19H Assessment and audit requirements for food premises

- (1) This section applies if a class of food premises is declared under section 19C and, under the declaration, food premises of that class are required to have a food safety program.
- (2) The declaration may specify for each type of food safety program permitted to be used by the food premises—
 - (a) whether food safety assessments of the food premises are required to be conducted and, if so, the frequency and timing of the assessments;
 - (b) whether food safety audits of the food premises are required to be conducted and, if so, the frequency and timing of the audits.
- (3) The declaration may specify the circumstances in which a food safety assessment may be conducted by a food safety auditor.

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- (4) For the purposes of subsection (2), the declaration may specify—
- (a) default requirements relating to the frequency and timing of the assessments or audits; and
 - (b) the range of frequencies and intervals that otherwise may be applied by the registration authority for any particular food premises.
- (5) In determining the frequency and intervals of the assessments and audits that are to apply to a food premises for the purposes of subsection (4)(b), the registration authority must take into account—
- (a) the food safety performance of the food business operating from the premises;

Example

The registration authority may take into account past failures by the proprietor of the food business to comply with food safety programs or any other relevant requirements of this Act (including the Food Standards Code) or the regulations.

- (b) any guidelines issued by the Secretary in a notice published in the Government Gazette for this purpose.

19HA Food safety assessments and food safety audits

S. 19HA
substituted
by
No. 42/2009
s. 13.

- (1) A food safety assessment is an assessment of a food premises conducted for the purposes of this Act to determine—
- (a) whether the food safety requirements applying to the premises have been complied with; and
 - (b) in the case of a premises using a standard food safety program, whether the food safety program complies with section 19DC(2).

Note

Under section 19DC(2), a standard food safety program must be created using a food safety program template registered under section 19DB as suitable for the food business being carried out at, on or from the food premises and the food safety program must be created in accordance with the instructions set out in the template.

- (2) A food safety audit is an audit of a food premises conducted for the purposes of this Act to determine—
 - (a) whether the food safety requirements applying to the premises have been complied with; and
 - (b) whether the food safety program for the premises is adequate.
- (3) For the purposes of a food safety assessment or food safety audit conducted under this Division—
 - (a) the food safety requirements applying to a food premises have been complied with if—
 - (i) the food safety program for the premises has been complied with during the period covered by the applicable food safety assessment or food safety audit; and
 - (ii) if relevant, appropriate action has been taken to remedy any deficiencies identified in any previous food safety assessment or food safety audit; and
 - (iii) the applicable provisions of the Food Safety Standards are being complied with; and
 - (b) a food safety program is adequate if it meets the requirements specified in section 19D.

19I Requirement for food safety assessment

- (1) This section applies to a food premises that is required by a declaration under section 19C to have a food safety assessment conducted.
- (2) Subject to section 19J, a food safety assessment of the premises must be conducted by the registration authority as required under section 19H.
- (3) A food safety assessment conducted under this section by the registration authority is an inspection for the purposes of this Act.

S. 19I
substituted
by
No. 42/2009
s. 13.

19IA Deficiencies identified in food safety assessment by registration authority

- (1) This section applies if the registration authority is of the opinion, after conducting a food safety assessment of a food premises, that—
 - (a) the food safety requirements applying to the premises have not been complied with; or
 - (b) in the case of a food premises using a standard food safety program, the food safety program does not comply with section 19DC(2).
- (2) Subject to subsection (3), the registration authority must give written notice to the proprietor of the food premises—
 - (a) stating that opinion and the reasons for the opinion; and
 - (b) identifying the deficiencies that need to be remedied; and
 - (c) advising that the deficiencies must be remedied—
 - (i) in the case where the registration authority is of the opinion that a serious threat to public health exists on the

S. 19IA
substituted
by
No. 42/2009
s. 13.

food premises, as soon as practicable;
or

(ii) in any other case, within the period
specified in the notice.

(3) A notice under subsection (2) is not required if the
registration authority has taken other appropriate
action in relation to the deficiencies.

Example

The registration authority has made an order under Part III
in relation to the deficiencies.

(4) A failure to comply with a notice given by the
registration authority under subsection (2) is a
ground for—

- (a) the refusal of the registration, renewal or
registration or transfer of registration of the
food premises;
- (b) the revocation or suspension of registration
of the food premises.

S. 19J
substituted
by
No. 42/2009
s. 13.

**19J Food safety assessment conducted by food safety
auditor**

- (1) This section applies if—
 - (a) a food premises is required by a declaration
made under section 19C to have a food
safety assessment conducted; and
 - (b) under the declaration, the assessment may be
conducted by a food safety auditor; and
 - (c) at the time of the registration of the food
premises, the proprietor has elected to have
the assessment conducted by a food safety
auditor.
- (2) The proprietor of the food premises must ensure
that a food safety assessment of the premises is
conducted as required under section 19H by a
food safety auditor.

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- (3) A failure to comply with subsection (2) is a ground for—
- (a) the refusal of the registration, renewal of registration or transfer of registration of the premises;
 - (b) the revocation or suspension of registration of the premises.
- (4) If a food safety auditor is of the opinion, after conducting a food safety assessment of a food premises, that—
- (a) the food safety requirements applying to the premises have been complied with; or
 - (b) in the case of a food premises using a standard food safety program, the food safety program complies with section 19DC(2)—
- the auditor must give the proprietor of the premises a certificate confirming that opinion.

19JA Deficiencies identified in food safety assessment by food safety auditor

S. 19JA
inserted by
No. 42/2009
s. 13.

- (1) This section applies if a food safety auditor is of the opinion, after conducting a food safety assessment of a food premises, that—
- (a) the food safety requirements applying to the premises have not been complied with; or
 - (b) in the case of a food premises using a standard food safety program, the food safety program does not comply with section 19DC(2).
- (2) The auditor must give written notice to the proprietor of the premises—
- (a) stating that opinion and the reasons for the opinion; and

s. 19K

- (b) identifying the deficiencies that need to be remedied; and
- (c) advising that the deficiencies must be remedied—
 - (i) in the case where the auditor is of the opinion that a serious threat to public health exists on the food premises, as soon as practicable; or
 - (ii) in any other case, within the period specified in the notice.
- (3) Within 14 days of the expiry of the period specified in the notice, the food safety auditor must check to see whether the deficiencies have been remedied.
- (4) Sections 19M(6), 19M(7) and 19M(8) apply to the assessment as if it were an audit and the reference in section 19M(7)(a) to subsections (2)(b) and (2)(c) of that section were a reference to subsections (2)(b) and (2)(c) of this section.
- (5) Despite subsection (4), a certificate given to the proprietor of a food premises in relation to a food safety assessment conducted under this section does not need to address the adequacy of the food safety program for the premises.

S. 19K
substituted
by
No. 42/2009
s. 13.

19K Requirement for food safety audit

- (1) The proprietor of a food premises that is required by a declaration under section 19C to have a food safety audit conducted must ensure that a food safety audit of the premises is conducted—
 - (a) as required under section 19H; and
 - (b) by an approved food safety auditor whose certificate under section 19P states that he or she is competent to conduct an audit of food premises of the class or of a category to which the premises belongs.

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- (2) A failure to comply with subsection (2) is a ground for—
- (a) the refusal of the registration, renewal of registration or transfer of registration of the premises;
 - (b) the revocation or suspension of registration of the premises.

19L Certificate of compliance following audit

S. 19L
substituted
by
No. 42/2009
s. 13.

If a food safety auditor is of the opinion, after conducting a food safety audit of a food premises, that—

- (a) the food safety requirements applying to the premises have been complied with; and
- (b) the food safety program for the premises is adequate—

the food safety auditor must give the proprietor of the premises a certificate confirming that opinion.

19M Deficiencies identified in food safety audit

S. 19M
substituted
by
No. 42/2009
s. 13.

- (1) This section applies if a food safety auditor is of the opinion, after conducting a food safety audit of a food premises, that—
- (a) the food safety requirements applying to the premises have not been complied with; or
 - (b) the food safety program is not adequate.
- (2) Subject to subsections (4) and (7), the auditor must give written notice to the proprietor of the food premises—
- (a) stating that opinion and the reasons for the opinion; and
 - (b) identifying the deficiencies that need to be remedied; and

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- (c) advising that the deficiencies must be remedied within the time specified in the notice.
- (3) Within 14 days of the expiry of the period specified in the notice, the auditor must check to see whether the deficiencies have been remedied.
- (4) If—
- (a) the food safety audit has been conducted by the registration authority; and
 - (b) an order has been made under Part III in relation to the deficiencies—
- a notice under section (2) is not required to be given but the auditor must within 14 days after the time allowed for compliance with the order check to see whether the deficiencies have been remedied.
- (5) If a notice under subsection (2) is given by the registration authority, failure to comply with the notice is a ground for—
- (a) the refusal of the registration, renewal or registration or transfer of registration of the food premises;
 - (b) the revocation or suspension of registration of the food premises.
- (6) If a deficiency identified in the audit has been remedied, the auditor must describe the deficiency in any certificate given to the proprietor under subsection (8).
- (7) If, in the opinion of the auditor, a particular food safety requirement applying to the premises has not been complied with and it is no longer possible to remedy the deficiency, the auditor—
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- (a) need not comply with subsections (2)(b) and (c) in relation to the deficiency, but must still comply with section 19N(3) if it is relevant to the deficiency; and
 - (b) must describe the deficiency in any certificate given to the proprietor under subsection (8) and any notice given to the registration authority under section 19N(4).
- (8) If all the deficiencies that could be remedied have been remedied, the auditor must give the proprietor a certificate stating that, despite deficiencies occurring during the audit period—
- (a) in the opinion of the auditor, the food safety program for the premises is now adequate; and
 - (b) any deficiencies relating to the food safety requirements applying to the premises that could be remedied have now been remedied.

19N Food safety auditor to provide certain information to registration authority

S. 19N
substituted
by
No. 42/2009
s. 13.

- (1) This section applies if a food safety assessment or a food safety audit of a food premises has been conducted by a food safety auditor who is not an officer or a member of the staff of the registration authority.
- (2) Within 14 days after a certificate is given to the proprietor of the food premises under section 19J, 19L or 19M, the food safety auditor must give a copy of the certificate to the registration authority.
- (3) If the auditor is of the opinion—
 - (a) that the food safety requirements applying to the premises have not been complied with or the food safety program is inadequate or, in the case of a food premises using a standard

food safety program, the program does not comply with section 19DC(2); and

- (b) the deficiency may lead to a serious risk of food being sold or prepared that is unsafe or unsuitable—

the auditor must notify the registration authority of the risk as soon as practicable, together with details of the notice given to the proprietor under section 19JA(2) or 19M(2) in relation to the deficiency.

- (4) If any deficiency has not been remedied within the period allowed under section 19JA(2)(c) or 19M(2)(c), the auditor must notify the registration authority of the failure to remedy the deficiency—
 - (a) if the failure to remedy the deficiency may lead to a serious risk of food being sold or prepared that is unsafe or unsuitable, as soon as practicable; or
 - (b) in any other case, within 14 days after becoming aware of the failure.

S. 19NA
inserted by
No. 42/2009
s. 13.

19NA Request by registration authority for copy of report prepared by food safety auditor

- (1) For the purposes of this Act, the registration authority may request the proprietor of a food premises to provide within 14 days copies of any report prepared by a food safety auditor in relation to the food premises prepared within the previous 4 years.
- (2) A failure by the proprietor to comply with the request is a ground for—
 - (a) the refusal of the registration, renewal or registration or transfer of registration of the food premises;
 - (b) the revocation or suspension of registration of the food premises.

Division 6—Food safety auditors

190 Only approved auditor may conduct audit

A person must not conduct a food safety audit of a food premises unless he or she is an approved food safety auditor for the class or category of food premises to which the food premises belongs.

Penalty: 40 penalty units.

S. 190
substituted
by
No. 42/2009
s. 13.

19P Certification of food safety auditors

- (1) A certifying body may certify in writing that a natural person is competent to conduct a food safety audit.
- (2) In certifying a person, the certifying body—
 - (a) may specify on the certificate that the certification applies to all, or specified, classes or categories of food premises; and
 - (b) may impose any conditions on the certification; and
 - (c) may specify for how long the certificate remains current.
- (3) The Secretary may impose conditions on the certification of a person as an approved food safety auditor whether or not the Secretary is, in relation to the person, the certifying body.
- (4) A person who is certified to conduct food safety audits of a class or category of food premises is also competent to conduct a food safety assessment of that class or that category of premises which has a non-standard food safety program.
- (5) The certifying body must not certify a person until the person has paid the fee (if any) prescribed in the regulations for a certification.

S. 19P
substituted
by
No. 42/2009
s. 13.

s. 19Q

- (6) For the purposes of this section and section 19T, *certifying body* means—
- (a) the Secretary; or
 - (b) any person prescribed by the regulations for the purposes of this section.

S. 19Q
substituted
by
No. 42/2009
s. 13.

19Q Auditor must comply with conditions of certification

An approved food safety auditor must comply with any conditions imposed under section 19P(2)(b) or 19P(3) on the certification of the person as a food safety auditor.

Penalty: 40 penalty units.

S. 19R
substituted
by
No. 42/2009
s. 13.

19R Offence to impersonate approved auditor

- (1) A person must not directly or indirectly represent that he or she is an approved food safety auditor unless the person is an approved food safety auditor.

Penalty: 40 penalty units.

- (2) Without limiting subsection (1), a person represents that he or she is an approved food safety auditor if the person uses or takes the title "approved food safety auditor".

- (3) A person must not directly or indirectly represent that he or she is authorised to conduct a food safety audit unless the person is an approved food safety auditor.

Penalty: 40 penalty units.

S. 19S
substituted
by
No. 42/2009
s. 13.

19S Conflict of interest

- (1) A person must not conduct a food safety audit of a food premises if the person has written, or assisted in preparing, the food safety program for the premises.

Penalty: 40 penalty units.

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- (2) A person must not conduct a food safety audit of a food premises if the person is the proprietor, or an employee or officer of the proprietor, of the premises.

Penalty: 40 penalty units.

- (3) For the purposes of this section, *assisted in preparing* does not include advice given by, or on behalf of, the registration authority to assist a proprietor of a food premises comply with this Act.

19T Revocation of approval to act as an auditor

S. 19T
substituted
by
No. 42/2009
s. 13.

- (1) A certifying body may, after giving a person an opportunity to be heard, revoke that person's certification as an approved food safety auditor if satisfied that—
- (a) the certification was granted on the basis of fraud, misrepresentation or the concealment of facts; or
 - (b) the person has failed to comply with any requirement imposed by this Act on approved food safety auditors; or
 - (c) the person is not sufficiently competent to conduct food safety audits; or
 - (d) the person has been found guilty of fraudulent conduct in conducting an audit; or
 - (e) the person has not satisfactorily conducted 2 or more food safety audits.
- (2) Despite subsection (1), only the Secretary may revoke the certification of a person who was certified by the Secretary.

s. 19U

S. 19U
substituted
by
No. 42/2009
s. 13.

19U Audit by council staff

- (1) An officer or member of the staff of a council must not conduct, or assist in conducting, a food safety audit of—
 - (a) any fixed food premises located within that council's municipal district unless the audit is conducted on behalf of the council; or
 - (b) any temporary food premises or mobile food premises unless the audit is conducted on behalf of a council.

Penalty: 40 penalty units.

- (2) If a food safety audit of a food premises is conducted by or on behalf of a council, the proprietor of the food premises must pay to the council the reasonable costs of the audit.
- (3) The council may waive or vary the costs of an audit payable under subsection (2) if the council considers that there are special circumstances having regard to criteria fixed by the council.
- (4) The council must ensure that the method of determining the reasonable costs of an audit payable under subsection (2) and the criteria fixed under subsection (3) are available for inspection by the public.

Division 7—Miscellaneous

S. 19UA
inserted by
No. 42/2009
s. 13.

19UA Council fees for assessments

- (1) A council may charge a fee for conducting—
 - (a) a food safety assessment of a food premises other than an assessment required by a declaration under section 19C;
 - (b) an inspection of a food premises other than an inspection under section 38B(1)(c) or an annual inspection required under section 39.

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- (2) For the purposes of subsection (1)(a), an assessment is not required by a declaration under section 19C if that assessment is in excess of the default requirements relating to the frequency and timing of assessments referred to in section 19H(4)(a).

Example

A declaration under section 19C specifies that the default requirement for the assessment of a food premises is that an assessment is to be conducted every 12 months. However, after taking into account failures by the business to comply with the Act, the registration authority determines that two assessments are required to be conducted in a 12 month period. In those circumstances, the registration authority may charge a fee for the second assessment conducted in that period but not for the first assessment.

- (3) The fee charged—
- (a) must be determined with reference to—
 - (i) the class declared under section 19C applicable to the premises; and
 - (ii) any guidelines issued by the Secretary; and
 - (b) must not include any costs of the assessment or inspection that form part of the registration fee payable to the registration authority under Part VI.
- (4) In deciding whether to charge the fee, the council must take into consideration the history of compliance by the proprietor in relation to the food premises.
- (5) The council must ensure that the method of determining a fee under subsection (3)(a) and the considerations that apply under subsection (4) are available for inspection by the public.

- (6) A fee charged under subsection (1) must be paid to the council that has conducted the assessment or inspection.
- (7) A failure to pay a fee charged under subsection (1) is a ground for the refusal of the registration, renewal of registration or transfer of registration of the food premises.

S. 19V
substituted
by
No. 42/2009
s. 13.

19V Exemptions concerning food safety

- (1) The Secretary may exempt a proprietor of a food premises, or the proprietors of a class of food premises, from—
 - (a) the need to have a food safety program, or a food safety program that fully complies with this Act; or
 - (b) the need to comply with any requirement in a food safety program;
 - (c) the need to have a food safety supervisor;
 - (d) the need to be assessed or audited in accordance with this Act;
 - (e) the need to comply with any other requirements imposed on proprietors by this Part or with any applicable provisions of the Food Safety Standards.
- (2) In granting the exemption, the Secretary—
 - (a) must issue the exemption in writing and, in the case of an exemption applying in relation to a class of food premises, by notice published in the Government Gazette; and
 - (b) must specify the period for which it is to apply; and
 - (c) may impose any condition that the Secretary considers to be appropriate.

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- (3) The Secretary may vary or revoke an exemption at any time in the same manner in which the exemption was granted.
 - (4) A failure to comply with a condition imposed under subsection (2)(c) is a ground for—
 - (a) the refusal of the registration, renewal of registration or transfer of registration of the premises;
 - (b) the revocation or suspension of registration of the premises.

19W Directions concerning food safety

S. 19W
substituted
by
No. 42/2009
s. 13.

- (1) The Secretary or the registration authority may direct the proprietor of a food premises to comply with any requirement under this Part relating to the premises.
- (2) Without limiting subsection (1), a direction may be given—
 - (a) to comply with any record keeping requirements applying to the premises under section 19CB;
 - (b) to comply with any specified requirement in the food safety program for the premises;
 - (c) to comply with the staff training requirements of a QA food safety program;
 - (d) to have the premises audited in accordance with this Act.
- (3) The Secretary or the registration authority may direct the proprietor of a food premises—
 - (a) to have staff at the premises undertake training or instruction within a specified time to ensure that the requirements of this Act applying to the premises are met;

s. 19W

- (b) to have details of any staff training incorporated into the minimum records required to be kept or food safety program of the premises.
 - (4) A direction given under this section must be in writing and must allow the proprietor at least 28 days to comply with the direction.
 - (5) A failure to comply with the direction within the time allowed is a ground for—
 - (a) the refusal of the registration, renewal of registration or transfer of registration of the premises;
 - (b) the revocation or suspension of registration of the premises.
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PART IV—AUTHORIZED OFFICERS

20 Authorized officers

- (1) The Secretary may authorise in writing a person employed under Part 3 of the **Public Administration Act 2004** or who is an officer or employee of a public statutory body to be an authorized officer for the purposes of this Act.
- (1A) The Secretary must not give an authorisation unless the Secretary is satisfied that the person is suitably qualified or trained to be an authorized officer for the purposes of this Act.
- (1B) Subject to this section, a council may, under section 224(1) of the **Local Government Act 1989**, appoint a person to be an authorized officer for the purposes of this Act.
- (1C) A council must not appoint a person to be an authorized officer for the purposes of this Act unless the council is satisfied that the person is suitably qualified or trained to be an authorized officer for the purposes of this Act.

S. 20(1) amended by Nos 10262 s. 4, 13/1994 s. 7(1), 46/1998 s. 7(Sch. 1), substituted by Nos 98/1997 s. 6(1), 46/2008 s. 253(1).

S. 20(1A) inserted by No. 46/2008 s. 253(1).

S. 20(1B) inserted by No. 46/2008 s. 253(1).

S. 20(1C) inserted by No. 46/2008 s. 253(1).

s. 20

S. 20(2)
amended by
Nos 95/1986
s. 7(1),
12/1989
s. 4(1)(Sch. 2
item 47.3) (as
amended by
No. 13/1990
s. 38(1)(o)),
repealed by
No. 125/1993
s. 20(5)(b),
new s. 20(2)
inserted by
No. 98/1997
s. 6(1),
amended by
No. 46/2008
s. 253(2).

S. 20(2)(c)
amended by
No. 46/2008
s. 253(2).

S. 20(3)
amended by
Nos 10262
s. 4,
98/1997
s. 16(a),
substituted by
No. 46/2008
s. 253(3).

S. 20(3A)
inserted by
No. 98/1997
s. 6(2),
substituted by
No. 46/2008
s. 253(3).

S. 20(4)
substituted by
No. 46/2008
s. 253(3).

- (2) In granting such an authority, the Secretary or council may—
- (a) limit the authority—
 - (i) to specified premises or vehicles or specified classes of premises or vehicles;
 - (ii) to a specified period of time;
 - (iii) to a particular investigation or for a particular purpose;
 - (b) specify that the authority is only to apply to particular powers, authorities, functions or duties of an authorised officer;
 - (c) impose conditions on the authority (including a requirement to comply with any directions of the Secretary or council).
- (3) The Secretary must issue an identity card to each authorized officer authorised under subsection (1).
- (3A) An identity card issued to an authorized officer under this section must—
- (a) contain a photograph of the authorized officer; and
 - (b) contain the signature of the authorized officer; and
 - (c) be signed by the Secretary.
- (4) An authorized officer must produce his or her identity card for inspection—
- (a) before exercising a power under this Act; and

(b) at any time during the exercise of a power under this Act, if asked to do so.

(5) Unless acting in accordance with a delegation from the Secretary under section 19 of the **Public Health and Wellbeing Act 2008**, an authorized officer who is an environmental health officer shall not exercise the powers and authorities or discharge the functions and duties conferred or imposed upon him by or under this Act in or with respect to any food premises being operated by or on behalf of the Crown or on land that is not part of a municipal district.

S. 20(5) amended by Nos 95/1986 s. 7(1), 12/1989 s. 4(1)(Sch. 2 item 47.4) (as amended by No. 13/1990 s. 38(1)(o)), 125/1993 s. 20(5)(c), 13/1994 s. 7(2)(a)(b), 20/1995 s. 9(1), 98/1997 s. 16(a), 14/2001 s. 20(1), 46/2008 s. 253(4).

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S. 20(6) amended by Nos 10262 s. 4, 95/1986 s. 7(2), 12/1989 s. 4(1)(Sch. 2 item 47.5) (as amended by No. 13/1990 s. 38(1)(o)(q)), 125/1993 s. 20(5)(d), repealed by No. 13/1994 s. 7(3).²

21 Powers of authorized officers

(1) In the execution of this Act an authorized officer with such assistants as he thinks necessary may—

(a) at any reasonable time enter any premises or other place in or at which he believes on reasonable grounds that any article is sold or handled for sale and therein may—

S. 21(1)(a) amended by No. 98/1997 s. 18(1)(e).

S. 21(1)(a)(ii)
amended by
No. 98/1997
s. 7.

- (i) make such investigation and enquiry as are necessary to ascertain whether the provisions of this Act are being complied with;
- (ii) inspect the premises or other place (as the case may be) and examine any fittings, fixtures, documents or articles contained therein including anything that he believes on reasonable grounds to be an article;
- (iii) open and examine any package that he believes on reasonable grounds contains an article;
- (iv) subject to this Act, take samples of any article;
- (v) seize any article by means of or in relation to which he believes on reasonable grounds that any provision of this Act has been contravened or not complied with and detain or remove to some suitable place any article so seized;
- (vi) mark, fasten, secure or seal any article or, where it is reasonably necessary to do so, mark, fasten, secure or seal any door, gate or opening that he believes on reasonable grounds affords access to an article;
- (vii) seize or take samples of any thing or matter (apart from any article of which a sample may be taken pursuant to subparagraph (iv) or which may be seized pursuant to subparagraph (v)) that he believes on reasonable grounds may be used as evidence in a proceeding under this Act and detain or

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- remove to some suitable place any samples so taken or thing or matter so seized; and
- (viii) take such photographs or audio or visual recordings as he considers necessary;
- (b) stop, detain and search any vehicle used or that he believes on reasonable grounds is being or is likely to be used for the conveyance of any article or in or on which he believes on reasonable grounds any article is sold or handled for sale and exercise in relation to that vehicle any of the powers or authorities conferred upon him by paragraph (a) in relation to any premises or other place;
- (c) require a person found by him committing an offence against this Act or who he believes on reasonable grounds has committed an offence against this Act or whose name and address are in his opinion reasonably required to state his full name and the address of his usual place of residence and, if he suspects on reasonable grounds that a name or address so stated is false, may require him to produce evidence of the correctness thereof;
- (d) in a case where he is obstructed or believes on reasonable grounds that he may be obstructed in the exercise of the powers or authorities or the discharge of the functions or duties conferred or imposed upon him by or under this Act, call to his aid a member of the police force, whereupon it shall be the duty of a member of the police force so called to assist him as required and a member so assisting shall have the same

S. 21(1)(b)
amended by
No. 98/1997
s. 18(1)(e).

powers and authorities as are conferred upon an authorized officer by this Act; and

(e) exercise such other powers or authorities and discharge such other functions or duties as are prescribed.

S. 21(2)
amended by
Nos 10262
s. 4,
98/1997
ss 16(a),
18(1)(c)(e).

(2) Where the Secretary certifies that the sale or the handling for sale of any food having any particular physical characteristics is likely to involve a contravention of or a failure to comply with this Act, the finding of any food having those physical characteristics and appearing to have been sold or handled for sale shall, for the purposes of subsection (1), constitute reasonable grounds for believing that there has been a contravention of or a failure to comply with this Act with respect to that food.

S. 21(3)
amended by
Nos 10262
s. 4,
98/1997
s. 16(a)(b).

(3) If in the opinion of the Secretary there are reasonable grounds for suspecting that any person is (for the purposes of the sale or the preparing for sale of food) in possession of any article by means of which or in relation to which any provision of this Act has been contravened or not complied with, the Secretary may require such person to produce for the Secretary's inspection or to produce to an authorized officer any relevant books and the Secretary or the authorized officer may inspect, examine and make copies of or extracts from any book so produced or remove it for the purpose of making a copy thereof or extracts therefrom.

22 Procuring of samples of food

S. 22(1)
amended by
No. 95/1986
s. 8.

(1) An authorized officer may, on payment or tender to the person in whose possession the food is or to his servant or agent of the current market value thereof or of the rate prescribed, demand and procure such samples of the food as are required for the purposes of this Act.

- (2) Where any food is kept for retail sale in an unopened package, a person shall not be required by an authorized officer to sell less than the whole of that package.
- (3) If a rate has been prescribed for the payment for a sample it shall not be necessary for an authorized officer to tender any higher price for that sample.
- (4) The procuring of a sample pursuant to this section and the payment or tender of the current market value thereof or of the rate prescribed (as the case requires) shall for the purposes of this Act be deemed to be a sale by the person from whom the sample was obtained to the authorized officer of the food contained in the sample.
- (5) In the case of a vending machine, it is sufficient compliance with subsection (1) if the authorized officer obtains the sample by making proper payment for it.

S. 22(5)
inserted by
No. 14/2001
s. 20(2).

23 Procedures on taking samples

- (1) Where an authorized officer obtains a sample of any food with the intention that it be submitted for analysis, he shall, before or as soon as practicable after obtaining the sample, inform the person from whom the sample was obtained or the person having charge of that food of his intention to have the sample analysed.
- (2) If a prescribed food standard does not otherwise prescribe in relation to the class or description of food concerned or the analysis proposed to be carried out and an authorized officer obtains a sample of any food with the intention that the sample be submitted for analysis, he shall—
 - (a) subject to subsection (3), divide the sample into three separate parts and mark and seal or fasten each part in such manner as its nature will permit;

S. 23(1)
amended by
No. 95/1986
s. 9(1).

S. 23(2)
amended by
No. 42/1993
s. 64(c).

S. 23(2)(b)
amended by
No. 95/1986
s. 9(2).

- (b) leave one part with the person from whom the sample was obtained or a person appearing to be the servant or agent of that 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 into three separate parts in accordance with paragraph (a) of subsection (2) would in the opinion of the authorized officer—
- (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis;
 - (b) furnish parts insufficient for accurate analysis; or
 - (c) render the sample in any other way unsuitable for analysis including a method of analysis prescribed in relation to the food from which the sample was taken—
- the authorized officer shall deal with the sample in such manner as is appropriate in the circumstances having regard to this Act.
- (4) Where a sample of any food is obtained by an authorized officer in the form of separate or severable objects it shall not be necessary for him in dividing that sample into parts in accordance with this section to divide any one of those objects and it shall be sufficient compliance with this section if he—
- (a) obtains a number of those objects;
 - (b) divides the number so obtained into the requisite number of parts so that each part consists of one or more than one of such separate or severable objects; and

- (c) deals with those parts in accordance with a prescribed food standard or subsection (2) or (3), as the case requires.
- (5) An authorized officer shall be deemed to have complied with the provisions of this section notwithstanding the failure by a person specified in subsection (2)(b) to accept any part or parts required to be delivered to him in accordance with this section.

S. 23(4)(c)
amended by
No. 42/1993
s. 64(d).

S. 23(5)
amended by
No. 95/1986
s. 9(3).

24 Duties of officer upon seizure and detention of article

An authorized officer, upon the seizure and detention by him of an article under this Act, shall forthwith—

- (a) give notice in the prescribed form of the seizure and detention to the person apparently in charge of the article;
- (b) if there is no person apparently in charge of the article and the name and address in Victoria of a person appearing to the authorized officer to be the consignor or owner of the article is set out on or attached to the article or a package containing the article, or the name and address in Victoria of the consignor or owner of the article is otherwise known to the authorized officer, give notice in the prescribed form of the seizure and detention to that person; or
- (c) in any other case, give notice in the prescribed form of the seizure and detention to the importer or consignee of the article or his agent if the authorized officer knows the name and address in Victoria of such importer, consignee or agent.

25 Keeping and storage of certain articles

An article that has been seized and detained or otherwise obtained under this Act by an authorized officer may, at the direction of the authorized officer—

- (a) be kept and stored in, at or on the premises or other place or vehicle where it was seized and detained or otherwise obtained; or
- (b) be removed to any other suitable place and there kept and stored.

26 Remedy in respect of articles seized

S. 26(1)
amended by
No. 57/1989
s. 3(Sch.
item 79.3).

(1) Where an article is seized and detained by an authorized officer under section 21, any person claiming the article may within 7 days after the seizure make application in the prescribed form to the Magistrates' Court for an order directing the authorized officer to release from detention the article seized by him.

S. 26(2)
amended by
No. 57/1989
s. 3(Sch.
item 79.4).

(2) Where an application is made to the Magistrates' Court under subsection (1), the applicant shall forthwith give to the authorized officer responsible for the seizure and detention of the article in question a copy of the application.

(3) Upon hearing an application under subsection (1) the Magistrates' Court—

- (a) if it is satisfied that—
 - (i) the authorized officer responsible for the seizure and detention of the article did not have reasonable grounds for believing that the article was one by means of or in relation to which any provision of this Act had been contravened or not complied with; or

- (ii) the article was not one by means of or in relation to which any provision of this Act had been contravened or not complied with—

shall make an order disallowing the seizure and directing the authorized officer to release the article from detention; or

- (b) if it is not so satisfied, shall refuse the application and make an order confirming the seizure and detention of the article—

and may make such order as it thinks fit in respect of the costs and expenses of and incidental to the removal and storage of the article seized.

- (4) Where—

- (a) an application is made under subsection (1) and the application is refused, then upon that refusal; or
- (b) an application is not made under subsection (1), then upon the expiration of the period of 7 days after the seizure—

S. 26(4)
amended by
Nos 10262
s. 4, 12/1989
s. 4(1)(Sch. 2
item 47.6) (as
amended by
No. 13/1990
s. 38(1)(o)),
125/1993
s. 20(5)(e)
98/1997
s. 16(a).

the article seized shall become the property of the Secretary or where the authorized officer who seized the article is an environmental health officer of a council, the property of that council, and shall be destroyed or otherwise disposed of as the Secretary or the council (as the case requires) directs.

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S. 26(5)
amended by
No. 16/1986
s. 30,
repealed by
No. 57/1989
s. 3(Sch.
item 79.5).

27 Destruction or other disposal of seized food

Notwithstanding anything in sections 25 and 26, where an authorized officer has seized any food under this Act and—

S. 27(a)
amended by
No. 95/1986
s. 10.

(a) the owner of the food or the person in whose possession the food was at the time of seizure consents to the destruction or other disposal thereof; or

(b) the food is in the opinion of the authorized officer decayed, deteriorated or putrefied—

the authorized officer—

(c) may destroy or otherwise dispose of the food; or

(d) if the owner of the food or the person in whose possession the food was at the time of seizure so requests, may permit the owner or, as the case may be, that person to destroy or otherwise dispose of the food subject to such reasonable conditions as the authorized officer stipulates.

28 Liability for costs and expenses of storage or destruction or other disposal of seized article

S. 28
amended by
No. 95/1986
s. 11.

Where an article is seized and detained under this Act and—

(a) an application is not made for its release from detention under section 26(1); or

(b) the article is destroyed or otherwise disposed of pursuant to section 26(4) or section 27—

the person in whose possession the article was when seized, shall be liable to pay the costs and expenses incurred in or in connexion with the storage, destruction or other disposal of that article.

29 Offences with respect to authorized officers and articles

A person who—

- (a) except with the authority of an authorized officer or pursuant to an order of a court—
 - (i) removes, alters or interferes in any way with—
 - (A) an article seized and detained under this Act; or
 - (B) any article or other thing or matter or a sample of any article or other thing or matter obtained by an authorized officer under section 21; or
 - (ii) erases, alters, opens, breaks or removes a mark, seal or fastening placed by an authorized officer in the exercise of his powers or authorities or the discharge of his functions or duties under this Act—
 - (A) on an article other than part of a sample or any sample, object or package left by the authorized officer with a person from whom a sample was obtained; or
 - (B) on any door, gate or opening affording access to an article;
 - (b) refuses to sell to an authorized officer any food or to allow him to take a sample of any food or other article in such quantity as he reasonably requires;
 - (c) refuses or neglects, when required by or under this Act to do so, to render assistance or to furnish information to an authorized officer or other person;
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s. 29

S. 29(d)
amended by
Nos 10262 s. 4
98/1997
s. 16(a)(b).

- (d) fails, when required by the Secretary to do so, to produce for the Secretary's inspection or to produce to an authorized officer any book required or authorized by or under this Act to be produced, or fails to allow an authorized officer to examine or to make a copy of or an extract from any book so produced or to remove it for the purpose of making a copy thereof or extracts therefrom;
- (e) contravenes or fails to comply with any lawful direction or order of an authorized officer;
- (f) makes orally or in writing a statement knowing it to be false or misleading to an authorized officer exercising a power or authority or discharging a function or duty under this Act;
- (g) assaults, obstructs or attempts to obstruct, threatens, abuses, insults, intimidates or attempts to intimidate any authorized officer or other person in the exercise of his powers or authorities or the discharge of his functions or duties under this Act; or
- (h) when required by an authorized officer to do so, fails to state his full name and the address of his usual place of residence or states a false name or address—

is guilty of an offence.

Penalty: For a first offence 25 penalty units, and for a second or subsequent offence 50 penalty units.

PART V—ANALYSTS

30 Analysts

- (1) The Secretary may authorize in writing persons, whom the Secretary considers to be appropriately qualified, to carry out analyses for the purposes of this Act. **S. 30(1) amended by Nos 10262 s. 4, 98/1997 s. 16(a).**
- (2) An authority given under subsection (1)—
- (a) may be subject to any conditions specified in the authority including—
- (i) a condition limiting the authority to a particular type of analysis;
- (ii) a condition limiting the authority to analyses carried out in a particular type of laboratory; and
- (b) may at any time be varied or revoked.
- (3) A person who is directly or indirectly engaged in any trade connected with the manufacture or sale of food shall not be authorized to carry out analyses for the purposes of this Act where his engagement in that trade would conflict with his duty as a person authorized to carry out analyses for the purposes of this Act.
- (4) A person authorized to carry out analyses for the purposes of this Act who becomes directly or indirectly engaged in any trade connected with the manufacture or sale of food shall forthwith notify the Secretary in writing of that engagement and, upon receipt of that notification, the Secretary may revoke the authority given to that person under subsection (1). **S. 30(4) amended by Nos 10262 s. 4, 98/1997 s. 16(a).**

s. 30

S. 30(5)
amended by
Nos 10262
s. 4, 98/1997
s. 16(a).

(5) The Secretary shall, at the request of a person authorized to carry out analyses for the purposes of this Act, revoke the authority given to that person under subsection (1).

S. 30(6)
amended by
Nos 10262
s. 4, 95/1986
s. 12(1),
98/1997
s. 16(a).

(6) The Secretary shall maintain a list of persons authorized for the time being to carry out analyses for the purposes of this Act and shall make sure that a copy of the list is open for inspection by any person, and that copies of the list are available, at the principal office of the Department at all reasonable times.

S. 30(6A)
inserted by
No. 95/1986
s. 12(2),
amended by
No. 98/1997
s. 16(a).

(6A) The Secretary may charge any fee prescribed by the Governor in Council for providing a copy of the list or part of it to a person for that person's use.

(7) A person shall not be prohibited from being authorized or continuing to be authorized as an analyst for the purposes of this Act by reason only that he is employed by or on behalf of a government department to carry out analyses and that government department is engaged in any trade connected with the manufacture or sale of food.

S. 30(8)
inserted by
No. 42/2009
s. 14(2).

(8) A person who has been approved for the purposes of the **Safe Drinking Water Act 2003** to conduct analyses of samples of drinking water is taken to be authorised under this section to carry out analyses of water for the purposes of this Act subject to any conditions of that approval.

S. 30(9)
inserted by
No. 42/2009
s. 14(2).

(9) However, a person referred to in subsection (8) is not required to be included in the list of persons required to be maintained by the Secretary under section 30(6).

31 Duties of analysts

Every analyst shall—

- (a) make an analysis of any article submitted to him pursuant to this Act for analysis or supervise the analysis of the article by any other person;

* * * * *

S. 31(b)
repealed by
No. 11/1995
s. 3(2).³

- (c) supply to the person submitting the article a certificate in the prescribed form setting out the result of the analysis; and

- (d) where any apparatus to be used or method to be observed has been prescribed—use that apparatus and observe that method accordingly and declare in his certificate that he has done so.

32 Councils to submit samples for analysis

- (1) Subject to this section, every council shall submit for analysis during each year not less than three samples of food for each thousand persons of the population of the municipal district so that one quarter of those samples shall be submitted for analysis in every quarter of each year.

S. 32(1)
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 47.7),
13/1994
s. 8(1).

- (2) Every analyst making an analysis for a council under this section shall report to the council forthwith after the end of each quarter the number of analyses so made by him during that quarter and specify the result of each analysis.

- (3) Every report received by a council from an analyst under this section shall be presented at the next ordinary meeting of the council held after the receipt of that report.

s. 33

S. 32(4)
inserted by
No. 13/1994
s. 8(2),
amended by
No. 98/1997
s. 16(a).

- (4) The Secretary may in writing exempt a Council from compliance with subsection (1) on any terms or conditions that the Secretary determines including, but not limited to, a requirement that a Council must arrange for specified surveys to be conducted of the standard of food premises within its municipal district and of the food prepared at them.

S. 33
amended by
No. 20/1995
s. 10.

33 Copy of certificate of analysis

A person from whom any article has been obtained for the purpose of its being submitted for analysis may, free of charge, obtain a copy of the certificate of the result of the analysis from the person who submitted the article for analysis.

34 Prohibition on use of analyst's certificate for certain purposes

A person who for the purposes of any trade or advertisement uses in whole or in part or authorizes or permits the use in whole or in part of any copy of an analyst's certificate obtained under this Act or the result of an analysis made for the purposes of this Act is guilty of an offence.

Penalty: For a first offence 20 penalty units, and for a second or subsequent offence 40 penalty units.

PART VI—REGISTRATION OF FOOD PREMISES

Pt 6 (Heading)
amended by
Nos 20/1995
s. 11, 14/2001
s. 21.

Division 1—General

Pt 6 Div. 1
(Heading)
inserted by
No. 42/2009
s. 15.

35 Registration authority

The registration authority for a food premises is—

- (a) the council of the municipal district in which the premises is located; or
- (b) if the premises is on land that is not part of a municipal district, the Secretary.

S. 35
amended by
No. 98/1997
s. 18(1)(f)(2)
(ILA s. 39B(1)),
substituted by
Nos 14/2001
s. 22, 42/2009
s. 16.

35A Requirement to be registered or to notify registration authority

- (1) The proprietor of a food business must not allow the business to operate from any food premises—
 - (a) that is not registered with the registration authority in accordance with Division 3; or
 - (b) while the registration of the premises is suspended.

S. 35A
inserted by
No. 95/1986
s. 13,
amended by
No. 20/1995
s. 12,
repealed by
No. 14/2001
s. 22, new
s. 35A
inserted by
No. 42/2009
s. 16.

Penalty: 120 penalty units.

- (2) The proprietor of a food premises that is exempt under section 38(1) or (2) from the requirement to be registered must not allow the business to operate from the premises unless the proprietor has given notification to the registration authority of its operation in accordance with Division 2.

Penalty: 120 penalty units.

- (3) If—
- (a) a temporary food premises or mobile food premises is registered with a registration authority in accordance with Division 3; and
 - (b) that registration is recognised under section 35B by another registration authority—

the premises is taken to be registered with the other registration authority subject to any conditions that have been imposed on the original registration.

S. 35B
inserted by
No. 42/2009
s. 16.

35B Recognition of registration

- (1) A council may in writing recognise the registration by another registration authority of a specified temporary food premises or mobile food premises.
- (2) A council may recognise the registration by another registration authority or all other registration authorities of—
 - (a) a specified class of temporary or mobile food premises; or
 - (b) all temporary or mobile food premises.
- (3) A recognition under subsection (2) may only be made by a resolution of the council.
- (4) The Secretary may in writing recognise—
 - (a) the registration by a council of a specified temporary food premises or mobile food premises;
 - (b) the registration by a council or all councils of—
 - (i) a specified class of temporary or mobile food premises; or
 - (ii) all temporary or mobile food premises.

36 Information required to be given to registration authority

- (1) Subject to subsection (2), the Secretary may, by notice in the Government Gazette, declare the information and documents that are required to be given to the registration authority by the proprietor of a food business—
 - (a) when giving notification of the operation of a food premises under this Part; and
 - (b) when applying for registration or transfer or renewal of registration of a food premises under this Part.
- (2) The Secretary may only declare information or documents that are relevant to the registration authority in—
 - (a) determining to which class declared under section 19C the premises belongs; or
 - (b) deciding whether the premises must be registered or notified; or
 - (c) deciding whether or not to accept the notification or to register or transfer or renew the registration of the food premises, as the case may be.

S. 36
amended by
Nos 10262
s. 4, 13/1994
s. 9(1)(2),
20/1995
ss 9(2), 13,
98/1997 ss 8,
16(a),
substituted by
Nos 14/2001
s. 22, 42/2009
s. 16.

37 Notification requirement of Food Standards Code

The proprietor of a food business is taken to have complied with the requirements of the Food Standards Code relating to notification for a food premises if the proprietor has—

- (a) applied for the registration of the food premises or notified the registration authority of an intention to operate the food premises; and

S. 37
amended by
Nos 10262
s. 4, 13/1994
s. 10(b)(c),
substituted by
Nos 14/2001
s. 22, 42/2009
s. 16.

- (b) given the registration authority the information and documents required under section 36.

38 Exemption from registration

S. 38(1)
amended by
No. 10262 s. 4,
repealed by
No. 13/1994
s. 10(d), new
s. 38(1)
inserted by
No. 42/2009
s. 17(1).

- (1) The Secretary may by notice published in the Government Gazette exempt a food premises or a class of food premises from the requirement to be registered under this Part.

S. 38(2)
repealed by
No. 13/1994
s. 10(d), new
s. 38(2)
inserted by
No. 42/2009
s. 17(1).

- (2) A council may by resolution exempt a food premises or a class of food premises, other than a class declared under section 19C, from the requirement to be registered under this Part.

S. 38(3)
amended by
Nos 10262 s. 4
98/1997
s. 16(a),
14/2001
s. 26(a),
substituted by
No. 42/2009
s. 17(2).

- (3) Before a council exempts a class of food premises under subsection (2), the council must consult with the Secretary about the proposed exemption.

S. 38(4)
substituted by
Nos 10262
s. 4, 42/2009
s. 17(2).

- (4) An exemption granted under subsection (1) or (2) may be—
- (a) subject to any conditions; and
 - (b) amended, varied or revoked in the same manner in which it was granted.

S. 38(5)
inserted by
No. 40/1993
s. 82,
substituted by
No. 98/1997
s. 32,
amended by
No. 46/2008
s. 254.

- (5) A premises used solely as a meat processing facility within the meaning of the **Meat Industry Act 1993** in respect of which a licence is in force under that Act is exempt from the requirement to be registered under this Act while that licence is in force.

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- (6) A vehicle used solely as a meat transport vehicle licensed under the regulations made under the **Meat Industry Act 1993** is exempt from the requirement to be registered under this Act while the licence is in force. **S. 38(6) inserted by No. 40/1993 s. 82.**
- (7) A food premises that is used by a business in respect of which a licence has been issued under Part 3 of the **Dairy Act 2000** is exempt from the requirement to be registered under this Act while that licence is in force. **S. 38(7) inserted by No. 14/2001 s. 23.**
- (8) A food premises that is used by a business in respect of which a seafood safety licence has been issued under Part 3 of the **Seafood Safety Act 2003** is exempt from the requirement to be registered under this Act while that licence is in force. **S. 38(8) inserted by No. 24/2003 s. 92.**

Division 2—Notification of premises exempt from registration

Pt 6 Div. 2 (Heading and ss 38AA, 38AB) inserted by No. 42/2009 s. 18.

38AA Procedure for notification

S. 38AA inserted by No. 42/2009 s. 18.

- (1) This section applies if the proprietor of a food business—
- (a) is operating, or intends to operate, from a food premises; and
 - (b) is of the opinion that the premises is exempt under section 38(1) or (2) from the requirement to be registered.
- (2) The proprietor must notify the relevant registration authority of the operation or intended operation of the food premises.

s. 38AB

- (3) The notification must include any information and be accompanied by any documents required under section 36.
- (4) On receipt of the notification, the registration authority must determine whether the premises are exempt from the requirement to be registered.
- (5) If the registration authority is not satisfied that the premises are exempt, the registration authority may—
 - (a) request further information from the proprietor; or
 - (b) advise the proprietor that the premises must be registered.

S. 38AB
inserted by
No. 42/2009
s. 18.

38AB Notification fee

- (1) The Secretary may, by notice published in the Government Gazette, declare the maximum fee that may be charged by a registration authority for the receipt of a notification under section 38AA.
- (2) The Secretary may under subsection (1) declare a maximum fee that applies in relation to—
 - (a) all notifications; or
 - (b) notifications made in a specified manner.
- (3) The Secretary must not make a declaration under subsection (1) unless—
 - (a) the Secretary has consulted with a body representing local government; and
 - (b) a draft of the declaration has been published in the Government Gazette and a newspaper circulating in Victoria for general comment.
- (4) A registration authority may fix a fee for the receipt of a notification under section 38AA in accordance with a declaration under subsection (1) but not otherwise.

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- (5) A person who is required to register a food premises is not required to pay a notification fee in relation to the premises.

Division 3—Registration of food premises

Pt 6 Div. 3
(Heading)
inserted by
No. 42/2009
s. 19.

38A Information required to accompany application for registration or transfer of registration

S. 38A
inserted by
No. 98/1997
s. 9,
substituted by
Nos 14/2001
s. 24, 42/2009
s. 20.

- (1) This section applies to an application for the registration or transfer of registration of a food premises under this Act.
- (2) In addition to the information required under this section, the application must contain the information and be accompanied by the documents required under section 36.
- (3) If the application is for a food premises that is required to have a food safety program, the proprietor must state in the application—
- (a) whether the food safety program intended to be used for the premises is—
 - (i) a standard food safety program; or
 - (ii) a non-standard food safety program;
and
 - (b) if a non-standard food safety program is intended to be used, whether it is a QA food safety program.
- (4) If a standard food safety program is intended to be used for the premises, the proprietor must—
- (a) state in the application which registered food safety program template has been used to create the food safety program; and

(b) if requested by the registration authority, provide to the registration authority the completed template.

(5) If a QA food safety program is intended to be used for the premises, the proprietor must provide to the registration authority a certificate from a food safety auditor issued under section 19DD.

Note

If the certificate is not available at the time the application is made the registration authority may register the business on a conditional basis under section 38E.

(6) If a non-standard food safety program other than a QA food safety program is intended to be used for the premises, the proprietor must either—

(a) include with the application a copy of the food safety program for the premises for assessment by the registration authority prior to registration; or

(b) unless subsection (7) applies, provide to the registration authority a certificate from a food safety auditor stating that the food safety program for the premises meets the requirements of section 19D.

Note

If the certificate is not available at the time the application is made the registration authority may register the business on a conditional basis under section 38E.

(7) A copy of the food safety program must be included with the application for a food premises to which subsection (6) applies, if the premises is of a class of food premises required by a declaration under section 19C to have a food safety assessment conducted by the registration authority under Part IIIB.

38B Requirements for registration or transferral of registration

S. 38B
inserted by
No. 14/2001
s. 24,
substituted by
No. 42/2009
s. 20.

- (1) Before registering or transferring the registration of a food premises under this Act, the registration authority must—
 - (a) assess the application and determine to which class of food premises under section 19C the food premises belongs; and
 - (b) ensure the proprietor has complied with any provisions of section 38A applicable to that class of food premises; and
 - (c) inspect the premises.
- (2) In addition, the registration authority must be satisfied—
 - (a) if the food safety program intended to be used for the premises is—
 - (i) a standard food safety program, that the correct template has been used to create the program; or
 - (ii) a QA food safety program, that a certificate has been issued under section 19DD; or
 - (iii) any other food safety program, that the food safety program—
 - (A) has been assessed as adequate by the registration authority; or
 - (B) has been certified by a food safety auditor as meeting the requirements of section 19D for the premises; and
 - (b) that all the relevant requirements of this Act with respect to the premises have been complied with.

s. 38C

S. 38C
inserted by
No. 42/2009
s. 20.

38C Information required to accompany application for renewal of registration

- (1) This section applies to an application for the renewal of registration of a food premises under this Act.
- (2) In addition to the information required under this section, the application must contain the information and be accompanied by the documents required under section 36.
- (3) If a standard food safety program is used for the premises, the proprietor must state in the application which registered template has been used to create the food safety program.

S. 38D
inserted by
No. 42/2009
s. 20.

38D Requirements for renewal of registration

- (1) Before renewing the registration of a food premises under this Act, the registration authority must—
 - (a) ensure the proprietor has complied with any provisions of section 38C applicable to that class of food premises; and
 - (b) if required under section 39, inspect the premises in accordance with that section.
- (2) In addition, the registration authority must be satisfied—
 - (a) if the food safety program used for the premises is—
 - (i) a standard food safety program, that the correct template has been used to create the program; or
 - (ii) a QA food safety program, that a certificate issued under section 19DD is in force; or

- (iii) any other food safety program, that, as a result of the most recent audit, the food safety program has been certified by a food safety auditor as meeting the requirements of section 19D for the premises; and
 - (b) that any fee for the inspection or assessment of the premises that is due to the registration authority has been paid; and
 - (c) that all the relevant requirements of this Act with respect to the premises have been complied with; and
 - (d) that no other ground under Part IIIB for the refusal of the renewal of the registration applies to the food premises.
- (3) For the purposes of subsection (2), the registration authority may request copies of any audit reports for the premises.

38E Conditional registration

- (1) This section applies if—
- (a) in the case of an application for the registration or transfer of registration of a food premises—
 - (i) the proprietor is required to provide to the registration authority a certificate stating that the food safety program for the premises meets the requirements of section 19D; and
 - (ii) it is not possible to produce the certificate until after the business has commenced operating from the premises; or

S. 38E
inserted by
No. 42/2009
s. 20.

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- (b) in the case of an application for the renewal of registration of a food premises, the registration authority is satisfied that for reasons beyond the control of the proprietor of the premises, any certificate required to be given before the expiry of the current registration cannot be obtained before then; or
 - (c) in the case of an application for the renewal of the registration a food premises which under its current registration is not required to have a food safety program, the registration authority has assessed that, because of a change in the food handling activities at the premises, it is now required to have a food safety program.
- (2) If the application otherwise meets the requirements of section 38B or 38D, the registration authority may register the food premises on a conditional basis for a specified period not exceeding the prescribed time limit.
- (3) It is a condition of registration under subsection (2) that, within the specified period—
- (a) in the case of food premises to which subsection (1)(a) or (1)(b) applies, the required certificate is provided to the registration authority; or
 - (b) in the case of a food premises to which subsection (1)(c) applies—
 - (i) a food safety program for the premises has been adopted; and
 - (ii) the requirements under section 38B that would apply to the food safety program if the application were an application for the registration or the transfer of
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registration of food premises have been met.

- (4) If the conditions of registration under subsection (3) are met, the registration authority must register the food premises for the balance of the 12 month period commencing when the registration of the premises would otherwise have taken effect.
- (5) For the purposes of this section, *the prescribed time limit* is—
 - (a) a period of 3 months; or
 - (b) a longer period declared by the Secretary by notice in the Government Gazette.

38F Change in operation of registered food premises

S. 38F
inserted by
No. 42/2009
s. 20.

- (1) This section applies if—
 - (a) a food premises has been registered or the registration of the food premises has been renewed; and
 - (b) a change to the operation of the food premises occurs after the premises is registered or its registration is renewed.
- (2) If the proprietor of the food premises knows that, as result of the change, the premises falls within a higher risk classification, the proprietor must notify the registration authority of the change within 14 days of it occurring.

Penalty: 60 penalty units.

Note

Whether a food premises falls within a higher risk classification is determined in the context of any system used by the Secretary in declaring the classes of food premises under section 19C.

- (3) If the classification of the food premises has changed as a result, the registration authority—
 - (a) must note the change to the classification on the certificate of registration of the food premises; and
 - (b) may require the proprietor of the food premises to comply with any requirements of this Act that would apply if the proprietor were applying for registration of the food premises under the new classification.

39 Annual inspection of premises by registration authority

S. 39
amended by
Nos 10262
s. 4, 97/1987
s. 179(3)(a),
13/1994
s. 10(e)–(j),
substituted by
No. 98/1997
s. 10,
amended by
No. 14/2001
ss 25, 26(b),
substituted by
No. 42/2009
s. 20.

- (1) This section applies to a food premises that—
 - (a) is registered under this Act; and
 - (b) is not of a class which, under the classification under section 19C, is exempt from the requirement to be inspected annually.
- (2) The registration authority must carry out an inspection of the premises within 12 months before the registration of the food premises is renewed.
- (3) However, the inspection must be carried out within 3 months before the registration of the food premises is renewed if any of the following apply—
 - (a) the registration authority has reason to believe that the food business or the proprietor has failed to comply with any requirements of this Act, whether or not the failure has occurred in the municipal district of the registration authority or otherwise;
 - (b) the registration authority has received complaints about the operation of the premises within the previous 12 months;

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- (c) as a result of a change to the operation of the food premises since the last registration, the food premises falls within a higher risk classification;
 - (d) other circumstances exist as specified in guidelines issued by the Secretary by notice published in the Government Gazette in relation to inspections.

39A Registration etc. may be made despite minor defects

S. 39A
inserted by
No. 98/1997
s. 10.

- (1) Despite sections 38B and 38D, the registration authority may register, or renew or transfer the registration of, a food premises even though, in its opinion—
 - (a) one or more of the relevant requirements of this Act with respect to the premises has not been complied with; or
 - (b) one or more grounds for the refusal of registration, the renewal of registration or the transfer of registration, of the premises exists under Part IIIB.
- (2) The registration authority may only do this if it is satisfied—
 - (a) in the case of a failure to do something by a specified time that has passed, that the thing will be done within a new time specified by the registration authority; or
 - (b) in the case of a failure to do something that it is no longer possible to remedy, that it is not likely that a similar failure will occur again; or

S. 39A(1)
amended by
Nos 14/2001
s. 26(c)(i),
42/2009 s. 21.

S. 39A(1)(a)
amended by
No. 14/2001
s. 26(c)(i).

S. 39A(1)(b)
amended by
No. 14/2001
s. 26(c)(i).

s. 39B

- (c) in any other case—
- (i) that the failure to comply poses no immediate risk to the health of any person; and
 - (ii) that the failure to comply can, and will, be remedied within the time specified by the registration authority.
- (3) If the registration authority exercises the power conferred by subsection (1), it is a condition of the registration, renewal or transfer—
- (a) that any thing referred to in subsection (2)(a) be done; and
 - (b) that any failure referred to in subsection (2)(c) be remedied—
- within the time specified in writing by the registration authority.
- (4) The Secretary may direct a council to not exercise the power conferred on it by subsection (1) in relation to a food premises or to a class of food premises or to a particular requirement or type of requirement.
- (5) A direction must be made in writing.
- (6) A council must comply with a direction.

S. 39A(4)
amended by
No. 14/2001
s. 26(c)(ii).

S. 39B
inserted by
No. 98/1997
s. 10.

39B Offence to fail to comply with registration condition

S. 39B
amended by
No. 14/2001
s. 26(d)(i)(ii).

If the registration, renewal of registration or transfer of a food premises is the subject of a condition under section 39A(3), the proprietor of the premises must comply with the condition.

Penalty: 50 penalty units for a first offence and 100 penalty units for a second or subsequent offence.

39C Contravention of section 34(1) of the Meat Industry Act 1993

S. 39C
inserted by
No. 46/2008
s. 255.

The proprietor of a food premises must not contravene the requirements of section 34(1) of the **Meat Industry Act 1993** at, on or in respect of a food premises that is registered, or is required to be registered, under this Act.

Penalty: First offence 100 penalty units.

Second or subsequent offence
500 penalty units or imprisonment for
24 months or both.

40 Certificates of registration

S. 40
amended by
Nos 10262
s. 4, 95/1986
s. 14, 13/1994
s. 10(k)–(m),
20/1995 ss 14,
15(1),
substituted by
No. 98/1997
s. 10.

(1) On registering a food premises under this Act, the registration authority must give the person in whose name the premises is to be registered a certificate of registration in the form required by the regulations.

S. 40(1)
amended by
No. 14/2001
s. 26(d)(i)(ii).

(1A) A certificate of registration for a food premises issued under subsection (1) must specify the class of food premises declared under section 19C to which the premises belongs.

S. 40(1A)
inserted by
No. 42/2009
s. 22.

(2) If a food premises is required to be registered with the council by or under Part 6 of the **Public Health and Wellbeing Act 2008**, the council may, subject to the requirements of that Act applicable to registration being complied with, incorporate the certificate of registration under this section in one document with any certificate of registration to be issued under that Act.

S. 40(2)
amended by
No. 46/2008
s. 256.

s. 40A

S. 40A
inserted by
No. 98/1997
s. 10,
amended by
No. 14/2001
s. 26(d)(i)(ii).

40A Certificates must be shown on demand

A person in whose name a food premises is registered must produce the certificate of registration issued in respect of the premises for inspection, if asked to do so by an authorised officer.

Penalty: 10 penalty units.

S. 40B
inserted by
No. 98/1997
s. 10,
amended by
No. 14/2001
s. 26(e).

40B Minister may specify period of registration

- (1) The Minister may, by notice published in the Government Gazette, declare that the registration of a specified class of food premises is to remain in force for a specified period of more than 1 year.
- (2) The Minister may, by notice published in the Government Gazette, vary any such declaration.
- (3) In making a declaration, the Minister may also declare what transitional arrangements are to apply to enable the effective operation of the declaration.

S. 40C
inserted by
No. 98/1997
s. 10,
amended by
Nos 14/2001
s. 26(f)(i),
42/2009
s. 23(2) (ILA
s. 39B(1)).

40C Period for which registration lasts

- (1) The registration of a food premises continues in force—

S. 40C(a)
amended by
No. 14/2001
s. 26(f)(i)(ii).

- (a) if the premises is within a class specified in a notice under section 40B, for the period specified for premises of that class in the notice; or

S. 40C(ab)
inserted by
No. 42/2009
s. 23(1).

- (ab) if subsection (2) applies, for the period for which the registration is renewed or granted;
or

(b) in any other case, for 1 year from the date it was last granted or renewed—

unless it is revoked or suspended before that date.

- (2) The registration authority may, at the request of the proprietor, grant or renew the registration of a food premises for a period of less than 1 year if satisfied that the food premises is intended to operate on a short-term basis.

S. 40C(2)
inserted by
No. 42/2009
s. 23(2).

40D Revocation or suspension of registration

S. 40D
inserted by
No. 98/1997
s. 10.

- (1) The registration authority may suspend or revoke the registration of a food premises if—

S. 40D(1)
amended by
No. 14/2001
s. 26(g)(i).

(a) a person is convicted of a second or subsequent offence against this Act that was committed in, at, on or in respect of the premises; or

S. 40D(1)(a)
amended by
No. 14/2001
s. 26(g)(ii).

(b) a condition imposed in respect of the premises under section 19V(2)(c) or 39A is breached; or

S. 40D(1)(b)
amended by
No. 14/2001
s. 26(g)(ii).

(c) a ground for the revocation or suspension of the registration of the premises exists under Part IIIB and the matter giving rise to that ground has not been dealt with under section 39A; or

S. 40D(1)(c)
amended by
No. 14/2001
s. 26(g)(ii).

(d) the registration authority receives a notice under section 19N; or

S. 40D(1)(d)
amended by
No. 14/2001
s. 26(g)(ii),
substituted by
No. 42/2009
s. 24.

s. 40E

S. 40D(1)(e)
inserted by
No. 42/2009
s. 24.

- (e) a food safety auditor who is an officer or member of the staff of the registration authority has conducted a food safety assessment or a food safety audit and is of the opinion that—
- (i) the food safety requirements applying to the premises have not been complied with or the food safety program is inadequate or, in the case of a food premises using a standard food safety program, the program does not comply with section 19DC(2); and
 - (ii) the deficiency may lead to a serious risk of food being sold or prepared that is unsafe or unsuitable.
- (2) In suspending a registration, the registration authority must specify for how long the suspension is to last.

S. 40E
inserted by
No. 98/1997
s. 10,
amended by
No. 14/2001
s. 26(h).

40E Secretary may direct council to revoke or suspend a registration

- (1) The Secretary may direct a council to suspend or revoke the registration of a food premises if, in the opinion of the Secretary, any of the matters listed in section 40D(1) apply.
- (2) In directing a suspension, the Secretary must specify for how long the suspension is to last.
- (3) A direction must be in writing.
- (4) A council must comply with a direction.

* * * * *

S. 41
amended by
Nos 10262
s. 4, 13/1994
s. 10(n)–(s),
repealed by
No. 98/1997
s. 10.

41A Registration fees

(1) The fees for registration, renewal of registration and transfer of registration are—

- (a) if registration is made with a Council, as determined by resolution of the Council; or
- (b) in any other case, as prescribed.

(2) Fees determined by the Council under this section—

(a) may vary according to the size or nature of the food premises; and

S. 41A
inserted by
No. 95/1986
s. 15,
substituted by
No. 13/1994
s. 11.

(ab) may vary according to the class of food premises declared under section 19C to which the premises belongs; and

S. 41A(2)(a)
amended by
No. 14/2001
s. 26(h).

S. 41A(2)(ab)
inserted by
No. 42/2009
s. 25.

(ac) may incorporate in whole or part, the costs associated with the assessment and inspection of the premises; and

S. 41A(2)(ac)
inserted by
No. 42/2009
s. 25.

(b) must not exceed the amount (if any) for the time being fixed by the Governor in Council by Order published in the Government Gazette.

42 Appeal

(1) A person who is aggrieved by a decision of a registration authority refusing to grant an application for or for the renewal of the registration of any food premises under this Act or suspending or revoking any such registration may appeal to the Magistrates' Court within one month after receiving notification of the refusal, suspension or revocation.

S. 42(1)
amended by
Nos 10262
s. 4, 16/1986
s. 30, 57/1989
s. 3(Sch. item
79.6), 13/1994
s. 10(t),
98/1997
s. 17(d),
14/2001
s. 26(h).

s. 43

(2) Upon any appeal under subsection (1) the court shall—

S. 42(2)(a)
amended by
Nos 10262
s. 4,
98/1997
s. 17(d).

(a) reconsider the decision of the registration authority; and

S. 42(2)(b)
amended by
Nos 10262
s. 4,
98/1997
s. 17(d).

(b) hear any relevant evidence tendered whether by the person aggrieved or by the registration authority.

(3) The costs of and incidental to an appeal under subsection (1) shall be in the discretion of the court to which the appeal is made.

S. 42(4)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 24).

(4) Nothing in subsection (2)(b) prevents the application of Part 3.10 of the **Evidence Act 2008**.

S. 43
amended by
Nos 10262
s. 4, 13/1994
ss 10(u), 12,
20/1995 s. 16,
98/1997
ss 16(a), 17(e),
14/2001
s. 26(i),
substituted by
No. 42/2009
s. 26.

43 Records of registration

(1) Each registration authority must maintain records of the prescribed particulars for all registrations and renewals and transfers of registrations made by the registration authority under this Act.

(2) The records must also—

(a) in the case of the registration of a food premises, include the details of any order in force under Part III that includes a direction referred to in section 19(3)(a) or (b) in relation to the food premises;

(b) in the case of the registration of a food vending machine, include the details of any order in force under Part III that includes a direction referred to in section 19A(3)(a)(i) in relation to the food vending machine;

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- (c) if either paragraph (a) or (b) applies, note any appeal made under section 19BA against the order.
- (3) If a person requests information held in the records in relation to a particular food premises, the registration authority must make that information available to the person free of charge.
- (4) For the purposes of subsection (3), the records includes any book, database or other record kept by the registration authority before the commencement of section 26 of the **Food Amendment (Regulation Reform) Act 2009** for the purposes of recording the particulars of registrations made by the registration authority.

43A Transitional provision

- (1) This section applies if a premises that was registered under this Act immediately before section 33 of the **Food (Amendment) Act 1997** came into operation becomes a meat processing facility within the meaning of the **Meat Industry Act 1993** as a result of the amendments made by section 25 of the **Food (Amendment) Act 1997**.
- (2) Until the registration of the premises under this Act expires or is suspended or revoked—
- (a) this Act continues to apply to the premises; and
- (b) the proprietor of the premises may continue to do anything at the premises that he, she or it was entitled to do at the premises immediately before section 33 of the **Food (Amendment) Act 1997** came into operation, despite anything to the contrary in section 40 of the **Meat Industry Act 1993**.
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S. 43A
inserted by
No. 98/1997
s. 33.

Pt 7
(Heading and
ss 44–44D)
amended by
Nos 10262
s. 4, 98/1997
ss 11, 16(a),
17(f),
substituted as
Pt 7
(Heading and
ss 44–44G) by
No. 14/2001
s. 27.

PART VII—EMERGENCY POWERS

S. 44
substituted by
No. 14/2001
s. 27.

44 Making of order

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

S. 44A
substituted by
No. 14/2001
s. 27.

44A Nature of order

- (1) An order under this Part may do any one or more of the following—
 - (a) require the publication of warnings, in a form approved by the Secretary, 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;

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- (d) direct that a particular food or type of food consigned or distributed for sale or sold be recalled and specify the manner in which, and the period within which, the recall is to be conducted;
 - (e) direct that a particular food or type of food or other primary produce intended to be used for human consumption be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which the impounding, isolation, destruction or disposal is to be conducted;
 - (f) prohibit absolutely the carrying on of an activity in relation to a particular food or type of food, or permit the carrying on of the activity in accordance with conditions specified in the order;
 - (g) without limiting the generality of paragraph (f), impose conditions for or with respect to requiring the taking and analysis of samples of the food or of water or soil or any other thing that is part of the environment in which that activity is carried on in relation to the food;
 - (h) specify methods of analysis (not inconsistent with any methods prescribed by the Food Standards Code) of any samples required to be taken in accordance with the order.
- (2) An order under this Part may be varied or revoked by the Secretary in the same manner as the order was made.

s. 44B

S. 44B
substituted by
No. 14/2001
s. 27.

44B Special provisions relating to recall orders

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

S. 44C
substituted by
No. 14/2001
s. 27.

44C Manner of making orders

- (1) An order under this Part—
 - (a) may be made in writing addressed to the person or persons intended to be bound by it, and served on that person or each of those persons, as the case requires; or
 - (b) may be addressed to several persons, to a class of persons, or to all persons.

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

44D Compensation

- (1) A person bound by an order under this Part who suffers loss as a result of the making of the order may apply to the Secretary for compensation if the person considers that there were insufficient grounds for the making of the order.
- (2) If there were insufficient grounds for the making of the order, the Secretary is to pay just and reasonable compensation to the applicant.
- (3) The Secretary is to send written notification of the Secretary's determination as to the payment of compensation under this section to each applicant for the payment of compensation.

S. 44D
substituted by
No. 14/2001
s. 27.

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- (4) If the Secretary has not determined an application for compensation under this section within 28 days of receiving the application, the Secretary 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 Secretary as to the refusal to pay compensation or as to the amount of compensation may apply to the Magistrates' Court for a review of the determination—
- (a) within 28 days after the day on which notification of the determination was received; or
 - (b) in a case to which subsection (4) applies, within 28 days after the 28-day period referred to in that subsection.
- (6) If the amount of compensation sought exceeds the jurisdictional limit of the Magistrates' Court, the application under subsection (5) is to be made to the Supreme Court.

S. 44E
inserted by
No. 14/2001
s. 27.

44E Failure to comply with emergency order

A person must not, without reasonable excuse—

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

Penalty: \$40 000 in the case of an individual or
\$200 000 in the case of a corporation.

44F Person has no right to be heard before order made

In making an order under this Part, it is not necessary for the Secretary to give any person who may be affected by the order a chance to be heard before the order is made.

S. 44F
inserted by
No. 14/2001
s. 27.

44G Secretary may obtain enforcement order

The Secretary may apply to the Supreme Court for an order against any person who is required to comply with an order made under this Part requiring the person to comply with the order.

S. 44G
inserted by
No. 14/2001
s. 27.

PART VIII—LEGAL PROCEEDINGS

45 Proceedings for offences

(1) Except as is otherwise expressly provided by this Act—

S. 45(1)(a)
amended by
No. 57/1989
s. 3(Sch. item
79.7(a)(b)).

(a) all charges for offences under this Act may be heard and determined in a summary way before the Magistrates' Court; and

S. 45(1)(b)
amended by
No. 57/1989
s. 3(Sch. item
79.7(b)).

(b) all money, costs, and expenses made payable or recoverable by this Act may be recovered before the Magistrates' Court as a civil debt recoverable summarily or in any court of competent jurisdiction.

S. 45(2)
amended by
No. 95/1986
s. 16.

(2) Subject to subsection (3), a prosecution for an offence against this Act in respect of any food obtained for analysis under this Act shall be instituted not later than 90 days after the day on which the food was so obtained.

S. 45(3)
amended by
No. 57/1989
s. 3(Sch. item
79.8).

(3) The Magistrates' Court shall have power to make an order extending the time appointed by subsection (2) for instituting the prosecution where a person makes application for such an order not later than 90 days after the day on which the food was obtained.

(4) The summons in a prosecution for an offence against this Act in which an analyst's certificate is to be used shall be made returnable not less than 14 days after the date on which it is served.

(5) Where a summons referred to in subsection (4) is served less than 14 days before the return date of the summons the court may, on an application made in that behalf, extend the return date of the summons.

- (6) A copy of any analyst's certificate obtained on behalf of the informant shall be served with the summons in a prosecution for an offence against this Act in respect of any food.

45AA Responsible agency for the Crown

S. 45AA
inserted by
No. 46/2008
s. 257.

- (1) If proceedings are brought against the Crown for an offence against this Act, the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.
- (2) In this section, the responsible agency in respect of an offence is the agency of the Crown—
- (a) whose acts or omissions are alleged to constitute the offence; or
 - (b) if that agency has ceased to exist, that is the successor of that agency; or
 - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.
- (3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

45AB Proceedings against successors to public bodies

S. 45AB
inserted by
No. 46/2008
s. 257.

- (1) In this section, *public body* means—
- (a) a body corporate representing the Crown; or
 - (b) a State owned enterprise or reorganising body within the meaning of the **State Owned Enterprises Act 1992**; or

s. 45AC

- (c) a council; or
 - (d) a public entity within the meaning of the **Public Administration Act 2004**.
- (2) Proceedings for an offence against this Act that were instituted against a public body before its dissolution, or that could have been instituted against a public body if not for its dissolution, may be continued or instituted against its successor if the successor is a public body.

S. 45AC
inserted by
No. 46/2008
s. 257.

45AC Power to bring proceedings

The Secretary, a council, an authorised officer or a member of the police force may bring proceedings for an offence under this Act.

S. 45A
inserted by
No. 95/1986
s. 17.

45A Burden of proof as to statements on packages etc.

In any prosecution under this Act the burden of proving the correctness of any statement in or on any label or advertisement with respect to the origin or composition or the therapeutic or nutritive properties or the therapeutic effects of any food is on the person charged.

S. 45B
inserted by
No. 95/1986
s. 17.

45B Prosecutions

In any prosecution under this Act—

- (a) a witness for the prosecution is not compelled to disclose the fact that the witness received any information or the name of any person from whom any information was received; and
- (b) no proof is required of the use by the person purchasing any food for analysis of the exact words of the section authorizing the purchase if the court decides that the person from whom the purchase was made was substantially informed of the purchaser's intention to have the food analysed.

46 Right of accused to have third person before court

S. 46
(Heading)
inserted by
No. 68/2009
s. 97(Sch.
item 59.3).

(1) An accused charged with an offence against this Act who alleges that the contravention or failure to comply constituting the offence was due to the act or default of another person may, upon compliance with subsection (2), have that other person brought before the court by which the charge is to be heard and determined.

S. 46(1)
amended by
No. 68/2009
s. 97(Sch.
item 59.4).

(2) An accused who desires to avail himself of the provisions of this section—

S. 46(2)
amended by
No. 68/2009
s. 97(Sch.
item 59.5(a)).

(a) shall, at least ten days before the return day of the summons in question, give to the informant notice in writing of his intention to avail himself of the provisions of this section and particulars of his claim that—

(i) the contravention or failure to comply was due to the act or default of another person; and

(ii) he exercised due diligence to ensure compliance with the provisions of this Act in question; and

(b) shall file a charge-sheet charging the other person with an offence against this Act.

S. 46(2)(b)
amended by
Nos 57/1989
s. 3(Sch.
item 79.9),
68/2009
s. 97(Sch.
item 59.5(b)).

s. 46

S. 46(3)
amended by
Nos 57/1989
s. 3(Sch. item
79.10(a)–(d))
(as amended
by No.
34/1990
s. 5(Sch. 4
item 65)),
68/2009
s. 97(Sch.
item 59.6).

- (3) A summons to answer to a charge issued in relation to a charge-sheet filed pursuant to paragraph (b) of subsection (2) shall require the person against whom the charge-sheet is filed to attend to answer to the charge at a date and place mentioned in the summons before the court by which the original charge is to be heard and determined and, where that date is not the return date of the original summons, the court shall adjourn the hearing of the original charge to that date or shall adjourn the hearing of the charges to a later date.

S. 46(4)
amended by
No. 57/1989
s. 3(Sch. item
79.11(a)).

- (4) On the hearing of the charges—

S. 46(4)(a)
amended by
Nos 35/1996
s. 453(Sch. 1
item 33),
68/2009
s. 97(Sch.
item 59.7).

- (a) the original informant or his legal practitioner as well as the other person who the accused has alleged committed the offence—
- (i) may cross-examine the accused (if he gives evidence) and any witness called by him; and
 - (ii) may call evidence in rebuttal; and
- (b) the court—

S. 46(4)(b)(i)
amended by
No. 68/2009
s. 97(Sch.
item 59.7).

- (i) may convict the other person if the contravention of or failure to comply with this Act is proved and the original accused satisfies the court that the contravention or failure to comply was due to the act or default of that other person;

- (ii) shall dismiss the charge against the original accused if, in addition to satisfying the court that the contravention or failure to comply was due to the act or default of the other person, he satisfies the court that he exercised due diligence to ensure compliance with the provisions of this Act in question; and
- (iii) may make such orders as to the costs of the proceedings as it thinks fit.
- (5) Where it appears to the Secretary or the registration authority that an offence against this Act has been committed in respect of which some person may be charged and the Secretary or the registration authority is reasonably satisfied that—
- (a) the offence was due to the act or default of some other person; and
- (b) the first-mentioned person could successfully defend a prosecution for the offence by availing himself of the provisions of this section—
- the Secretary or the registration authority may cause proceedings to be instituted against that other person for that offence without proceedings first being instituted against the first-mentioned person.
- (6) In proceedings taken pursuant to subsection (5) the other person may be charged with the offence with which the first-mentioned person might have been charged and, on proof that the offence was due to the act or default of that other person, he may be convicted of the offence.

S. 46(4)(b)(ii) amended by Nos 57/1989 s. 3(Sch. item 79.11(b)), 68/2009 s. 97(Sch. item 59.7).

S. 46(5) amended by Nos 10262 s. 4, 98/1997 s. 17(g)(f)(ii).

s. 46A

S. 46A
inserted by
No. 95/1986
s. 18.

46A Analysis is not necessary to conviction

Despite any provision of any other Act, in any prosecution under this Act if it appears to the court that the offence is sufficiently proved without an analysis, proof that an analysis has been made or of the results of an analysis is not necessary to conviction for the offence.

47 Power of court to order further analysis

In a prosecution for an offence against this Act the court may, at the request of any party and if satisfied that there are special circumstances which warrant it in so doing, cause the part or parts of any sample retained under section 23 to be sent to an analyst (other than an analyst who has made an analysis of any other part of the sample) and the first-mentioned analyst shall make an analysis of that part or those parts for the information of the court.

48 Power of court to order forfeiture

(1) A court that convicts a person of an offence against this Act or before which a person is charged with an offence against this Act of which he is found guilty or to which he pleads guilty and in respect of which a conviction is not recorded may order that—

- (a) the article by means of or in relation to which the offence was committed; or
- (b) subject to subsection (3), any similar article belonging to and found in the possession of the accused at the time of the commission of the offence—

be forfeited to Her Majesty.

(2) A court, in addition to exercising the powers conferred upon it by subsection (1) may, upon the application of an authorized officer and such

S. 48(1)(b)
amended by
No. 68/2009
s. 97(Sch.
item 59.8).

notice as the court determines being given to such persons as the court directs, order that—

- (a) any article seized under this Act by that authorized officer (being an article by means of or in relation to which any provision of this Act is being or has been contravened or not complied with); or
- (b) subject to subsection (3), any similar article found with an article so seized—

be forfeited to Her Majesty.

- (3) A court shall not order forfeiture of an article under this section if the court is satisfied with respect to that article that it is not one by means of or in relation to which any provision of this Act is being or has been contravened or not complied with.
- (4) Every article forfeited to Her Majesty under this section shall be destroyed or otherwise disposed of as the Secretary directs.

S. 48(4)
amended by
Nos 10262 s. 4
98/1997
s. 16(a).

49 Liability of accused for certain costs and expenses

Except as is otherwise expressly provided by this Act, a court that convicts a person of an offence against this Act or before which a person is charged with an offence against this Act of which he is found guilty or to which he pleads guilty and in respect of which a conviction is not recorded shall, without affecting any other power of that court to award costs, have power to make such order as it thinks fit in respect of the costs and expenses of and incidental to the examination, seizure, detention, storage, analysis, destruction or other disposition of any article the subject of proceedings in that court.

S. 49
(Heading)
inserted by
No. 68/2009
s. 97(Sch.
item 59.9).

50 Evidentiary provisions

- (1) For the purposes of this Act—
- (a) the onus of proof in any prosecution under this Act that any food was not sold, prepared for sale, conveyed or intended for sale for human consumption is on the person charged with the offence;
 - (b) any food found in any premises or other place or vehicle used for the sale or the handling for sale of food shall be presumed, until the contrary is proved, to be intended for sale for human consumption;
 - (c) any food found in any premises or other place or vehicle used for the preparing for sale of food shall be presumed, until the contrary is proved, to be intended to be used in the preparation for sale of food;
 - (d) service of a copy of an analyst's certificate with a summons may be proved in any manner in which service of the summons may be proved and, where proof of the service of the summons is by affidavit, by stating in the affidavit that a copy of the analyst's certificate was served with the summons;
 - (e) each of the parts into which a sample of any food obtained for analysis under this Act is divided shall be presumed, until the contrary is proved, to be of uniform composition with the other parts;
 - (f) any person whose name appears on or is attached to a package shall, unless the contrary is proved, be deemed to have manufactured, packed or imported that food;

S. 50(1)(b)
amended by
No. 98/1997
s. 18(1)(d).

S. 50(1)(e)
amended by
No. 95/1986
s. 19(1).

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- (g) it shall not be a defence to allege that the person instituting the prosecution is not the person who caused any analysis to be made for the purposes of the prosecution;
- (h) where the prosecution or proceeding relates to any food purchased for analysis it shall not be a defence that the part of the food retained for future comparison has from spontaneous natural causes deteriorated, perished or undergone a material change in its constitution; and
- (i) if an accused relies on any exception or provision contained in this Part the onus of proving the same shall be on him. **S. 50(1)(i) amended by No. 68/2009 s. 97(Sch. item 59.10).**
- (2) Where in respect of a prosecution for an offence against this Act a copy of an analyst's certificate—
- (a) if obtained on behalf of the informant, is served with the summons; or
- (b) if obtained on behalf of the accused, is given to the informant at least seven days before the return day of the summons— **S. 50(2)(b) amended by Nos 95/1986 s. 19(2), 68/2009 s. 97(Sch. item 59.11).**
- that analyst's certificate shall, on its production in the proceedings, be sufficient evidence of the matters stated in the certificate and of the facts on which they are based unless an order is made under subsection (3) or unless notice is given under subsection (4).
- (3) Where an analyst's certificate, a copy of which has been served or given as mentioned in subsection (2), is produced or it is proposed to produce such a certificate, the court, where it is satisfied (whether upon an application made to it or by any other

s. 50AA

means) that in the circumstances of the case the analyst who issued the certificate should be called as a witness in the proceedings, may order that the analyst be called as a witness by the party who produces or proposes to produce the certificate.

S. 50(4)
amended by
No. 95/1986
s. 19(3).

- (4) Where in respect of a prosecution for an offence against this Act a copy of an analyst's certificate has been obtained on behalf of a party, another party may at least three days before the hearing give notice in writing to the first-mentioned party that he requires the analyst to be called as a witness.

S. 50(5)
repealed by
No. 11/1995
s. 3(2).⁴

* * * * *

S. 50(6)
inserted by
No. 95/1986
s. 19(4),
amended by
No. 13/1994
s. 13(a)–(c),
repealed by
No. 20/1995
s. 15(2).

* * * * *

S. 50AA
inserted by
No. 46/2008
s. 258.

50AA Evidentiary certificate signed by the Secretary

In any proceeding for an offence against this Act, a certificate signed by the Secretary stating any of the following matters is evidence of the matter—

- (a) a stated document is one of the following things made, given or issued under this Act—
- (i) an appointment, authorisation, exemption; declaration or other decision;
 - (ii) an order or a notice, direction or requirement;

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- (iii) a registration;
 - (iv) a record or an extract from a record;
 - (v) a register or an extract from a register;
 - (b) a stated document is a copy of a thing referred to in paragraph (a);
 - (c) on a stated day, or during a stated period, a stated person was or was not the holder of a registration;
 - (d) on a stated day, or during a stated period, a registration—
 - (i) was or was not in force; or
 - (ii) was or was not subject to a stated condition;
 - (e) on a stated day, or during a stated period, a registration was suspended;
 - (f) on a stated day a registration was cancelled, varied, transferred or surrendered;
 - (g) on a stated day, or during a stated period, an authorisation as an authorized officer or analyst was, or was not, in force for a stated person;
 - (h) on a stated day, a stated person was given a stated order, notice or direction under this Act;
 - (i) on a stated day, a stated requirement was made of a stated person;
 - (j) a stated amount is payable under this Act by a stated person and has not been paid.
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s. 50AB

S. 50AB
inserted by
No. 46/2008
s. 258.

50AB Evidentiary certificate signed by Chief Executive Officer of a council

In any proceeding for an offence against this Act, a certificate signed by the Chief Executive Officer of a council stating any of the following matters is evidence of the matter—

- (a) a stated document is one of the following things made, given or issued under this Act—
 - (i) an appointment, authorisation, exemption; declaration or other decision;
 - (ii) an order or a notice, direction or requirement;
 - (iii) a registration;
 - (iv) a record or an extract from a record;
 - (v) a register or an extract from a register;
- (b) a stated document is a copy of a thing referred to in paragraph (a);
- (c) on a stated day, or during a stated period, a stated person was or was not the holder of a registration;
- (d) on a stated day, or during a stated period, a registration—
 - (i) was or was not in force; or
 - (ii) was or was not subject to a stated condition;
- (e) on a stated day, or during a stated period, a registration was suspended;
- (f) on a stated day a registration was cancelled, varied, transferred or surrendered;

- (g) on a stated day, or during a stated period, an appointment as an authorized officer was, or was not, in force for a stated person;
- (h) on a stated day, a stated person was given a stated order, notice or direction under this Act;
- (i) on a stated day, a stated requirement was made of a stated person;
- (j) a stated amount is payable under this Act by a stated person and has not been paid.

50AC Evidence of signatures

A signature purporting to be the signature of the Minister, the Secretary, an authorized officer, the Chief Executive Officer of a council or an analyst is evidence of the signature it purports to be.

S. 50AC
inserted by
No. 46/2008
s. 258.

50A Alternative verdicts for serious food offences

- (1) If, on the trial of a person charged with an offence against section 8 or 8A the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 11(1), the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 11(1), and the person is liable to punishment accordingly.
- (2) If, on the trial of a person charged with an offence against section 9 or 9A, the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 11(2), the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 11(2), and the person is liable to punishment accordingly.

S. 50A
inserted by
No. 14/2001
s. 28.

51 Offences by bodies corporate

- (1) Where a body corporate is guilty of an offence against this Act any person who is concerned or takes part in the management of that body corporate is also guilty of that offence and liable to the penalty for that offence.
- (2) It is a defence to a charge brought pursuant to subsection (1) against a person who is concerned or takes part in the management of a body corporate to prove that the offence was committed by the body corporate without his consent or knowledge and that he exercised due diligence to prevent the commission of the offence.
- (3) A statement made by a person who is concerned or takes part in the management of a body corporate is admissible as evidence against the body corporate in any proceeding against the body corporate for an offence against this Act.

S. 51(3)
inserted by
No. 46/2008
s. 259.

52 Offences by unincorporated bodies, partnerships etc.

Where this Act provides that a person, being a partnership or an unincorporated body or association, is guilty of an offence, that reference to the person shall—

- (a) in the case of a partnership—be read as a reference to each member of the partnership;
and
- (b) in the case of an unincorporated body or association—be read as a reference to each member of the committee of management of the body or association.

52A Offences by employers

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

S. 52A
inserted by
No. 14/2001
s. 29.

52B Liability of employees and agents

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

S. 52B
inserted by
No. 14/2001
s. 29.

S. 52B(1)
amended by
No. 68/2009
s. 97(Sch.
item 59.12).

S. 52B(2)
amended by
No. 68/2009
s. 97(Sch.
item 59.12).

53 General penalty

A person who is guilty of an offence against this Act for which a specific penalty is not prescribed by another provision of this Act is liable to a penalty not exceeding 10 penalty units.

s. 53A

S. 53A
inserted by
No. 14/2001
s. 29.

53A Court may order costs and expenses

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

S. 53B
inserted by
No. 14/2001
s. 29,
amended by
No. 68/2009
s. 97(Sch.
item 59.13(a)).

53B Court may order corrective advertising

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

S. 53B(a)
amended by
No. 68/2009
s. 97(Sch.
item 59.13(b)).

(a) an order requiring the offender to disclose in a particular manner to the public, to a particular person or to a particular class of person information specified in the order, or information of a kind specified in the order, which the offender possesses or to which the offender has access;

S. 53B(b)
amended by
No. 68/2009
s. 97(Sch.
item 59.13(b)).

(b) an order requiring the offender 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 VIIIA—PUBLICATION OF CONVICTIONS

Pt 8A
(Heading and
ss 53C–53J)
inserted by
No. 42/2009
s. 27.

53C References to appeal against conviction

S. 53C
inserted by
No. 42/2009
s. 27.

In this Part, a reference to an appeal against a conviction includes—

- (a) an appeal against the conviction and sentence imposed by a court;
- (b) an appeal against the sentence imposed by a court.

53D Register of convictions

S. 53D
inserted by
No. 42/2009
s. 27.

- (1) The Secretary must keep a register of convictions for offences under this Act or the regulations.
- (2) The register may be kept in such form as the Secretary considers appropriate.
- (3) Subject to section 53F, the register must include the following information in relation to each conviction recorded in the register—
 - (a) the name of the person (whether a natural person or otherwise) convicted of the offence;
 - (b) the trade name and any company name of the food business operating the food premises at which, or in relation to which, the offence was committed;
 - (c) if known, the relationship between the person convicted of the offence and the food business operating the food premises at which, or in relation to which, the offence was committed;
 - (d) a description of the offence;

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- (e) details of the conviction including—
- (i) the date of the conviction;
 - (ii) the decision of the court;
 - (iii) the name of the court;
 - (iv) the sentence or any other order imposed (including any forfeiture incurred);
- (f) for an offence committed at or in relation to a fixed premises—
- (i) the name and address of the premises;
 - (ii) the municipal district in which the premises is located;
- (g) for an offence committed at or in relation to a temporary food premises, mobile food premises or food vending machine—
- (i) if the premises are registered in conjunction with a fixed premises, the address of the fixed premises;
 - (ii) the municipal district in which the offence was committed;
 - (iii) a description of the premises or machine and any other information that identifies the premises or machine;
- (h) the name of the council or public body that prosecuted the offence or on whose behalf the offence was prosecuted.
- (4) A conviction of a person must not be recorded in the register unless—
- (a) the time allowed for an appeal against the conviction has expired and the person has not lodged an appeal or applied for leave to appeal within that time; or
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- (b) if an appeal, or an application for leave to appeal, against the conviction has been lodged by the person within the time allowed—
- (i) the appeal has been abandoned or dismissed; or
 - (ii) leave to appeal has been refused; or
 - (iii) on the hearing of an appeal the court confirms or imposes a conviction.
- (5) If subsection (4)(b)(iii) applies, the details of the conviction referred to in subsection (3)(e) are those relating to the conviction confirmed or imposed by the court hearing the appeal.

53E Publication of information on register

S. 53E
inserted by
No. 42/2009
s. 27.

- (1) The register kept by the Secretary under this Part must be published on an internet website of the Department.
- (2) A copy of any information published in the register may be provided on request to a member of the public by the Department.

53F Information that must not be included in register

S. 53F
inserted by
No. 42/2009
s. 27.

- (1) Information must not be included in the register if—
 - (a) to do so would contravene a court order suppressing the publication of the information, protecting a natural person's whereabouts or prohibiting the publication of a person's name or address;
 - (b) the Secretary is satisfied that to do so would be contrary to the purpose of an order under the **Family Violence Protection Act 2008** or other similar order under any other law;

- (c) to do so would be contrary to any other law prohibiting the publication of certain information without the need for a court order.

Example

Section 534 of the **Children, Youth and Families Act 2005**.

- (2) An address of a food premises that is a private residence must not be included in the register unless the premises is open to the general public for the purpose of selling food.
- (3) If the Secretary considers that the inclusion of an address in the register may raise privacy issues in circumstances that are not identified in subsections (1) and (2), the Secretary must consult the Privacy Commissioner and take into account the advice given by the Privacy Commissioner in deciding whether or not to include the address in the register.
- (4) In this section, *Privacy Commissioner* has the same meaning as in section 3 of the **Information Privacy Act 2000**.

S. 53G
inserted by
No. 42/2009
s. 27.

53G Obtaining information for inclusion in the register

- (1) As soon as practicable after a person is convicted by a court for an offence under this Act or the regulations, the relevant council must provide to the Secretary—
- (a) a certified extract or other authenticated record of the decision of the court;
- (b) advice regarding the time allowed for an appeal against the conviction;
- (c) if applicable, the certificate of registration of the food premises at which, or in relation to which, the offence occurred;

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- (d) any information about that food premises that is kept in the records of registration of the council under section 43;
 - (e) any other information held by the council that is required to be included in the register of convictions or that is required by the Secretary in deciding what information should be included in the register.
- (2) If the person convicted of the offence has not lodged an appeal or applied for leave to appeal against the conviction within the time allowed, the relevant council must inform the Secretary of that fact as soon as practicable after the expiry of the time allowed.
 - (3) As soon as practicable after an appeal or application for leave to appeal is lodged against the conviction, whether within the time allowed or otherwise, the relevant council must inform the Secretary of that fact and the date, or dates, and at which court the appeal or the application for leave to appeal is to be determined.
 - (4) As soon as practicable after an appeal or application for leave is determined, the relevant council must inform the Secretary of the outcome of the appeal or application.
 - (5) The Secretary may obtain information from any council or any person with knowledge of a particular proceeding for the purpose of—
 - (a) obtaining reliable information to include in the register of convictions; or
 - (b) verifying information in the register or intended to be included in the register; or
 - (c) deciding whether information should be included in the register.
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s. 53H

- (6) For the purposes of this section, the relevant council in relation to the conviction of a person for an offence occurring at, or in relation to, a food premises is—
- (a) the council that, at the time of the offence, is the council with which the food premises is registered; or
 - (b) if the food premises was not registered at the time of the offence, the council that brought the proceeding against the person; or
 - (c) if none of the above apply, the council of the municipal district in which the offence occurred.

S. 53H
inserted by
No. 42/2009
s. 27.

53H Correction of register

- (1) The Secretary must correct any error in information in the register as soon as practicable after becoming aware of the error.
- (2) The Secretary may at any time correct any omission from information in the register.
- (3) An error or omission may be corrected on the initiative of the Secretary or at the request of any person who is directly affected by the publication of the information.

S. 53I
inserted by
No. 42/2009
s. 27.

53I Removal of record of conviction from register

- (1) The information relating to a conviction for an offence must be removed from the register of convictions if—
 - (a) the information has been on the register for 12 consecutive months; or
 - (b) the Secretary becomes aware that—
 - (i) leave has been granted to lodge an appeal against the conviction out of time; or

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- (ii) the conviction or sentencing order has been stayed by a court; or
 - (c) the removal is otherwise required by this Act or another law.
- (2) Information relating to a conviction for an offence that has been removed from the register because of subsection (1)(b) must be re-entered on the register if—
- (a) the appeal against the conviction is abandoned or dismissed; or
 - (b) leave to appeal against the conviction is refused.
- (3) If information relating to a conviction for an offence is removed from the register because of subsection (1)(b) and on the hearing of the appeal the court confirms or imposes a conviction for the offence, the information must be re-entered on the register and updated to include any information relating to the outcome of the hearing of the appeal.
- (4) If information relating to a conviction for an offence is re-entered on the register under subsection (2) or (3), for the purposes of subsection (1)(a) the 12 months runs from the date the information is re-entered on the register.
- (5) Information may be removed from the register under this section on the initiative of the Secretary or at the request of any person who is directly affected by the publication of the information.

53J Additional information

- (1) If a food premises is identified in the register as a premises at which, or in relation to which, an offence has been committed and the registration of the food premises is transferred after the offence occurred the Secretary may add information to the

S. 53J
inserted by
No. 42/2009
s. 27.

register of convictions to indicate that the registration of the premises has been transferred.

- (2) Information relating to a food premises may be added to the register under this section on the initiative of the Secretary or at the request of the proprietor of the premises.
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PART IX—MISCELLANEOUS PROVISIONS

54 Secrecy

- (1) Except as provided by subsection (2), an authorized officer shall not disclose information or publish a document or part of a document obtained by him in connexion with the administration of this Act unless the disclosure or publication is made—
- (a) with the consent of the person from whom the information or document was obtained;
 - (b) in accordance with any Act or regulation; or
- (ba) in connection with the administration of—
- (i) this Act or the regulations; or
 - (ii) any other Act or regulation that applies to, or regulates, the food premises or the activities at the food premises to which the disclosure relates; or
- (bb) to a person or body administering or enforcing—
- (i) a corresponding law; or
 - (ii) a law that relates to the safety or suitability of food; or
 - (iii) the Aged Care Act 1997 of the Commonwealth; or
 - (iv) any other law of a State or the Commonwealth prescribed by the regulations; or
- (bc) to prevent or lessen a serious threat to public health; or
- S. 54(1)**
amended by
No. 42/2009
s. 28(2).
- S. 54(1)(b)**
substituted by
No. 42/2009
s. 28(1).
- S. 54(1)(ba)**
inserted by
No. 42/2009
s. 28(1).
- S. 54(1)(bb)**
inserted by
No. 42/2009
s. 28(1).
- S. 54(1)(bc)**
inserted by
No. 42/2009
s. 28(1).

s. 54A

(c) for the purposes of any proceedings under or arising out of this Act or a report of any such proceedings.

Penalty: For a first offence 60 penalty units, and for a second or subsequent offence 100 penalty units.

S. 54(2) amended by Nos 10262 s. 4, 98/1997 s. 16(a), substituted by No. 42/2009 s. 28(3).

(2) A person does not commit an offence under subsection (1) if the information or the information contained in the document was publicly available before, or at the time, the information was disclosed or the document was published.

S. 54(3) amended by Nos 10262 s. 4, 98/1997 s. 16(a), repealed by No. 42/2009 s. 28(4).

* * * * *

(4) Notwithstanding subsection (1)(c), an authorized officer appearing as a witness in any proceedings under or arising out of this Act shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

S. 54A inserted by No. 98/1997 s. 14.

54A Confidential food information may be given to the Secretary

Despite anything to the contrary in this Act or in any other Act, a person does not commit any offence in disclosing to the Secretary any information relating to food, the handling or sale of food or any illness, condition or disease that is, or may be, related to food.

54B Confidential food information may be given to the Food Safety Council

S. 54B
inserted by
No. 98/1997
s.14.

Despite anything to the contrary in this Act or in any other Act, a person does not commit any offence in disclosing to the Food Safety Council any information relating to food, the handling or sale of food or any illness, condition or disease that is, or may be, related to food to enable the Council to carry out any of its duties or functions under this Act.

54C Confidential food information may be given to a council

S. 54C
inserted by
No. 98/1997
s. 14.

Despite anything to the contrary in this Act or in any other Act, a person does not commit any offence in disclosing to a council (or anyone acting on behalf of a council) any information relating to food, the handling or sale of food or any illness, condition or disease that is, or may be, related to food.

54D Confidential food information may be given to a public statutory body

S. 54D
inserted by
No. 98/1997
s. 14.

Despite anything to the contrary in this Act or in any other Act, a person does not commit any offence in disclosing to a public statutory body any information relating to food, the handling or sale of food or any illness, condition or disease that is, or may be, related to food, to enable the body to carry out any of its duties or functions under any Act or regulations, or to assist the Secretary or a council.

55 Mode of service of documents and certain samples

- (1) Where under this Act a notice, order or other document is required or authorized to be given to or served on a person, the notice, order or other document may be given or served—

s. 55

S. 55(1)(b)
amended by
No. 14/2001
s. 26(j)(i)–(iii).

S. 55(1)(c)
amended by
Nos 10262
s. 4, 98/1997
s. 16(a).

S. 55(3)
inserted by
No. 46/2008
s. 260.

- (a) by giving it to or serving it personally on the person or by leaving it at or sending it by post to the person at his usual or last known place of abode or business;
 - (b) where it is addressed to the proprietor of any food premises, by leaving it with some adult person on the premises or, if there is no such person on the premises, by fixing it or a copy of it on some conspicuous part of the premises;
 - (c) where it is addressed to the Secretary, by giving it to, serving it personally on or sending it by registered post to the Secretary;
 - (d) where it is addressed to a council, by giving it to, serving it personally on or sending it by registered post to the clerk of the municipality concerned.
- (2) Where under or for the purposes of this Act a notice or a part of a sample of any food is required or authorized to be given or delivered to a person and the food in question was sold through a food vending machine, the notice or part of a sample shall be sufficiently given or delivered for the purposes of this Act if the notice or part is given or delivered personally to or sent by registered post to the person in whose name the machine is registered or, if the machine is not registered or is not required to be registered, to the proprietor of the premises on which the machine is located.
- (3) Instead of attending at any proceedings under this Act, a person who gives or serves any notice, order or other document under this Act may make an affidavit that—

- (a) identifies and is endorsed on, or attached to, a true copy of the original notice, order or other document; and
 - (b) states the time and manner in which the original notice, order or other document was given or served.
- (4) A document purporting to be an affidavit under subsection (3) is to be received in any proceedings and is evidence of the statements contained in the document.

S. 55(4)
inserted by
No. 46/2008
s. 260.

56 Protection against liability

- (1) This section applies to authorized officers (other than the Secretary) and employees of councils.
- (2) A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (3) Any liability resulting from an act or omission that would but for subsection (2) attach to a person to whom this section applies attaches instead—
 - (a) in the case of an authorized officer who is not an employee of a council, to the Secretary; and
 - (b) in the case of an employee of a council, to the council.

S. 56
amended by
Nos 10262
s. 4, 20/1995
s. 17, 98/1997
ss 15 (ILA
s. 39B(1)),
16(a),
substituted by
No. 14/2001
s. 31.

s. 57

S. 57
amended by
No. 12/1989
s. 4(1)(Sch. 2
items 47.8,
47.9).

57 Payment of penalties

Where an offence against this Act has been prosecuted by the council, all penalties recovered in relation to the offence shall be paid into the municipal fund of that council.

S. 58
amended by
No. 10262 s. 4,
substituted by
No. 97/1987
s. 179(3)(b).

58 Director of Liquor Licensing to be notified of certain matters

S. 58(1)
amended by
Nos 98/1997
s. 17(h)(i)(ii),
74/2000
s. 3(Sch. 1
items 51.1,
51.2).

(1) If the Secretary or the registration authority makes an order under section 19 in respect of premises in respect of which a licence or permit under the **Liquor Control Reform Act 1998** is in force, the Secretary or the registration authority must notify the Director of Liquor Licensing of the making of the order.

S. 58(2)
amended by
Nos 98/1997
s. 17(i),
74/2000
s. 3(Sch. 1
item 51.2).

(2) If a person who is the holder of a licence or permit referred to in subsection (1) is charged with an offence against this Act of which he or she is found guilty or to which he or she pleads guilty and in respect of which a conviction is not recorded, the Secretary or the registration authority which caused proceedings to be instituted for the offence shall notify the Director of Liquor Licensing of the result of the proceedings.

S. 58A
inserted by
No. 95/1986
s. 20,
amended by
Nos 13/1994
ss 10(v), 14,
98/1997 s. 12,
14/2001
s. 26(k),
substituted by
No. 42/2009
s. 29.

58A Delegation by council

- (1) A council may delegate to one or more of its officers or members of its staff its powers and discretions under Part III (other than its power under section 19(3)), Part IIIB, Part VI and section 46(5).
- (2) The refusal by an officer or member of a council's staff to grant, renew or transfer the registration of a food premises is of no effect until it is ratified by

the council or the chief executive officer of the council.

58B Matters occurring outside registration area

S. 58B
inserted by
No. 42/2009
s. 30.

- (1) A registration authority for a temporary food premises or mobile food premises may take action in relation to a thing done or omitted to be done at the food premises regardless of where the thing was done or omitted to be done.
- (2) In making a decision under this Act in relation to a temporary food premises or mobile food premises, the registration authority for the food premises may take into account the results of any inspection, assessment or audit conducted, or other action taken, by another registration authority in relation to the premises.

59 False and misleading statements

S. 59
amended by
No. 10/2005
s. 3(Sch. 1
item 8(a)(b)),
substituted by
No. 46/2008
s. 261.

- (1) A person must not—
 - (a) give information that is false or misleading in a material particular; or
 - (b) make a statement that is false or misleading in a material particular; or
 - (c) produce a document that is false or misleading in a material particular—

to the Secretary, a council or an authorised officer under this Act or the regulations without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

s. 59A

- (2) A person must not make an entry in a document required to be kept by this Act or the regulations that is false or misleading.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (3) In a proceeding for an offence against subsection (1) or (2) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the information, statement or document was true or was not misleading.

S. 59A
inserted by
No. 46/2008
s. 261.

59A Destroying or damaging records

A person must not, without lawful authority, destroy or damage any record required to be kept in accordance with this Act or the regulations.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 59B
inserted by
No. 46/2008
s. 261.

59B Validity and effect of notices, orders and other documents

- (1) The validity of any notice, order or other document or of the service of the notice, order or other document is not affected by any error, misdescription or irregularity which in the opinion of the court is not likely to mislead or which in fact does not mislead.
- (2) If due service of a notice, order or other document required under this Act to be given or served on any owner or occupier has been once made on any owner or occupier the notice, order or other document is binding on all persons claiming by

from or under that owner or occupier and on all subsequent owners or occupiers to the same extent as if served on each of those persons respectively.

59C Cost recovery in respect of failure to comply with direction or notice

S. 59C
inserted by
No. 46/2008
s. 261.

- (1) This section applies if a person fails to comply with—
 - (a) a direction under Part III; or
 - (b) an order under Part VII.
- (2) If this section applies, the Secretary or the council or a person authorised by the Secretary or the council may take the actions necessary to ensure as far as is possible compliance with the direction.
- (3) If this section applies, the Secretary or a person authorised by the Secretary may take the actions necessary to ensure as far as is possible compliance with the order.
- (4) An authorisation under subsection (2) or (3) authorises the person to take the actions necessary to ensure as far as is possible compliance with the direction or order.
- (5) Without limiting the generality of subsection (2) or (3), actions necessary to ensure as far as is possible compliance with the direction or order include—
 - (a) entering onto any relevant land;
 - (b) executing or performing any action which is necessary to give effect to the direction or order.
- (6) Any reasonable costs incurred under subsection (2) or (3) are a debt payable to the Secretary or the council by the person given the direction or order.

S. 59C(1)(a)
amended by
No. 42/2009
s. 31.

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- (7) Any reasonable costs incurred under subsection (2) or (3) in relation to any premises—
- (a) are until recovered a charge on the relevant land; and
 - (b) may at any time be recovered by the Secretary or the council in a court of competent jurisdiction—
 - (i) from the owner of the relevant land for the time being; or
 - (ii) after demand from the occupier of the relevant land, from the rent, to the extent of the amount of rent due at the time of demand from the occupier to the owner.
- (8) In this section, *reasonable costs* means—
- (a) the costs and expenses of taking the actions necessary to ensure as far as is possible compliance with the direction or order; and
 - (b) all other costs and expenses lawfully incurred by the Secretary or the council in respect of any premises whether or not any judgment or order has been obtained; and
 - (c) interest at the percentage rate per annum fixed in accordance with section 2 of the **Penalty Interest Rates Act 1983**.
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PART X—FOOD SAFETY COUNCIL

Pt 10
(Heading and
ss 60-62),
amended by
Nos 10262
s. 4, 12/1989
s. 4(1)(Sch. 2
item 47.10) (as
amended by
No. 13/1990
s. 38(1)(o)(r),
125/1993
s. 20(5)(e),
13/1994
s. 15(1)(a)–
(d)(2), 23/1994
s. 118(Sch. 1
item 21.2),
59/1996
s. 10(Sch. 2
item 7),
substituted as
Pt 10
(Heading and
ss 60–60I) by
No. 98/1997
s. 13.

60 Establishment of the Council

There is established a Food Safety Council.

S. 60
substituted by
No. 98/1997
s. 13.

60A Functions

The functions of the Council are—

- (a) to advise the Minister on any matter referred to it by the Minister including, without limiting the scope of this paragraph—
 - (i) the Food Standards Code; and
 - (ii) food safety and food standards; and
 - (iii) the operation of this Act; and
 - (iv) regulations and proposed regulations under this Act; and
 - (v) any matter concerning food that relates to public health; and

S. 60A
inserted by
No. 98/1997
s. 13.

s. 60B

- (b) to advise the Secretary on any matter referred to it by the Secretary; and
- (c) to supply information concerning food, food related matters and matters of public health that may involve food to the Minister and the Secretary.

S. 60B
inserted by
No. 98/1997
s. 13.

60B Powers

The Council may do all things that are necessary or convenient to enable it to perform its functions.

S. 60C
inserted by
No. 98/1997
s. 13.

60C Members of the Council

- (1) The Council consists of a Chairperson and as many people as are necessary, in the opinion of the Minister, to enable the Council to carry out its functions.
- (2) All appointments to the Council are to be made by the Minister.
- (3) The Minister may only appoint a person to be a member of the Council if, in the opinion of the Minister, the person has skills, knowledge or experience that will help the Council to carry out its functions.
- (4) The Minister may appoint a person to be the Deputy Chairperson of the Council.
- (5) An act or decision of the Council is not invalid by reason only of defects in the appointment of members of the Council.

S. 60D
inserted by
No. 98/1997
s. 13.

60D Conditions of office of members

- (1) A member of the Council—
 - (a) holds office for the period specified in her or his instrument of appointment, which must be a period of not more than 3 years;
 - (b) holds office on the terms and conditions determined by the Minister; and

- (c) may be re-appointed; and
 - (d) may resign from office by delivering a signed letter of resignation to the Minister; and
 - (e) may be removed from office at any time by the Minister.
- (2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

S. 60D(2) amended by No. 46/1998 s. 7(Sch. 1), substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 81.2), 80/2006 s. 26(Sch. item 42).

60E Procedure at meetings

- (1) The Council may not provide advice to the Minister on any matter that is put to a vote of the Council unless at least three quarters of the members of the Council are present when the matter is put to the vote.
- (2) Any other matter cannot be decided at a meeting of the Council unless more than half of its members are present when the matter is to be decided.
- (3) The decision on a question of the majority of the members present and voting on the question is the decision of the Council.
- (4) If there is a Deputy Chairperson, he or she is to preside at meetings of the Council at which he or she is present and at which the Chairperson is not present.

S. 60E inserted by No. 98/1997 s. 13.

s. 60F

- (5) If neither the Chairperson nor the Deputy Chairperson (if any) are present at a meeting, the meeting is to be chaired by a member chosen by the members present at the meeting.
- (6) The person presiding at a meeting has both a deliberative and a casting vote.
- (7) In all other respects the Council may regulate its own procedure.

S. 60F
inserted by
No. 98/1997
s. 13.

60F Report on operations

- (1) The Council must submit a report on its operation to the Minister on or before 31 October in each year.
- (2) The Minister must cause a copy of the report to be laid before each House of Parliament within 7 sitting days of that House after the report is submitted to the Minister.

S. 60G
inserted by
No. 98/1997
s. 13.

60G Use of assistants

- (1) With the approval of the Minister, the Council may invite a person to participate in meetings of the Council for the purpose of assisting the Council in its deliberations on particular matters.
- (2) A person invited to do this is entitled to receive the fees and allowances (if any) determined by the Minister (unless the person is an employee in the public service).

S. 60G(2)
amended by
No. 46/1998
s. 7(Sch. 1).

60H Members must not disclose confidential information

- (1) A person who is, or has been, a member of the Council must not disclose any information that is obtained by him or her as a member of the Council.

Penalty: 5 penalty units.

S. 60H
inserted by
No. 98/1997
s. 13.

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- (2) Also, the person must not use any such information to obtain directly or indirectly any pecuniary advantage for himself or herself or for any other person.

Penalty: 5 penalty units.

- (3) However, the person may disclose or use such information if—
- (a) in the case of information that enables a person to be identified and that was provided by another person, the disclosure of the information is made with the consent of the Minister and of the person who is to be, or may be, identified; or
 - (b) in the case of all other information, the disclosure is made with the consent of the Minister and of the person from whom the information was obtained; or
 - (c) the disclosure or use is made in the performance of a duty under, or in connection with, this Act or any Act of the Commonwealth or of a State or Territory; or
 - (d) the information is in the public domain at the time it is disclosed or used.
- (4) This section also applies to any person who obtained any information as a result of participating (or being asked to participate) in a meeting of the Council under section 60G as if the person was a member of the Council.
- (5) Subsection (3) is not intended to interfere with any rights another person may have with regard to the disclosure or use of the information.

s. 60I

- (6) Despite anything to the contrary in this or any other Act, a person to whom this section applies is neither competent nor compellable in any proceedings to answer any question, or to produce any document, relating to any information referred to in this section without the approval of the Minister.
- (7) Despite anything to the contrary in this section, a person may disclose the identity of approved food safety auditors.

S. 60I
inserted by
No. 98/1997
s. 13.

60I Council the successor of the Food Standards Committee

- (1) The Council is the successor in law to the Food Standards Committee.
- (2) Any reference to the Food Standards Committee in any Act, subordinate instrument, agreement or other document as far as it relates to any period after the commencement of section 13 of the **Food (Amendment) Act 1997** is to be treated as a reference to the Council, unless the contrary intention appears.
- (3) The members of the Food Standards Committee cease to hold office.

Ss 61, 62
repealed by
No. 98/1997
s. 13.

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PART XI—REGULATIONS

63 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted to be prescribed for the purposes of this Act or is necessary to be prescribed for carrying this Act into effect and, without limiting the generality of the foregoing, for or with respect to—
- (a) prescribing standards for the nature, substance, composition, strength, weight, quantity, purity or quality of food generally or food of a specified class or description or of any ingredient thereof or for the nature or proportion of any substance that may be mixed with or used in the preparation or preservation thereof;
 - (b) prohibiting the addition to, mixture with or use in the preparation of or presence in food generally or food of a specified class or description of a specified substance or a specified substance exceeding a prescribed quantity or proportion;
 - (c) prescribing the quantity or proportion of a specified substance that is to be the quantity or proportion or the maximum or minimum or maximum and minimum quantities and proportions that shall or may be added to, mixed with or used in the preparation of or present in food generally or food of a specified class or description;

s. 63

S. 63(1)(d)
amended by
Nos 98/1997
s. 18(1)(d),
14/2001
s. 32(a).

- (d) prohibiting the sale or the handling for sale of food generally or food of a specified class or description the use of any equipment containing a specified substance or a specified substance exceeding a prescribed quantity or proportion;
- (e) prescribing or prohibiting specified modes of preparation of food generally or food of a specified class or description;
- (f) prescribing the temperature at which or range of temperatures within which food generally or food of a specified class or description that is prepared, stored, displayed, exposed or conveyed for sale shall be kept;
- (g) prohibiting the sale of food generally or food of a specified class or description containing any micro-organism or a micro-organism of a specified kind or a micro-organism of a specified kind in excess of a specified number in a specified quantity;

S. 63(1)(h)
amended by
No. 98/1997
s. 18(1)(d).

- (h) providing for and prescribing all matters and things for or with respect to securing the wholesomeness and purity of food and the conditions and practices in connexion with the sale or the handling for sale of any food and, without limiting the generality of the foregoing, for or with respect to—

S. 63(1)(h)(i)
amended by
Nos 98/1997
s. 18(1)(g),
14/2001
s. 32(b).

- (i) the cleanliness of premises or other places or vehicles in, at, on or from which any food is sold or handled for sale and fittings, fixtures or equipment in, at or on such premises or other places or vehicles;

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|---|--|
| (ii) the provision and proper use of satisfactory facilities for the protection of food in, at or on premises or other places or vehicles in, at, on or from which any food is sold or handled for sale; | S. 63(1)(h)(ii)
amended by
No. 98/1997
s. 18(1)(g). |
| (iii) the design and construction of premises or other places, vehicles, equipment, fittings or fixtures used for or in connexion with the sale or the handling for sale of any food; | S. 63(1)(h)(iii)
amended by
Nos 98/1997
s. 18(1)(d),
14/2001
s. 32(b). |
| (iv) the prohibition or regulation of the use of specified materials or materials of a specified class in the manufacture of equipment, fittings or fixtures; | S. 63(1)(h)(iv)
amended by
No. 14/2001
s. 32(b). |
| (v) the clothing to be worn by persons attending equipment or in, at or on premises or other places or vehicles in, at, on or from which any food is sold or handled for sale; | S. 63(1)(h)(v)
amended by
Nos 98/1997
s. 18(1)(g),
14/2001
s. 32(b). |
| (vi) requiring the proprietor of food premises, or his nominee approved by the Secretary, or any persons employed or engaged by that proprietor to handle unpackaged food at those premises, to attend such courses of instruction in the handling of food as are prescribed; | S. 63(1)(h)(vi)
amended by
Nos 10262
s. 4, 20/1995
s. 18,
98/1997
s. 16(a),
14/2001
s. 32(c)(i)(ii). |
| (vii) the standards of cleanliness and hygiene to be maintained; | |
| (viii) preventing or minimizing the spread of disease; | |
| (ix) the provision and use of equipment, fittings or fixtures; | S. 63(1)(h)(ix)
amended by
No. 14/2001
s. 32(b). |
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s. 63

S. 63(1)(h)(x)
amended by
Nos 10262
s. 4,
98/1997
s. 16(a),
14/2001
s. 32(b).

(x) prescribing standards for equipment, fittings or fixtures and requiring equipment, fittings or fixtures of specified kinds to be approved by the Secretary and specifying the procedure for obtaining such approval;

S. 63(1)(h)(xi)
amended by
Nos 98/1997
s. 18(1)(g),
14/2001
s. 32(b).

(xi) the inspection and testing of equipment, fittings or fixtures and the inspection of premises or other places or vehicles in, at, on or from which any food is sold or handled for sale;

S. 63(1)(h)(xii)
amended by
No. 98/1997
s. 18(1)(g).

(xii) the provision and maintenance of an adequate water supply and drainage, sewerage, lighting and ventilation facilities in premises or other places or vehicles in, at, on or from which any food is sold or handled for sale;

(i) providing for and prescribing all matters and things for or with respect to food vending machines and, without limiting the generality of the foregoing, for or with respect to—

(i) the location, surroundings and cleanliness thereof;

(ii) the mode of construction thereof with particular reference to the provision of means for maintaining cleanliness and operating temperatures;

(iii) maintenance and servicing thereof and the keeping of records in relation thereto;

(iv) marking on or affixing thereto operating instructions, evidence of the currency of registration thereof and the name and address or other particulars of any person or body who or which receives or shares in the profits or

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- proceeds of the sale of any food therefrom;
- (v) requiring notices or other writings containing specified words, statements, expressions or specified pictorial representations or designs to be affixed thereto or prohibiting the use in such notices or other writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or representations or designs of a similar or other specified nature;
 - (vi) the regulation and control of the temperature of food contained therein;
 - (vii) the preventing of the adulteration of food contained therein;
 - (viii) the inspection thereof and of food contained therein;
 - (ix) the prohibition of the operation thereof and rendering them inoperable whilst in a faulty condition;
 - (x) the prohibition or regulation of the sale or supply therefrom of goods other than food or food of a specified class or description with food of another class or description;
 - (xi) the prohibition or regulation of the use thereof for dispensing food other than food that they are designed to dispense;
 - (xii) generally, the control and use thereof;
- (j) regulating and controlling and where necessary prohibiting and restricting advertisements relating to food generally or food of a specified class or description;
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- requiring any such advertisements to contain specified words, statements, expressions, pictorial representations or designs or prohibiting the use therein of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or pictorial representations or designs of a similar or other specified nature or of statements, claims, designs, devices or abbreviations of a specified nature;
- (k) prescribing the mode of labelling food generally or food of a specified class or description or packages of food generally or of food of a specified class or description; the forms or kinds of labels; the matter to be contained in labels including specified words, statements, expressions, pictorial representations or designs of a specified kind; the size, style or colour of any such matter or the nature or colour of the background on which it appears; requiring specified labels to be written on or attached to any food or to packages of any food; prohibiting generally as to the matter to be contained in labels and, without limiting the generality of the foregoing, prohibiting the use on labels of specified words, statements or expressions or of words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a similar or other specified nature; requiring that where food generally or food of a specified class or description that is not in a package is displayed for sale it shall be displayed in conjunction with a label bearing such matter as is prescribed; exempting any food, or any package of food, of any specified class or description from any provision of this Act relating to labelling;
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- (l) requiring and providing for the seizure, recall, destruction, denaturation or disposal of food that has become unsafe, unsuitable, damaged, deteriorated or perished to such degree as is specified or of food of a specified class or description and specifying the circumstances in which such food shall be destroyed or denatured;
- (m) prescribing modes of making packages or packing materials for any food so as to avoid contact with injurious substances; prohibiting the use of specified substances or materials in making packages or packing materials for any food; prescribing the minimum size of and the packing required for an article not being food that will be enclosed in a package; requiring that specified food be packed in a specified manner and prohibiting specified modes of packing food;
- (n) requiring notices or other writings containing specified words, statements or expressions or words, statements or expressions having the same or a similar effect or specified pictorial representations or designs to be affixed to premises or other places or vehicles used in selling or handling for sale of food or food of a specified class or description; prohibiting the use in such notices or other writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a similar or other specified nature;
- (o) prescribing the mode of storing or conveying for sale of food generally or food of a specified class or description;

S. 63(1)(l)
amended by
No. 14/2001
s. 32(d).

S. 63(1)(n)
amended by
No. 98/1997
s. 18(1)(d).

s. 63

S. 63(1)(p)
amended by
Nos 10262
s. 4,
98/1997
ss 16(a),
18(1)(d),
14/2001
s. 32(e).

- (p) providing for premises or other places, vehicles, equipment, methods, processes, packages, seals or closures and sources of water used in connexion with the sale or the handling for sale of any food to be approved by the Secretary and making requirements to that effect;
- (q) prescribing methods of analysis to be observed in analyses under or for the purposes of this Act;
- (r) prescribing methods for obtaining samples for the purposes of this Act and dealing with samples so obtained; the rates of the payments to be made for samples obtained for the purposes of this Act; the number of samples to be so obtained in specified cases;
- (s) prescribing the books to be kept by the proprietor of any food premises or equipment;
- (t) requiring specified laboratory and testing facilities to be provided in, at or on premises or other places or vehicles where food is prepared for sale and prescribing procedures and facilities to be used for the examination of any food and notification to specified persons of the results of any such examination;
- (u) prescribing the qualifications of authorized officers and their powers, authorities, functions and duties;
- (v) providing for the licensing by the Secretary of persons for specified purposes;

S. 63(1)(s)
amended by
No. 14/2001
s. 32(f).

S. 63(1)(v)
amended by
Nos 10262
s. 4,
98/1997
s. 16(a).

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- (w) providing for the registration by the Secretary of premises or other places, vehicles or equipment for specified purposes and the inspection of premises or other places, vehicles or equipment in respect of which registration has been granted or is sought;
- (x) providing for applications for and the grant, issue, revocation, cancellation, suspension or surrender of licences, registrations, permits, approvals, certificates and authorities under this Act and transfers, renewals and duplicates thereof; prescribing the terms and conditions on which licences, registrations, permits, approvals, certificates and authorities may be granted, issued, revoked, cancelled, suspended, surrendered, transferred or renewed and the records to be kept in relation thereto; prescribing fees for registrations and transfers and renewals thereof; prescribing proportionate fees where registrations are granted during the currency of a year; fixing days for lodging applications for renewals of registration; prescribing additional fees for renewals of registration in cases where late applications for renewal are lodged;
- (y) providing for the giving, serving and enforcement of notices for or with respect to the rectification of acts or omissions that constitute a contravention of or failure to comply with this Act; and
- (z) prescribing—
- (i) forms to be used for the purposes of this Act and the particular purposes for which those forms shall respectively be used; and
- S. 63(1)(w) amended by Nos 10262 s. 4, 98/1997 s. 16(a), 14/2001 s. 32(g).
- S. 63(1)(x) amended by No. 95/1986 s. 21(1).

(ii) fees and charges payable or to be paid under or for the purposes of this Act and the fixing thereof; the matters and things in respect of which they are payable or to be paid; the methods of collection thereof; the manner, time and place of payment thereof; the persons by whom and to whom they are payable and all matters with respect to the recovery thereof.

(2) Any regulation made under this Act may—

- (a) be made so as to be limited in respect of time, place or circumstances having regard to the conditions existing in any area in which the regulation is to have effect;
- (b) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, council or public authority or by any officer or member of staff of such department, council or authority;
- (c) confer powers or impose duties in connexion with the regulations on any government department, council or public authority or on any officer or member of staff of such department, council or authority or on owners or occupiers of premises or other places or on owners or operators of vehicles or on any persons whomsoever;
- (d) incorporate or adopt by reference the provisions of any document (including any code, standard, rule, specification or method) formulated, issued, prescribed or published by any authority or body whether—
- (i) wholly or partially or as amended by the regulation; and

S. 63(2)(b)
amended by
No. 12/1989
s. 4(1)(Sch. 2
item 47.11).

S. 63(2)(c)
amended by
No. 12/1989
s. 4(1)(Sch. 2
item 47.11).

- (ii) as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; and
- (e) impose a penalty of not more than 10 penalty units for any contravention of or failure to comply with the regulation.

* * * * *

S. 63(3)
repealed by
No. 95/1986
s. 21(2).

(4) Where any form is prescribed by a regulation made under this Act, any form in or to the like effect of the prescribed form shall be sufficient in law.

(5) The Secretary may cause to be published codes of practice in connexion with matters and things that may be made the subject of regulations for the purpose of giving advice and guidance to persons responsible for compliance with those regulations and may alter, amend, modify or vary those codes.

S. 63(5)
amended by
Nos 10262
s. 4,
98/1997
s. 16(a).

(6) Except—

(a) in a case of emergency or sudden necessity (of the existence of which emergency or necessity the Secretary shall be the sole judge); or

S. 63(6)(a)
amended by
Nos 10262
s. 4,
98/1997
s. 16(a).

(b) in the case of regulations to be made under paragraph (a), (b), (c), (d), (e), (f), (g), (k), (m) or (q) of subsection (1)—

where any proposed regulations affect or are likely to affect any municipality copies thereof shall be sent to every such municipality at least six weeks before the making of the regulations.

(7) Regulations made under this Act shall be subject to disallowance by Parliament.

S. 63A
inserted by
No. 95/1986
s. 22,
amended by
Nos 26/1990
s. 3, 6/1991
s. 7(1)(a)–(c),
substituted by
No. 36/1991
s. 3.

63A Prescribed food standards

(1) In this section—

Authority has the same meaning as in the
Commonwealth Act;

Commonwealth Act means the National Food
Authority Act 1991 of the Commonwealth as
amended and in force for the time being and
includes an Act passed in substitution for
that Act;

Food Standards Code has the same meaning as in
the Commonwealth Act;

gazetted means published in the Commonwealth
of Australia Gazette.

(2) For the purposes of this Act a prescribed food
standard is—

- (a) a standard gazetted by the Authority under
the Commonwealth Act; or
- (b) a standard contained in the Food Standards
Code.

(3) A prescribed food standard—

- (a) has effect as amended, varied or partly
superseded by a standard or variation of a
standard gazetted under the Commonwealth
Act; and
- (b) ceases to have effect if revoked or wholly
superseded by a standard or variation of a
standard gazetted under the Commonwealth
Act.

(4) A standard or variation of a standard gazetted
under the Commonwealth Act has effect—

- (a) on the date specified for that purpose in the
gazette; or

-
- (b) if no date is so specified, on the date of gazettal.
- (5) An amendment of the standards contained in the Food Standards Code gazetted before the commencement of the **Food (Amendment) Act 1991** and not incorporated or adopted by reference by the Food Standards Regulations 1987 before that commencement has effect in Victoria from that commencement or the later effective date specified in the gazette.

63B Limitation on power to make local laws

S. 63B
inserted by
No. 20/1995
s. 19.

- (1) A council must not make a local law under the **Local Government Act 1989** for or with respect to any matter or thing for or with respect to which—
- (a) regulations made under this Act are in force;
or
 - (b) regulations could be made under this Act; or
 - (c) a prescribed food standard has effect.
- (2) A local law (whether made before or after the commencement of the **Food (Amendment) Act 1995**) is of no effect to the extent that it makes provision for or with respect to any matter or thing referred to in subsection (1).
-

s. 63C

Pt 12
(Heading)
substituted by
No. 42/2009
s. 32.

**PART XII—TRANSITIONAL PROVISIONS FOR FOOD
(AMENDMENT) ACT 2001**

Pt 12
(Heading and
ss 64, 65)
repealed by
No. 20/1995
s. 20, new Pt
12 (Heading
and ss 63C,
63D) inserted
by No.
14/2001 s. 33.

S. 63C
inserted by
No. 14/2001
s. 33.

63C Existing orders to continue

An order made under section 44 or 44A that was in force immediately before the commencement of section 27 of the **Food (Amendment) Act 2001** continues to have effect as if it had been made under Part VII as in force after that commencement until it is revoked.

S. 63D
inserted by
No. 14/2001
s. 33.

63D Extended application of Division 3 of Part IIIA

- (1) The proprietor of a food premises to which this section applies may elect to have Division 3 of Part IIIB apply to the premises rather than Division 3A of that Part.
- (2) This section applies to any food premises—
 - (a) that is of a class declared by the Secretary, by notice published in the Government Gazette, to be a class of premises to which this section applies; and
 - (b) in respect of which the registration authority had, before 1 January 2002, satisfied itself that the food safety program was adequate.

- (3) An election under subsection (1)—
 - (a) must be made by written notice; and
 - (b) must be given to the registration authority before 1 January 2002.
- (4) A notice of election made in accordance with this section is to be given effect according to its tenor, regardless of anything to the contrary in Part IIIB.
- (5) The proprietor of a premises may, by written notice given to the registration authority, withdraw an election at any time, but Division 3 of Part IIIB will continue to apply to the premises until the registration of the premises is next renewed or transferred, whichever occurs first.
- (6) An election under this section ceases to have any effect on 1 January 2004.
- (7) Despite subsection (6), Division 3 of Part IIIB continues to apply to a premises in respect of which an election under this section was in effect on 1 January 2004 until the registration of the premises is next renewed or transferred, whichever occurs first.

s. 64

Pt 13
(Heading and
ss 64–76)
inserted by
No. 42/2009
s. 33.

**PART XIII—TRANSITIONAL AND SAVINGS PROVISIONS
FOR PART 2 OF THE FOOD AMENDMENT (REGULATION
REFORM) ACT 2009**

New s. 64
inserted by
No. 42/2009
s. 33.

64 Definitions

In this Part—

commencement date, unless stated otherwise,
means the date section 13 of the **Food
Amendment (Regulation Reform) Act
2009** comes into operation;

unamended Act means this Act as in force
immediately before the commencement date.

New s. 65
inserted by
No. 42/2009
s. 33.

65 Minimum record keeping

- (1) This section applies if immediately before the commencement date, a food premises meets the requirements under section 19E of the unamended Act relating to a food safety program.
- (2) While the food premises continues to meet the requirements under section 19E of the unamended Act and until the registration of the premises is renewed, the proprietor of the food premises is taken to meet any requirement under section 19CB to keep minimum records.

S. 66
inserted by
No. 42/2009
s. 33.

66 Food safety program templates

A food safety program template registered by the Secretary under section 19DB of the unamended Act is taken to be registered under section 19DB.

S. 67
inserted by
No. 42/2009
s. 33.

67 Inspections

- (1) If the registration of a food premises under Part VI is renewed after the commencement date, any inspection of the premises under section 19HA or 39(1)(a) of the unamended Act conducted within

12 months before the renewal is taken to be an assessment conducted under Part IIIB.

- (2) A notice given to the proprietor of a food premises under section 19HB(1) of the unamended Act is taken to have been given under section 19IA(2).

68 Audits

S. 68
inserted by
No. 42/2009
s. 33.

- (1) A food safety program audit conducted for the purposes of Part IIIB of the unamended Act is taken to be a food safety audit conducted for the purposes of Part IIIB.
- (2) A certificate issued under section 19L of the unamended Act is taken to have been issued under section 19L.
- (3) A certificate issued under section 19M of the unamended Act is taken to have been issued under section 19M.
- (4) An advice given to the proprietor of a food premises under section 19M(1) of the unamended Act is taken to have been given under section 19M(2).
- (5) A notice given to the registration authority by an auditor under section 19M of the unamended Act is taken to have been given under section 19N.

69 Food safety auditors

S. 69
inserted by
No. 42/2009
s. 33.

- (1) A certificate issued under section 19P of the unamended Act is taken to have been issued under section 19P.
- (2) A reference in section 19T(1)(b) to a requirement imposed by this Act includes any requirement imposed on a food safety auditor by the unamended Act before the commencement date.

s. 70

S. 70
inserted by
No. 42/2009
s. 33.

70 Registration and notification of food premises

A food premises that, immediately before the commencement date, is registered under Part VI of the unamended Act is taken to be registered under Part VI.

S. 71
inserted by
No. 42/2009
s. 33.

71 Grounds for revocation or suspension of registration or direction by the Secretary

If, immediately before the commencement date, a ground for the revocation or suspension of the premises exists under Part IIIB or section 40D of the unamended Act and the matter giving rise to that ground has not been dealt with under the unamended Act—

- (a) the registration authority may revoke or suspend of the registration of the food premises under Part IIIB or section 40D; or
- (b) the Secretary may give a direction under section 40E in relation to the matter.

S. 72
inserted by
No. 42/2009
s. 33.

72 Food (Forms and Registration) Regulations 2005

Regulation 10 of the Food (Forms and Registration) Regulations 2005 applies to section 43(1) as if a reference in that regulation to a register book were a reference to the records required to be kept under section 43.

S. 73
inserted by
No. 42/2009
s. 33.

73 Register of convictions

The Secretary must include in the register of convictions under section 53D a conviction for an offence committed before the date section 27 of the **Food Amendment (Regulation Reform) Act 2009** comes into operation if the conviction for the offence is recorded after that date.

74 First declaration under section 19C

Despite section 19C(4), the first declaration made by the Secretary under section 19C—

- (a) does not require a notice of intention under section 19CA; and
- (b) takes effect on the date specified in the notice under section 19C.

S. 74
inserted by
No. 42/2009
s. 33.

75 Declarations made and exemptions granted before commencement

- (1) On the commencement date, the following cease to have effect—
 - (a) any declaration made under section 19C as in force immediately before that date;
 - (b) any exemption granted under section 19V as in force immediately before that date.
- (2) An exemption granted under section 38(3) as in force immediately before the commencement date remains in force for 4 months after that date unless sooner revoked under section 38(4).

S. 75
inserted by
No. 42/2009
s. 33.

76 Transitional regulations

The Governor in Council may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the **Food Amendment (Regulation Reform) Act 2009**.

S. 76
inserted by
No. 42/2009
s. 33.

Sch. 1

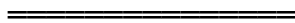
SCHEDULES

Sch.
re-numbered
as Sch. 1 by
No. 95/1986
s. 23(1),
repealed by
No. 42/1993
s. 64(a).

* * * * *

Sch. 2
inserted by
No. 95/1986
s. 23(2),
repealed by
No. 36/1991
s. 4(i).

* * * * *



ENDNOTES

1. General Information

The **Food Act 1984** was assented to on 15 May 1984 and came into operation (*except* sections 31(b), 50(5)) on 1 January 1986: Government Gazette 6 November 1986 page 4213. Sections 31(b) and 50(5) were never proclaimed, repealed by No. 11/1995 section 3(2).

2. Table of Amendments

This Version incorporates amendments made to the **Food Act 1984** by Acts and subordinate instruments.

Health (Amendment) Act 1985, No. 10262/1985

Assent Date: 10.12.85
Commencement Date: S. 4(Sch.) on 1.3.86: Government Gazette 26.2.86 p. 451
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: S. 30(Sch.) on 1.7.86: Government Gazette 25.6.86 p. 2180
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Food (Amendment) Act 1986, No. 95/1986

Assent Date: 16.12.86
Commencement Date: 16.12.86
Current State: All of Act in operation

Liquor Control Act 1987, No. 97/1987

Assent Date: 1.12.87
Commencement Date: S. 179 on 3.5.88: Government Gazette 27.4.88 p. 1044
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Local Government (Consequential Provisions) Act 1989, No. 12/1989 (as amended by No. 13/1990)

Assent Date: 9.5.89
Commencement Date: S. 4(1)(Sch. 2 items 47.2, 47.7–47.9, 47.11) on 1.11.89: Government Gazette 1.11.89 p. 2798; Sch. 2 items 47.1, 47.3–47.6 on 3.6.92: Government Gazette 3.6.92 p. 1306; Sch. 2 item 47.10 on 1.10.92: Government Gazette 23.9.92 p. 2789
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989 (as amended by No. 34/1990)

Assent Date: 14.6.89
Commencement Date: S. 3(Sch. items 79.1–79.11) on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Food (Valuation) Act 1990, No. 26/1990

Assent Date: 5.6.90
Commencement Date: 5.6.90
Current State: All of Act in operation

Interpretation of Legislation (Amendment) Act 1991, No. 6/1991

Assent Date: 16.4.91
Commencement Date: 16.4.91
Current State: All of Act in operation

Food (Amendment) Act 1991, No. 36/1991

Assent Date: 18.6.91
Commencement Date: 19.8.91—same day as the National Food Authority Act 1991 of the Commonwealth—see Commonwealth Special Gazette (No. 219) of 8.8.91
Current State: All of Act in operation

Dairy Industry Act 1992, No. 88/1992

Assent Date: 26.11.92
Commencement Date: 24.12.92: Special Gazette (No. 70) 24.12.92 p. 1
Current State: All of Act in operation

Meat Industry Act 1993, No. 40/1993

Assent Date: 1.6.93
Commencement Date: S. 82, Sch. 2 item 4.1 on 30.6.93: Government Gazette 24.6.93 p. 1596
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Health and Community Services (General Amendment) Act 1993, No. 42/1993

Assent Date: 1.6.93
Commencement Date: S. 64 on 1.10.93: Government Gazette 16.9.93 p. 2548
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993

Assent Date: 7.12.93
Commencement Date: S. 20(5) on 7.12.93: s. 2(4)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Food (Amendment) Act 1994, No. 13/1994

Assent Date: 3.5.94
Commencement Date: 3.5.94
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: S. 118(Sch. 1 item 21) on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: This information relates only to the provision/s amending the **Food Act 1984**

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Therapeutic Goods (Victoria) Act 1994, No. 79/1994

Assent Date: 22.11.94
Commencement Date: S. 74 on 22.5.95: s. 2(3)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Statute Law Revision Act 1995, No. 11/1995

Assent Date: 26.4.95
Commencement Date: 26.4.95: s. 2
Current State: All of Act in operation

Food (Amendment) Act 1995, No. 20/1995

Assent Date: 16.5.95
Commencement Date: 16.5.95
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 33) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Commonwealth Powers (Industrial Relations) Act 1996, No. 59/1996

Assent Date: 12.12.96
Commencement Date: S. 10(Sch. 2 item 7) on 1.1.97: Special Gazette (No. 146) 23.12.96 p. 15
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Food (Amendment) Act 1997, No. 98/1997

Assent Date: 16.12.97
Commencement Date: Ss 3-8, 11-18 on 16.12.97: s. 2(1); ss 9, 10 on 8.2.98: Government Gazette 5.2.98 p. 282; ss 32, 33 on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Water Acts (Further Amendment) Act 1997, No. 110/1997

Assent Date: 23.12.97
Commencement Date: S. 41 on 1.1.98: Government Gazette 24.12.97 p. 3783
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 51) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Food (Amendment) Act 2001, No. 14/2001 (as amended by 44/2001)

Assent Date: 22.5.01
Commencement Date: Ss 1, 2 on 23.5.01: s. 2(1); rest of Act on 1.1.02: s. 2(3)
Current State: All of Act in operation

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 47) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002, No. 49/2002

Assent Date: 22.10.02
Commencement Date: S. 13 on 23.10.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Seafood Safety Act 2003, No. 24/2003

Assent Date: 13.5.03
Commencement Date: S. 91 on 1.7.03: Government Gazette 26.6.03 p. 1548; s. 92 on 1.1.04: Government Gazette 13.11.03 p. 2840
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Safe Drinking Water Act 2003, No. 46/2003

Assent Date: 11.6.03
Commencement Date: S. 58 on 1.7.04: s. 2
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 81) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Statute Law Revision Act 2005, No. 10/2005

Assent Date: 27.4.05
Commencement Date: S. 3(Sch. 1 item 8) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 21) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

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Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 42) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: Ss 254, 255 on 1.1.09: Special Gazette (No. 365) 12.12.08 p. 1; ss 251–253, 256–261 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Food Amendment (Regulation Reform) Act 2009, No. 42/2009 (as amended by No. 69/2009)

Assent Date: 5.8.09
Commencement Date: Ss 3–33 on 1.7.10: s. 2(5)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09.
Commencement Date: S. 97(Sch. item 59) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09.
Commencement Date: S. 54(Sch. Pt 1 item 24) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 24) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Food Act 1984**

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date: 8.6.10
Commencement Date: S. 56 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Food Act 1984**

3. Explanatory Details

¹ S. 4(1):

S. 4(1) amended by Nos 10262 s. 4, 95/1986 s. 5(a)(b), 12/1989 s. 4(1)(Sch. 2 items 47.1, 47.2) (as amended by No. 13/1990 s. 38(1)(o)(p)), 36/1991 s. 4(a)(b), 88/1992 s. 86, 42/1993 s. 64(b), 125/1993 s. 20(5)(a), 13/1994 s. 4(a)(b), 23/1994 s. 118(Sch. 1 item 21.1(a)(b)), 79/1994 s. 74, 20/1995 s. 5, 98/1997 ss 3(a)(b), 16(a), 18(1)(a)(b), 110/1997 s. 41, 46/1998 s. 7(Sch. 1), 44/2001 s. 3(Sch. item 47), substituted by No. 14/2001 s. 4(1) (as amended by No. 44/2001 s. 3(Sch. item 48)).

² S. 20(6) (*repealed*): Section 18 of the **Food (Amendment) Act 1994**, No. 13/1994 reads as follows:

18 Authorised officers

- (1) An instrument of authorisation in force under section 20(6) of the Principal Act immediately before the commencement of this Act is deemed, on and from that commencement, to be an instrument of delegation under section 8A of the **Health Act 1958**.
- (2) An instrument to which subsection (1) applies—
 - (a) is deemed to be a delegation by the Chief General Manager of the functions, powers and duties of an authorised officer that are specified in the instrument; and
 - (b) is deemed to have been made for the period and on the same terms and conditions (if any) that are specified in the instrument; and
 - (c) may be varied or revoked under section 8A of the **Health Act 1958**.

³ S. 31(b): The amendment proposed by section 4(2) of the **Food (Amendment) Act 1995**, No. 20/1995 is not included in this publication because section 31(b) had been repealed by section 3(2) of the **Statute Law Revision Act 1995**, No. 11/1995.

⁴ S. 50(5): The amendment proposed by section 4(3) of the **Food (Amendment) Act 1995**, No. 20/1995 is not included in this publication because section 50(5) had been repealed by section 3(2) of the **Statute Law Revision Act 1995**, No. 11/1995.

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