Food safety in Queensland

Audit verification system

Food Act 2006

January 2014
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Introduction

Queensland is a signatory to the Food Regulation Agreement 2000, an inter-governmental agreement to provide consistent food regulation across Australia. Under the Agreement, state and territory governments agreed to review their food legislation against the requirements in Annex B Model Food Provision. Amongst other things, this includes provisions for the auditing of food safety programs and for the approval of food safety auditors. Food regulators agreed to a number of measures to implement nationally consistent food safety program requirements.

The National Food Safety Audit Policy was endorsed by the Australia and New Zealand Food Regulation Ministerial Council in October 2006. The Queensland Government is obliged under the Food Regulation Agreement 2000 to implement the National Food Safety Audit Policy. The Queensland audit system has been designed to align with the policy.

This document focuses on the audit verification framework to be implemented by the Department of Health’s, Food Safety Standards and Regulation team under the Food Act 2006 (the Act). The framework has been developed in line with the National Regulatory Food Safety Auditor Guideline developed by the Implementation Sub-Committee of the Food Regulation Standing Committee.

The National Regulatory Food Safety Auditor Guideline recommends that regulatory audit management systems include sufficient provisions to enable food regulators to determine whether regulatory food safety auditors are conducting audits in accordance with the appropriate legislation. This document details the various components in the auditor verification system under the Act.

The document is intended to provide information for auditors, Queensland Health officers and holders of accredited food safety programs about the various ways auditor activities may be monitored and assessed.

The term ‘auditor’ is used throughout the document to mean a person approved as an auditor under chapter 5 of the Act.

Further information relating to the management of food safety programs under the Act can be found in the guideline “Management of food safety programs, Food Act 2006” available on the Queensland Health website.

1 – Verification system

The Act audit verification system consists of check audits, witness audits, criminal history checks and other means considered appropriate by the Department of Health to monitor and review the performance of auditors.

1.1 Check audits

Section 159 of the Act allows a check audit of an accredited food safety program. Schedule 3 of the Act defines a check audit as an audit of an accredited food safety program, other than a compliance or non-conformance audit, conducted:

a) by an auditor who is an employee of the department after a compliance or non-conformance audit of the program has been conducted by another auditor; and
b) to ensure the other auditor is conducting compliance or non-conformance audits appropriately.

By auditing the accredited food safety program and comparing the results of a check audit to the results from a compliance or non-conformance audit undertaken by another auditor, it will be possible to gain a primary insight into whether an auditor is performing competently.
Subsection a) of the definition above requires check audits to be undertaken after a compliance or non-conformance audit has been conducted. This means that check audits are not able to be undertaken at the same time an auditor is conducting an audit (known as a witness audit).

In accordance with the National Regulatory Food Safety Auditor Guideline, check audits examine a food safety auditor’s ability to:

- conduct desktop reviews of a businesses accredited food safety program
- plan a regulatory audit
- review evidence gathered by the business to suggest compliance with its accredited food safety program
- gather their own evidence during the on-site component of a regulatory audit
- apply interpretative skills with respect to evidence supplied by the business or evidence they have gathered, in order to generate an opinion as to whether the business is carrying on its system in accordance with the accredited food safety program
- apply interpretative skills to ascertain whether the priority classification status assigned to the business is still appropriate, or whether the auditor should suggest to the food regulator that it amend the classification (audit frequency) assigned to the business
- communicate and negotiate with the business, both during the audit and during the opening and closing meetings
- manage the time impost placed upon a business by the regulatory audit process.

1.2 Witness audits

A witness audit is when a Queensland Health employee observes an auditor conducting a compliance or non-conformance audit to evaluate the competency of the auditor in relation to their knowledge of the legislation, conduct and auditing ability.

The witness audit will assist the Department of Health in verifying that the auditor:

- is a suitable person by observing diligence, professionalism and integrity, behaviour and ethical obligations
- possesses appropriate knowledge of the legislation, and
- can effectively demonstrate practical regulatory auditing ability.

Witness audits may be utilised where an auditor’s knowledge or behaviour has come to the Department of Health’s attention. This could be via a complaint lodged or individual dealings with an auditor.

1.3 Criminal history checks

When considering an application for approval as an auditor, the Department of Health undertakes a criminal history check with the Queensland Police Service to identify any previous criminal activity which may affect an applicant’s suitability.

As part of the verification system, auditors who are not Queensland Health employees will be selected to have a criminal history check undertaken to confirm they continue to be a suitable person.

While auditors are required to complete and sign a declaration as part of the renewal process indicating they have not been convicted of:

- an indictable offence
- an offence against the Food Act 2006, Food Regulation 2006 or a repealed provision or a corresponding law
- an offence relating to a food business and/or auditing activity against the:
  - Work Health and Safety Act 2011
  - Fair Trading Act 1989
They are not required to advise the Department of Health if they have been convicted of an offence noted above at any other time.

Undertaking criminal history checks at various times, allows the Department of Health to verify auditors continue to be a suitable person and have not provided false and misleading information during the renewal process.

Queensland Health employees who are approved auditors are not subject to this component of the verification system as the Code of Conduct for the Queensland Public Service requires all persons covered by the Code to report employee criminal charges and convictions which negates the requirement to ascertain if a person has been convicted of an offence.

1.4 Other means
Separate to undertaking check audits, witness audits or criminal history checks, the Department of Health may undertake other means of monitoring the activity of an auditor. This may include actions such as undertaking investigations into complaints received, interviewing and/or counselling auditors, requiring auditors to maintain a minimum level of audit activity or assessing an auditor’s classification of non-compliances.

The Department of Health also requires auditors to complete and sign a disclosure and declaration each time they renew their approval demonstrating they continue to meet the requirements for approval.

Auditors are required to comply with their conditions of approval and the code of conduct for approved auditors. Failure to comply with these provisions may result in further action being undertaken.

2 – Roles and responsibilities
The roles and responsibilities of various parties in relation to the audit verification system are outlined below.

2.1 Food Safety Standards and Regulation
Food Safety Standards and Regulation (FSSR) in its role as system manager regulates food safety auditors. FSSR is responsible for:
- approving auditors and maintaining a register of auditors
- reviewing auditor complaints and other information received
- investigating reported non-compliances
- forwarding information to Public Health Units (PHUs) to enable further investigations or check audits to be undertaken on behalf of the Department of Health
- determining which auditors will be subject to a verification function
- obtaining information from auditors about audits conducted by the auditor
- liaising with auditors concerning audit compliance matters
- conducting witness audits
- undertaking data collection via local government reporting to determine the number of audits undertaken each year.
2.2 Public Health Units
Hospital and Health Service (HHS), PHUs will undertake regulatory monitoring on behalf of Queensland Health in accordance with individual service agreements. Where requested by FSSR, PHUs will:
- conduct investigations into complaints received regarding auditors
- ensure adequate staff are approved auditors to undertake check audits
- conduct check audits (must be an approved auditor)
- conduct witness audits
- forward check audit and witness audit reports to FSSR.

2.3 Local Government
It is expected local government will:
- forward any concerns regarding auditors to FSSR for investigation and appropriate action.

2.4 Auditors
An auditor is required to:
- comply with their conditions of approval and the code of conduct
- provide details and records of audits to a Queensland Health employee on request
- be available for check audits when requested
- participate in an auditor development program when directed.

3 – Check audit procedure
When deciding how check audits are determined, consideration will be given to:
- complaints and other information received by FSSR
- selecting auditors located in a variety of HHS
- the number of audits undertaken each year by auditors

Any function undertaken as apart of an auditor’s activity is considered suitable for a check audit. This includes providing written advice, audit reports or notification of critical non-compliances.

Check audits should where possible be undertaken within one month of a regulatory audit being conducted to ensure that comments made in the auditor’s report are current and to ensure systems are relatively unchanged from when the regulatory audit was undertaken.

To ensure an unbiased check audit, the PHU do not require a copy of the audit report or written advice submitted to FSSR to undertake this verification process.

3.1 Number of auditors to be check audited annually
FSSR will select a number of auditors to be check audited annually. Auditors who are not Queensland Health employees will be randomly selected from the register of auditors. Where a complaint has been received about an auditor, that auditor may be selected for a check audit.

Auditor selection is at the minimum rate of 20 per cent. There are currently approximately 70 auditors who are not Queensland Health employees equating to around 14 auditors selected for a check audit per annum.

3.2 Request list of activities
Selected auditors are required to provide a list of all their activities undertaken in the previous 3 month period to FSSR.
Details of audit activities to be provided include the type of activity (written advice, compliance audit or non-compliance audit), the business name and address, and the date of the activity.

The selected auditors are required to comply with this request within 14 days.

### 3.3 Request audit report

From the list generated above, consideration will be given to whether one audit report is requested from an auditor or if the auditor should be subject to a criminal history check in the event an auditor does not have audit currency suitable for a check audit.

Selection of the audit report to be requested will be based on the business location and date of audit. A minimum lag time between the audit report and the check audit is desirable. The auditor is required to provide the audit report within 14 days.

The check audits are to be as evenly distributed as possible across HHS.

### 3.4 Advise public health units

To ensure PHUs are given as much notice as possible for forward planning, FSSR are to advise PHUs that audit data is being requested from auditors and details relating to businesses located within their area shall be forwarded shortly.

Following finalisation of which audit activities are to be verified, detailed information relating to businesses located within a PHUs area will be forwarded.

### 3.5 Advise relevant businesses

FSSR are to advise the relevant businesses of the upcoming check audit and provide contact details for the relevant PHU.

This communication will clarify to the business that it is the auditor being assessed, not the business.

### 3.6 Undertake check audit

It is requested that PHUs conduct the check audit at their earliest convenience, noting it is beneficial to conduct the check audit as close to the regulatory audit as possible.

If during the check audit, the auditor observes a critical non-compliance, the auditor is required to complete a ‘Notice of critical non-compliance’ and forward it to the relevant local government as per section 162 of the Act with a copy to the Director, FSSR as per their conditions of approval.

### 3.7 Return check audit report

The PHU is requested to return the completed check audit report to FSSR within 14 days of completing the audit in equivalence with section 161 of the Act.


### 3.8 Assess check audit report

FSSR will undertake a comparison of the completed check audit report against the auditor’s report provided in section 3.3 above. Matters to be considered include consistency, categorisation of non-compliances and other aspects considered appropriate.
3.9 Advise auditor of outcome

FSSR will formally advise the auditor of the outcome and manage issues identified using a range of enforcement options described in section 6 below as considered necessary.

4 – Witness audit procedure

In the event of an auditor being selected for a witness audit, the auditor is to be advised in writing that a witness audit is to be undertaken.

The auditor is required to notify FSSR of the details of upcoming audits including business name and location, date of audit, anticipated audit duration and scope. FSSR will consult with PHUs in the event a regional audit is necessary.

At the conclusion of the witness audit, a report detailing observations relating to the auditors conduct, knowledge of legislation, diligence, professionalism and integrity, behaviour, ethical obligations and auditing ability is to be forwarded to the Director, FSSR. The report may include a proposed recommendation.

FSSR is to formally advise the auditor of the outcome and manage issues identified using a range of enforcement options described in section 6 below as considered necessary.

5 - Criminal history check

Where auditors have been selected to have a criminal history check undertaken, the process shall be conducted in line with new applications. Criminal history checks may be appropriate where the selected auditor does not have current audit history suitable for a check audit.

Auditors may also be randomly selected for a criminal history check as apart of the verification system.

6 - Enforcement options

In the situation where issues have been identified with an auditors conduct, competency or skills and knowledge, enforcement action may be considered appropriate. The Act provides for a number of enforcement options, these include:

- issue a penalty infringement notice (PIN) for registered offences
- issue a show cause notice for suspension or cancellation of approval (section 145)
- suspend or cancel approval (section 148)
- immediate suspension of approval (section 149)
- impose a condition of approval (section 136(3)(b))
- prosecution

However, where appropriate other options such as counselling or requiring the auditor to maintain a minimum level of audit activity can also be considered.

The table over details the maximum penalty and PIN value for offences relating to an auditor.
<table>
<thead>
<tr>
<th>Section</th>
<th>Offence</th>
<th>PIN amount</th>
<th>Maximum Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Penalty Unit ($</td>
<td>Penalty Unit ($)</td>
</tr>
<tr>
<td>137</td>
<td>Failure to comply with conditions of approval</td>
<td>10</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>($1100)</td>
<td>($11,000)</td>
</tr>
<tr>
<td>150(2)</td>
<td>Failure to return a cancelled or suspended approval to the chief executive within 7 days.</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>($220)</td>
<td>($2200)</td>
</tr>
<tr>
<td>161(1)</td>
<td>Failure to provide an audit report within 14 days after completing the audit.</td>
<td>10</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>($1100)</td>
<td>($11,000)</td>
</tr>
<tr>
<td>162(3)</td>
<td>Failure of an auditor to inform the local government of a potential contravention that poses an imminent and serious risk to food safety.</td>
<td>20</td>
<td>500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>($2200)</td>
<td>($55,000)</td>
</tr>
<tr>
<td>162(4)</td>
<td>Failure of an auditor to give the local government written notice of details relating to a potential contravention that poses an imminent and serious risk to food safety.</td>
<td>20</td>
<td>500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>($2200)</td>
<td>($55,000)</td>
</tr>
<tr>
<td>163(1)</td>
<td>Obstruction of an auditor in the conduct of an audit.</td>
<td>5</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>($550)</td>
<td>($11,000)</td>
</tr>
<tr>
<td>164</td>
<td>Impersonating an auditor.</td>
<td>5</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>($550)</td>
<td>($11,000)</td>
</tr>
</tbody>
</table>

7 – Supporting documents

7.1 Authorising Legislation, Policy and Standard

- *Food Act 2006*
- *Food Regulation Agreement 2000*
- National Food Safety Audit Policy
- National Regulatory Food Safety Auditor Guideline

7.2 Forms and templates

- Code of conduct for approved auditors
- Management of food safety programs *Food Act 2006*
- Audit report template
- Notice of critical non-compliance template
- Written advice for consideration of food safety program for accreditation template