Due diligence

Food businesses are able to apply the defence of due diligence in proceedings relating to certain offences under the Food Act 2006 (the Act). This fact sheet provides information about the due diligence defence and when it can be used in legal proceedings in accordance with section 44 of the Act.

What is the defence of due diligence?

The defence of due diligence is a method of defence a person can use in prosecution proceedings to demonstrate that they, or a person under their control (not including an employee, agent or director of the person), demonstrated all due diligence to prevent the offence from being committed.

Which offences can the defence of due diligence be used for?

The defence of due diligence can be used only for offences outlined in Chapter 2 of the Act. These include:
- handling of food in an unsafe way
- sale of unsafe food
- false description of food
- handling and sale of unsafe food
- handling and sale of unsuitable food
- misleading conduct relating to the sale of food
- sale of unfit equipment or packaging or labelling material
- non-compliance with the Australia New Zealand Food Standards Code.

Note: it does not matter that the food concerned was sold or intended for sale outside Queensland.

How can due diligence be demonstrated?

The person satisfies the requirements of due diligence if it is proved-
- that the offence was committed:
  - by an act or default of another person; or
  - the person relied on information supplied by another person; and
- that:
  - the person carried out all checks of the food concerned, that were reasonable in all the circumstances, or
  - 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
- that the person did not import the food into the State from another country; and
- if the offence involves the sale of food, that:
  - the person sold the food in the same condition as when the person purchased it; or
  - 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 a contravention of the Act.

A person may satisfy the requirements of due diligence and that they carried out all checks of the food concerned, that were reasonable in all the circumstances, by proving that the person complied with:
- an accredited food safety program (see Food Safety Fact Sheet Food safety programs); or
- a scheme (eg. quality assurance program or industry code of practice) that was designed to manage food safety hazards and is based on national or international standards, codes or guidelines provided for that purpose and documented in some way.
Note: ‘another person’ does not include a person who was:
(a) an employee or agent of the defendant; or
(b) in the case of a defendant that is a body corporate, a director, employee or agent of the defendant.

It is important to note that it is the role of the Courts, not food businesses or authorised persons, to determine if the defence of due diligence has been satisfied.

For further information

The Queensland Department of Health has a variety of fact sheets with detailed information on food safety. These can be accessed at [www.health.qld.gov.au/foodsafety](http://www.health.qld.gov.au/foodsafety).

If you have any further questions relating to the defence of due diligence, contact the local government for the area where your food business is located. Contact details can be found in the White Pages or at [www.dlgp.qld.gov.au/local-government-directory](http://www.dlgp.qld.gov.au/local-government-directory).