Monitoring and enforcement of the *Food Act 2006*
Table of Contents

Part 1 – A guide to the division of food safety responsibilities under the Food Act 2006

Introduction  ......................................................... 3
Legislation used by agencies  ......................................................... 3
Food Act 2006  ......................................................... 3
Food production (Safety) Act 2000  ......................................................... 3
Food standards code  ......................................................... 4
Divisions of responsibility between agencies  ......................................................... 4
Queensland Health and Local Government joint responsibility for enforcement  ......................................................... 4
Working in partnership  ......................................................... 5
Action by State in the event Local Government does not administer and enforce the Food Act 2006  ......................................................... 6
Potential food safety issues and the responsible enforcement agency  ......................................................... 7

Part 2 – Monitoring and Enforcement of the Act

Introduction  ......................................................... 8
Local laws about administration of Act (Section 30)  ......................................................... 9
Offences relating to food  ......................................................... 9
Identifying the elements of an offence  ......................................................... 9
Offences administered by Queensland Health and Local Government  ......................................................... 9
Handling of food in unsafe way (Section 32)  ......................................................... 9
Sale of unsafe food (Section 33)  ......................................................... 10
Handling of sale of unsafe food (Section 35)  ......................................................... 11
Handling and sale of unsuitable food (Section 36)  ......................................................... 11
Compliance with food standards code (Section 39)  ......................................................... 12
Offences administered by Queensland Health and Local Government  ......................................................... 14
False description of food (Section 34)  ......................................................... 14
Misleading conduct relating to sale of food (Section 37)  ......................................................... 14
Sale of unfit equipment or packaging or labelling material (Section 38)  ......................................................... 15
False description of food (Section 40)  ......................................................... 16
Defences related to food  ......................................................... 17
Application of provisions outside the State (Section 41)  ......................................................... 17
Defence due diligence (Section 44)  ......................................................... 17
Mobile food premises  ......................................................... 19
Action that may be taken by Local Government (Section 90)  ......................................................... 19
Notification to first Local Government (Section 91)  ......................................................... 19
Action that may be taken by first Local Government (Section 92)  ......................................................... 21

Authorised persons powers and responsibilities  ......................................................... 21
Production or display of identity card (Section 171)  ......................................................... 21
Power to enter places (Section 175)  ......................................................... 21
Warrants – procedure before entry (Section 181)  ......................................................... 22
General powers after entering places (Section 182)  ......................................................... 23
Stopping or moving motor vehicle (Section 185)  ......................................................... 25
Receipts for seized things (Section 192)  ......................................................... 25
Forfeiture things (Section 193)  ......................................................... 26
Access to seized things (Section 195)  ......................................................... 26
Power of destruction (Section 196)  ......................................................... 26
Application of div 8 (Section 203)  ......................................................... 27
Power and procedure for entry (Section 204)  ......................................................... 27
How power may be exercised (Section 206)  ......................................................... 28
Improvement notice (Section 209)  ......................................................... 28
Notice of damage (Section 212)  ......................................................... 29
Compensation (Section 213)  ......................................................... 29
Injunctions  ......................................................... 29
Application of part 5 (Section 222)  ......................................................... 29
Who apply for an injunction (Section 223)  ......................................................... 30
District Court’s powers (Section 224)  ......................................................... 30
Terms of injunction (Section 225)  ......................................................... 30
Undertakings as to damages or costs (Section 226)  ......................................................... 30
Miscellaneous  ......................................................... 30
Particular premises taken to be within local government area (Section 275)  ......................................................... 30

Part 3 – Prescribed infringement notices (PINs) under the Food Act 2006

Issuing of prescribed infringement notices (PINs)  ......................................................... 31
Withdrawing prescribed infringement notices (PINs)  ......................................................... 38
Administration requirements for prescribed infringement notices (PINs)  ......................................................... 39

Part 4 – Material to support this guideline

Standard resources for EHOs  ......................................................... 41
Standard forms  ......................................................... 41
Introduction

Queensland Health, Local Government and Safe Food Queensland have the responsibility of working with the food industry in Queensland to ensure that consumers are provided with a high quality and safe food supply. These agencies work closely with the food industry to assist them in understanding and complying with their legislative responsibilities.

Part 1 of this guideline provides guidance on the division of responsibilities between Local Government and Queensland Health under the Food Act 2006. The guideline will also outline Safe Food Queensland’s areas of responsibility. The part will further identify the legislation generally that each agency operates under and which parts of the legislation they are specifically responsible for. Additionally, the guideline will examine various examples/issues relating to the safety of food encountered by the public and the responsible agencies for the various issues.

Legislation used by the agencies

Food Act 2006

Queensland Health and Local Government are responsible for administering the requirements of the Food Act 2006. The Food Act 2006 applies to the handling of food for sale and as the definitions of food, handling and sell are broad, the fundamental requirement of the Food Act 2006 – ensuring food is safe and suitable– applies across the entire food system.

The Act also creates an administrative structure for the supervision of the manufacturing, wholesale and retail sectors of the food industry. This administrative structure consists mainly of licensing provisions and food safety programs for high risk food businesses.

The division of responsibilities between Queensland Health and Local Government will be discussed within this document.

Food Production (Safety) Act 2000

The Food Production (Safety) Act 2000 objectives are to:

- ensure the production of primary produce is carried out in a way that makes the primary produce fit for human or animal consumption and maintains food quality.
- to provide for food safety measures for the production of primary produce consistent with other State laws relating to food safety.
- creates Safe Food Production Queensland (Safe Food Queensland).

The Food Production (Safety) Act 2000 contains provisions making it an offence to supply unsafe primary produce and to supply unwholesome meat or seafood.

The Food Production (Safety) Act 2000 also creates an administrative structure for the supervision of components of the primary production sector through the development of food safety schemes. These schemes currently include meat, dairy and eggs.

Where a food safety scheme exists Safe Food Queensland regulate production, processing and transport of food products from the source (e.g. farm), through to the point where products enter the manufacturing and retail sectors.

Safe Food Queensland does regulate butcher shops at the retail level. Where a butcher shop also undertakes other retail food activities that normally require a food license under the Food Act 2006 dual regulation may apply.
Food Standards Code

Queensland Health has primary responsibility for ensuring compliance with the Code, with the exception of Chapter 3, the Food Safety Standards, which are the responsibility of local government and Chapter 4, the Primary Production Standards.

Division of responsibility between the agencies

The Act clearly identifies the responsibilities of Queensland Health and Local Government under the legislation. The following sections outline which parts of the Food Act 2006 is the responsibility of the different agencies.

Table 1 – The division of responsibilities between Queensland Health and Local Government

<table>
<thead>
<tr>
<th>Food Act 2006</th>
<th>Description of provision</th>
<th>State</th>
<th>Local</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 34</td>
<td>False description of food</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 37</td>
<td>Misleading conduct relating to sale of food</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 38</td>
<td>Sale of unfit equipment or packaging or labelling material;</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 39(2)</td>
<td>Compliance with labelling requirements of Food Standards Code</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 39(3)</td>
<td>Compliance with requirement of Food Standards Code</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 39(4)</td>
<td>Contravention by selling or advertising food in a way that fails to comply with Food Standards Code;</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 159</td>
<td>Check audits</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Chapter 7, Part 4</td>
<td>Emergency Powers of Chief Executive</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 39(1)</td>
<td>Compliance with Chapter 3 of the Food Standards Code</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Chapter 3</td>
<td>Licences of food businesses</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Chapter 4</td>
<td>Food Safety Programs</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Chapter 6</td>
<td>Audits of accredited Food Safety Programs (excluding section 159).</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 32</td>
<td>Handling food in an unsafe way</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 33</td>
<td>Sale of unsafe food</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 35</td>
<td>Handling and sale of unsafe food</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Section 36</td>
<td>Handling and sale of unsuitable food</td>
<td></td>
<td>✔</td>
</tr>
</tbody>
</table>

Queensland Health and Local Government joint responsibility for enforcement

Where both Queensland Health and Local Government have joint responsibility for administering provisions, it is important to minimise any potential confusion as to how the Sections are enforced. The following is a guide on how to determine which organisation has responsibility for enforcing Sections 32, 33, 35 and 36.

When determining whether Queensland Health or Local Government is responsible for enforcing the provisions for which they have joint responsibility, consideration needs to be given as to which organisation identified the breach of legislation.

In the event that Queensland Health identified the failure to comply with the legislation, the State would be responsible for enforcing the jointly administered provisions.
An authorised person, employed by Queensland Health, who is undertaking an investigation of the
labelling of food products at a particular food premises, observes a food handler at the business
sell food that is unsafe due to the food containing a foreign object – a breach of Section 35(2). As
the breach was identified by a Queensland Health authorised person, the State is responsible for
acting upon the breach of the Food Act 2006.

Alternatively, should the breach in the example above have been identified by a Local Government authorised person
during a routine inspection of a licensed food business, the Local Government would be responsible for addressing
the breach of the legislation.

In the event that authorised persons from Queensland Health and a Local Government are undertaking a joint
operation, the officer from the organisation leading the investigation would assume responsibility for acting upon a
breach of legislation that is jointly administered.

Queensland Health and a Local Government are jointly undertaking an investigation into an
alleged food-borne illness outbreak. During the investigation evidence is obtained that a breach
of Section 35, ‘Handling of food in unsafe way’ has occurred. As food-borne illness investigation
is primarily the responsibility of the State, Queensland Health is the lead agency in this instance.
Therefore, Queensland Health would be responsible for undertaking the necessary action against
the food business for a failure to comply with Section 35 of the Food Act 2006.

It is recommended that Queensland Health and Local Government inform each other of any action taken in relation to
sections 32, 33, 35 and 36 of the Act. This will ensure consistency in interpretation and enforcement of the Act and
prevent duplication of enforcement action.

Working in partnership

The Act allows for Queensland Health and Local Government to develop partnerships to ensure that the requirements
of the Act are met. The power to do this is provided in Section 25 of the Act.

Section 25 allows the chief executive and the chief executive officer of a Local Government to come to an agreement
about the State undertaking the administration or enforcement of the Act which is normally undertaken by a Local
Government.

A small, rural Local Government only employs one person authorised under the Food Act 2006.
The authorised person is planning to go on annual leave. Previously, this would have meant that
the Local Government would not have had an authorised person available to respond to emergent
food safety issues. The Local Government instead would be able to enter into an agreement with
Queensland Health to ensure the continuation of services in the event of emergent food safety issues.

Alternatively, Queensland Health may also agree to a Local Government performing the administration or
enforcement functions which the State is ordinarily responsible for under the Act.
Monitoring and enforcement

Example

Queensland Health’s population health units are often located a considerable distance from some of the population centres for which they are responsible. Subsequently, Queensland Health would be able to enter into an agreement with a geographically remote local government to have their authorised person respond to emergent food safety issues for which the State is responsible. Subsequently, reducing the response time, improving the service level to the community and meeting the obligations of the Act.

The Act is silent on the processes of how an agreement between the State and a Local Government can be reached. Therefore, a partnership agreement may be made verbally or in writing. However, it is preferable for an agreement between the State and a Local Government to be in writing, unless the agreement is to address an emergency situation.

While the Act does not specify what needs to be contained within a partnership agreement, there are a number of issues which should be addressed. These being:

- the duration of the agreement
- the sections or chapters to be administered and enforced
- expectations of each party to the agreement (e.g. level of service to be provided)
- cost recovery
- dispute resolution
- how and when the agreement is to be commenced and concluded.

It should be noted that agreement reached between the State and a Local Government to administer the Act in partnership would constitute a contract. Subsequently, the relevant contract law will be applicable to any agreement entered into.

**Action by State in the event Local Government does not administer and enforce the Food Act 2006**

Section 26 of the Act provides the State with the ability to undertake the responsibilities that the Act gives to Local Government. The State is only able to undertake these responsibilities if certain criteria have been met.

Queensland Health’s chief executive must be satisfied that a Local Government has not undertaken or not sufficiently undertaken one or more of its responsibilities in relation to:

1. Compliance with Chapter 3 of the Food Standards Code
2. Licensing of food businesses
3. Food safety programs
4. Audits of accredited food safety programs\(^1\).

In the event that Queensland Health’s chief executive is satisfied that the Local Government has not undertaken or sufficiently addressed one of its responsibilities, two considerations must also be taken into account. Queensland Health’s chief executive needs to reasonably consider that undertaking action will:

1. significantly reduce the risk associated with the sale of unsafe or unsuitable food
2. prevent a significant risk to public health from recurring.

When the State has determined that the above criteria have been met, Queensland Health’s chief executive is required to consult with the chief executive officer of the Local Government. Additionally, the Local Government’s chief executive officer must be given a reasonable opportunity to take the necessary action prior to the Queensland Health taking any action.

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\(^1\) Excludes responsibility for Section 162 – Check Audits. The *Food Act 2006* has allocated this responsibility to Queensland Health.
It should be noted that in the event Queensland Health undertakes a responsibility normally administered by Local Government, the reasonable costs and expenses incurred, become a debt payable by the Local Government to the State.

**Potential food safety issues and the responsible enforcement agency**

The table below outlines a number of food safety issues that may be encountered by members of the public and outlines which enforcement agency is responsible for responding to the matter.

Table 2 – Types of food safety issues and the responsible lead agency

<table>
<thead>
<tr>
<th>Issue</th>
<th>Example</th>
<th>Responsible agency</th>
<th>Relevant Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food-borne illness</td>
<td>Symptoms may include: nausea, vomiting, diarrhoea</td>
<td>Queensland Health</td>
<td>Food Act 2006</td>
</tr>
<tr>
<td>Foreign matter¹</td>
<td>Glass, metal, bandaid in food</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labelling of food product</td>
<td>Ingredients not listed on the package</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food composition issue</td>
<td>Presence of unidentified allergens, non-permitted preservatives</td>
<td>Queensland Health</td>
<td></td>
</tr>
<tr>
<td>Misleading conduct by a food business</td>
<td>Misleading or deceptive advertising, packaging or labelling of food</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food safety issue at a government business</td>
<td>Public hospitals or state schools</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General food safety issue at a retail premises</td>
<td>Staff smoking while handling food at a café or take away food shop</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General food safety issue at a manufacturer</td>
<td>Goods supplied to a retail business are spoiled</td>
<td>Local government</td>
<td>Food Act 2006</td>
</tr>
<tr>
<td>General food safety issue in a wholesale and retail distribution centre</td>
<td>Vermin infestation in warehouse.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Primary produce and processing safety – particularly meat, dairy and eggs. | Spoiled milk  
Raw meat not being refrigerated while transported  
Sale of eggs from unapproved producer  
Poor storage of primary produce  
Unhealthy conditions at a primary producers | Safe Food Queensland | Food Production (Safety) Act 2000 |
| Food safety issue at a retail butcher                  | Butcher staff not washing hands.                                       |                                     |                               |

² The responsible agency (which may also be the licensing agency) is the lead authority that has responsibility for the issue. It should be noted that in some instances a joint response from more than one agency may be appropriate.

³ Foreign matter complaints may be referred to Local Government for action.
PART 2 – Monitoring and Enforcement of the Act

Introduction

Queensland Health and Local Government authorised persons are required to monitor and enforce the provisions of the Food Act 2006. Part 2 – Monitoring and Enforcement of the Act of this guideline is intended to provide guidance and clarification of the enforcement related provisions contained within the Act.

Not all of the enforcement provisions in the Act have been discussed in Part 2. The provisions which have been discussed were selected by the members of the Enforcement Working Group on the basis of a need for clarity and the ease of comprehension.

Table 3 provides a summary of the provisions discussed in Part 2 and outlines which enforcement agency they are relevant for.

Table 3 Summary of monitoring and enforcement provisions

<table>
<thead>
<tr>
<th>Section of Food Act 2006</th>
<th>Description of provisions</th>
<th>Relevant to:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>State</td>
</tr>
<tr>
<td>30</td>
<td>Local Laws about administration of Act</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Identifying the elements of an offence</td>
<td>✔</td>
</tr>
<tr>
<td>32</td>
<td>Handling of food in unsafe way</td>
<td>✔</td>
</tr>
<tr>
<td>33</td>
<td>Sale of unsafe food</td>
<td>✔</td>
</tr>
<tr>
<td>34</td>
<td>False description of food</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Handling and sale of unsafe food</td>
<td>✔</td>
</tr>
<tr>
<td>36</td>
<td>Handling and sale of unsuitable food</td>
<td>✔</td>
</tr>
<tr>
<td>37</td>
<td>Misleading conduct relating to sale of food</td>
<td>✔</td>
</tr>
<tr>
<td>38</td>
<td>Sale of unfit equipment or packaging or labelling material</td>
<td>✔</td>
</tr>
<tr>
<td>39</td>
<td>Compliance with food standards code</td>
<td>✔</td>
</tr>
<tr>
<td>40</td>
<td>False description of food</td>
<td>✔</td>
</tr>
<tr>
<td>41</td>
<td>Application of provisions outside the State</td>
<td>✔</td>
</tr>
<tr>
<td>44</td>
<td>Defence of due diligence</td>
<td></td>
</tr>
<tr>
<td>90</td>
<td>Action that may be taken by second Local Government</td>
<td></td>
</tr>
<tr>
<td>91</td>
<td>Notification to first Local Government</td>
<td></td>
</tr>
<tr>
<td>92</td>
<td>Action that may be taken by first Local Government</td>
<td></td>
</tr>
<tr>
<td>171</td>
<td>Production or display of identity card</td>
<td></td>
</tr>
<tr>
<td>175</td>
<td>Power to enter places</td>
<td>✔</td>
</tr>
<tr>
<td>181</td>
<td>Warrants – procedure before entry</td>
<td>✔</td>
</tr>
<tr>
<td>182</td>
<td>General powers after entering places</td>
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</tr>
<tr>
<td>185</td>
<td>Stopping or moving motor vehicles</td>
<td>✔</td>
</tr>
<tr>
<td>192</td>
<td>Receipts for seized things</td>
<td>✔</td>
</tr>
<tr>
<td>193</td>
<td>Forfeiture of seized things</td>
<td>✔</td>
</tr>
<tr>
<td>195</td>
<td>Access to seized things</td>
<td>✔</td>
</tr>
<tr>
<td>196</td>
<td>Power of destruction</td>
<td>✔</td>
</tr>
<tr>
<td>203</td>
<td>Application of div 8</td>
<td>✔</td>
</tr>
<tr>
<td>204</td>
<td>Power and procedure for entry</td>
<td>✔</td>
</tr>
<tr>
<td>206</td>
<td>How power may be exercised</td>
<td>✔</td>
</tr>
<tr>
<td>209</td>
<td>Improvement notice</td>
<td>✔</td>
</tr>
<tr>
<td>212</td>
<td>Notice of damage</td>
<td>✔</td>
</tr>
<tr>
<td>213</td>
<td>Compensation</td>
<td>✔</td>
</tr>
<tr>
<td>222</td>
<td>Application of part 5</td>
<td>✔</td>
</tr>
<tr>
<td>223</td>
<td>Who may apply for an injunction</td>
<td>✔</td>
</tr>
<tr>
<td>224</td>
<td>District Court’s powers</td>
<td>✔</td>
</tr>
<tr>
<td>225</td>
<td>Terms of injunction</td>
<td>✔</td>
</tr>
<tr>
<td>226</td>
<td>Undertakings as to damages or costs</td>
<td>✔</td>
</tr>
<tr>
<td>275</td>
<td>Particular premises taken to be within Local Government area</td>
<td>✔</td>
</tr>
</tbody>
</table>
Local Laws about administration of Act (Section 30)

Local governments are not able to make local laws so as to impose additional requirements. For example, a local law that sought to impose additional structural requirements to a food premises would not be permitted by Section 30. The local law must be necessary to assist the Local Government administer the Act.

Offences relating to food

Sections 32 to 40 of the Act examine the offences relating to food. The discussion on each offence will include which is the responsible agency for enforcing the provision, the elements of the offences and an examination of specific elements.

Identifying the elements of an offence

The first step in identifying the elements of an offence should be to dissect and separate each element for consideration. To assist in separating the elements it is recommended that each element or component part of the offence be listed on separate lines to assist in establishing what must be proved and how this can be done.

Offences administered by Queensland Health and Local Government

Queensland Health and Local Government have joint responsibility for many of the offences relating to food contained within the Act. This section of the guideline will examine the offences administered jointly.

Handling of food in unsafe way (Section 32)

Responsible agencies

The offence of handling food in an unsafe way will be administered by both Queensland Health and local government.

Elements

The elements of this offence are: a person, must not handle, food, intended for sale, person knows or reasonably ought to know, will or likely to make, and food unsafe (physical harm).

Element – Person

In this instance the person described in the offence is the food handler who handled the food so as to make or was likely to make it unsafe.

Element – Handling

A critical element in this offence is food must have been handled in a way that led to it becoming or likely to become unsafe. When investigating breaches against this section, careful consideration needs to be given to what handling involves. Handling of food is defined in the Act as including: the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving and displaying of food.

Element – Intended for sale

Another important element in this offence is that the food must be intended for sale. The definition of sell is included in Section 19 of the Act. It includes receive for sale, have in possession for sale, display for sale, provide under a contract of service, offer as a prize or reward and sell for the purposes of resale. Therefore, when investigating an alleged breach against this provision the authorised person must be able to demonstrate that the food was intended for sale. This would be achieved by establishing that the business was offering to sell the food product by one of the methods described in Section 19.

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4 A discussion on how joint responsibility of provisions will be managed can be found in Part 1 of this guideline.
5 Refer to Clause 19 for the additional definitions of sell.
**Element – Knows or reasonable ought to know**

The ‘person knows or reasonably ought to know’ element is a standard legislative test that a person had knowledge of a matter, or if that knowledge is disputed or cannot be proved, that they reasonably should have had that knowledge.

This element relates to the Standard 3.2.2 of the Food Standards Code. The Standard requires that a food business must ensure that persons undertaking or supervising food handling operations have skills in food safety and food hygiene matters and knowledge of food safety and hygiene matters. From this it may be argued that a food handler has sound knowledge and skills in food handling and such their ability to reasonably know may be argued as higher than that for an unskilled person.

### Example

An employee of a food business prepared an uncooked salad on a cutting board early in the day. Prior to preparing the salad, the staff member had sliced raw fish fillets on the cutting board. The cutting board was not washed between slicing the raw fish and preparing the salad. The salad was left on a work bench, at room temperature after being prepared.

The salad was sold several hours latter during the lunch rush and eaten by a consumer who purchased the salad. The consumer subsequently suffered food-borne illness.

In this instance the food handler ought to have known that the preparation of raw fish on the cutting board prior to making the salad would have resulted in the salad becoming contaminated.

---

**Sale of unsafe food (Section 33)**

### Relevant agencies

The offence of sale of unsafe food will be administered by both Queensland Health and Local Government.

### Elements

The elements of this offence are: a person, must not sell, food, the person, knows or reasonably ought to know, is unsafe.

**Element – Must not sell**

An important element of this offence provision is, ‘must not sell’. Section 19 defines the meaning of sell. The definition of sell includes, but is not limited to, receive for sale, have in possession for sale, display for sale, provide under a contract of service, dispose of by way of raffle, lottery or other game of chance, offer as a prize or reward, give away for the purpose of advertisement or in furtherance of trade or business and sell for the purposes of resale.

Thus an authorised person would be required to prove that the unsafe food had been offered for sale or sold in accordance with the definition of sell contained within the Act.

**Element – Knows or reasonable ought to know**

Guidance on the element of ‘knows or reasonably ought to know’ has been provided in the discussion on Section 32 ‘Handling of food in unsafe way’.

### Example

A person, who is also the licensed business’ food safety supervisor, notices the metal blade on a slicer is faulty in that the slicer appears to be missing metal fragments from its blade. The person uses the slicer regardless of its condition to shave slices of meat, some of which become contaminated with the metal fragments. The contaminated meat slices are placed into sandwiches which are then sold to consumers.
**Handling and sale of unsafe food (Section 35)**

**Relevant agencies**
The offence of handling and sale of unsafe food will be administered by both Queensland Health and Local Government.

**Elements**
The elements of subsection 1 are: a person, must not handle, food, intended for sale, that will or is likely to make, food unsafe.

The elements of subsection 2 are: a person, must not sell, food, that is unsafe.

Guidance on the elements of ‘a person, handle and intended for sale’ have been provided in the discussion on Section 32 ‘Handling of food in unsafe way’. The element ‘must not sell’ has been discussed in Section 33 ‘Sale of unsafe food’.

**Element – Unsafe food**
Section 20 defines food as being unsafe if at a particular time it would be likely to cause physical harm to a person who might latter consume it. This is based upon a number of assumptions that take into consideration what occurs after a consumer has purchased the food. These assumptions being:

- the food 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
- nothing happened to it after that particular time and before being consumed by the person that would prevent its being used for its reasonable intended use; and
- the food was consumed by the person according to its reasonable intended use.

**Example**
A person purchases raw meat and leaves it at room temperature for an extended period of time. By the person having done this, the food would not be considered to have been ‘unsafe’ when sold.

However, it is important to note that food will not be considered ‘unsafe’ because it may cause an adverse reaction to a minority of persons.

**Example**
A food product containing peanuts may cause an allergic reaction in some people. However, it would not be considered unsafe because the food product would be considered safe for the majority of people.

The following is an example of food that is not safe.

**Example**
An employee of a food business places sanitiser into a container which is similar to those used by the restaurant to provide drinking water. Another employee who is unaware that this has occurred provides the container to a table of customers. One of whom drinks the sanitiser. Consequently, the consumer suffers burns to the throat and mouth.

**Handling and sale of unsuitable food (Section 36)**

**Relevant agencies**
The offence of handling and sale of unsuitable food will be administered by both Queensland Health and Local Government.

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6 As the water is given away for the furtherance of business it is considered to have been sold.
Elements
The elements of subsection 1 are: a person, must not handle, food, intended for sale, the will make or is likely to make, the food unsuitable.

The elements of subsection 2 are: a person, must not sell, food, that is unsuitable.

Element – Unsuitable food
Section 21 provides that food is unsuitable if it:

- is damaged, deteriorated or perished to the extent that it affects its reasonable intended use; or
- contains a damaged, deteriorated or perished substance that affects its reasonable intended use; or
- is the product of a diseased animal, or an animal that died other than by slaughter, and has not been declared under an Act to be safe for human consumption; or
- contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.

Example
A food premises offers for sale loaves of bread that have begun to deteriorate and have large colonies of mould growing on them.

It should be noted that food should not be considered unsuitable because it contains:

- an agricultural or veterinary chemical in amounts that do not contravene the food standards code; or
- 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
- it contains a matter or substance that is permitted by the food standards code.

Compliance with food standards code (Section 39)

Relevant agencies
The offence of failing to comply with the Food Standards Code will be administered by both Queensland Health and Local Government. Local government will be specifically responsible for section 39(1). Section 39(1) relates to Chapter 3 of the Food Standards Code. Queensland Health will have exclusive responsibility for sections 39(2) to (4).

Elements
The elements of subsection 1 are: a person, must comply with, a requirement imposed, on the person, by a provision of the food standards code, in relation to, conduct of a food business or to food intended for sale or food for sale.

Example
A food business displaying its food products, fails to take all practicable measures to protect the food from the likelihood of contamination.

The elements of subsection 2 are: a person, must not sell, food, that does not comply, with a requirement of the food standards code, that relates to the food.

Example
A butcher sells minced meat that contains added water and sulphur dioxide.

The elements of subsection 3 are: a person, must not sell or advertise, food, that is packaged or labelled, in a way that contravenes, a provision of the food standards code.
The elements of subsection 4 are: a person, must not sell or advertise for sale, food, in a way that contravenes, a provision of the food standards code.

Example

A manufacturer sells cartons of milk that contain health claims. A statement on the packaging claims that the milk will prevent a variety of diseases.

Example

A licensed food business sells prawns that do not state the country of origin on the display.

Guidance on the element of ‘a person’ has been provided in the discussion on Section 32 ‘Handling of food in unsafe way’. The element ‘must not sell’ has been discussed in Section 33 ‘Sale of unsafe food’.

Element – Food Standards Code

The Food Standards Code is a collection of individual food standards. Standards on related matters are grouped together in Parts, which in turn are collected into four Chapters. Chapter 1 deals with standards which apply to all foods, with the exception of Maximum Residue Limits (MRLs). Chapter 2 deals with standards affecting particular classes of foods. Chapter 3 deals with food hygiene arrangements. Chapter 4 contains standards dealing with the primary production of food in Australia.

Section 14 states the Food Standards Code means the Australia New Zealand Food Standards Code as defined in the Food Standards Australian New Zealand Act 1991 (Cwlth).

It should be noted that Schedule 2 of the Act contains a small number of amendments to the Food Standards Code. Thus when an authorised person is seeking to prove an offence involving the Food Standards Code element, they must demonstrate that the code addresses the particular food or issue by way of a particular provision and that the person failed to comply with the provision.

Element – Advertise

An important element of this offence provision is the term, ‘advertise’. Schedule 3 defines the meaning of advertisement. It is defined as meaning any of the following things used or apparently used to promote, directly or indirectly, the sale of food –

(a) words, whether written or spoken;
(b) a pictorial representation or design; or
(c) any other type of representation.

Thus when seeking to establish an offence involving advertising, an authorised person needs to demonstrate that a thing was promoted using one of the abovementioned methods.

Element – Packaged

The term, ‘package’ is defined in the Act as including a container and wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packed and, if food is carried or sold or intended to be carried or sold in more than one package, includes each of the packages.

An authorised person investigating an alleged breach which involved the element, ‘packaged’ needs to demonstrate that the food was packaged. Should the food not have been packaged (or labelled) in a way that contravenes a provision of the Food Standards Code a prosecution against Section 39(3) would be unsuccessful.
Element – Labelled
When examining the element, ‘labelled’ its definition must be considered. Schedule 3 of the Act states that ‘label’ includes any tag, brand, mark, statement in writing, representation, design or other descriptive matter on or attached to or used or displayed in connection with or accompanying food or a package of food.

Therefore, an authorised person pursuing an alleged breach of Section 39(3) would be required to prove that food item was labelled in a way that satisfies the requirements of the above definition.

Offences administered by Queensland Health
Queensland Health has sole responsibility for the provisions contained with sections 34, 37, 38 and 40. Many of the elements within these sections are also contained in the previously discussed provisions.

False description of food (Section 34)

Relevant agency
The offence of providing false descriptions of food will be administered only by Queensland Health.

Elements
The elements of subsection 1 are: a person, must not cause, food intended for sale, to be falsely described, if the person knows or reasonably out to know, a consumer of the food, relies on the description, will or is likely to, suffer physical harm.

The elements of subsection 2 are: a person, must not sell, food, that the person knows or reasonably out to know, is falsely described, will or is likely to, cause physical harm, to a consumer of the food, who relies on the description.

It is an offence to falsely describe food in a manner that will or may lead to a person suffering physical harm or to sell falsely described food that will or may lead to a person suffering physical harm.

This can involve the describing, advertising, or labelling food which contains nuts, milk, gluten or another common allergen when the food is not clearly described, advertised, or labelled as containing, or possibly containing the allergen. It can also involve selling food which contains nuts, milk, gluten or another common allergen when the vendor knows that the food is not clearly described, advertised, or labelled as containing, or possibly containing the allergen.

Example
A Queensland Health authorised person investigating a consumer complaint regarding the activities of a food business, learns that a particular food product described on the packaging as not containing peanuts actually contains peanuts. The food product’s label describes the food as not containing any peanuts.

Therefore, the food business has falsely described a food. Furthermore, the business should have reasonably known that a person allergic to peanuts, who relies upon the labelling, may suffer physical harm. Subsequently, the authorised person takes action in relation to the breach of Section 34.

Misleading conduct relating to sale of food (Section 37)

Relevant agency
The offence of misleading conduct relating to the sale of food will be administered only by Queensland Health.

Elements
The elements of subsection 1 are: 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, advertising, packaging, or labelling of, food intended for sale, or the sale of food.
The elements of subsection 2 are: a person, must not, for the purpose of effecting or promoting, the sale of 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.

The elements of subsection 3 are: 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.

Section 37 includes offences for misleading conduct in relation to the sale of food. The offences apply to persons conducting a food business who:

- engage in conduct that is misleading or deceptive or is likely to mislead or deceive
- cause food to be advertised, packaged or labelled in a way that falsely describes the food
- sell food that is packaged or labelled in a way that falsely describes the food.

A licensed food business sells a seafood product described as Coral trout fillets. A sample of the fish is purchased for analysis by an authorised person. The analysis determines the sample is not comprised of Coral trout fillets, but that of a fish of lesser monetary value. Subsequently, the authorised person initiates procedures to commence legal action against the licensee for selling food that is packaged or labelled in a way that falsely describes the food.

Guidance on the elements of ‘a person’ and ‘food intended for sale’ have been provided in the discussion on Section 32 ‘Handling of food in unsafe way’. The element ‘advertise’ has been discussed in Section 39 ‘Compliance with food standards code’.

**Sale of unfit equipment or packaging or labelling material (Section 38)**

**Relevant agency**

The offence of the sale of unfit equipment or packaging or labelling material will be administered only by Queensland Health.

**Elements**

The elements of subsection 1(a) are: a person, must not sell, equipment, that if used for the purposes for which it was designed or intended to be used, would make or be likely to make, food unsafe.

The elements of subsection 1(b) are: a person, must not sell, equipment, that if used for the purposes for which it was designed or intended to be used, would put other equipment or be likely to put other equipment, in a condition, that if the other equipment were used, for the purposes for which it was designed or intended to be used, it would make or be likely to make, food unsafe.

A manufacturer produces bain maries. The bain maries have faulty thermostats which prevents temperatures of 60°C of being reached. Thus creating the opportunity for food-borne pathogens to grow and cause a food poisoning outbreak.

The elements of subsection 2 are: a person, must not sell, packaging or labelling material, if used for the purposes for which it was designed or intended to be used, would make or be likely to make, food unsafe.

A company makes packaging for food manufacturers. During the production process a contaminant (machine grease) gets onto the packaging material. The company then sells the contaminated packaging material to a food business. Once the food business uses the packaging material its food products become contaminated.
Guidance on the elements of ‘a person’ has been provided in the discussion on Section 32 ‘Handling of food in unsafe way’. The element ‘must not sell’ has been discussed in Section 33 ‘Sale of unsafe food’. The element of ‘unsafe food’ has been discussed in Section 35 ‘Handling and sale of unsafe food’.

**Element – Equipment**

Schedule 3 of the Act defines equipment as meaning, “the whole or part of –

(a) any utensil, machinery, instrument, device, apparatus or appliance used, or designed or intended for use, in connection with the handling of food; or

(b) any substance, utensil, machinery, instrument, device, apparatus or appliance used, or designed or intended for use, in cleaning anything mentioned in paragraph (a).”

### False description of food (Section 40)

Section 40 outlines the circumstances in which food would be considered to be falsely described under the Act. Thus food is considered to be falsely described if:

- there is a prescribed standard under the food standards code for a particular food and the food does not comply with the standard

  **Example**
  
  The food standards code requires that cows’ milk must have a minimum of 30g/kg of protein. The milk carton with 15g/kg protein would be considered to be falsely described.

- a food is being mixed or diluted with a substance so that the food decreases in either food value or nutritional properties

  **Example**
  
  A manufacturer producing infant formula dilutes the product by adding baking flour to the containers.

- a food is mixed or diluted with a substance of lower commercial value

  **Example**
  
  A shot of whisky that has been diluted with tap water would constitute a food which has been falsely described.

- a constituent of the food is either removed or partly removed so that the food has diminished properties

  **Example**
  
  A manufacturer calls a product chocolate even though the product does not contain any cocoa butter.

- the labelling or packaging of a food creates a false impression through the use of a word, statement, device or design

  **Example**
  
  A food item contains the words ‘no fat’ on its packaging. However, the product actually does contain fat, thus resulting in the food being falsely described.

- the food is not of the nature or substance represented by the way in which it is packaged, labelled or offered for sale.
Defences relating to food

The Act provides a number of defences relating to the above mentioned offences. This guideline will briefly discuss two of them.

**Application of provisions outside the State (Section 43)**

Section 43 provides a defence for where the food is to be sold overseas and the food complies with the standards applicable in the country the food is exported to. However, in the event that the food is sold within Queensland, this defence is not applicable.

**Defence of due diligence (Section 44)**

This section provides that in a proceeding for an offence under Chapter 2, it is a defence to prove that the person exercised all due diligence to prevent the commission of the offence. The dictionary in schedule 3 of the Act defines the term ‘exercised all due diligence’ to include taking all reasonable precautions.

The section provides the ways in which a person may show that he or she has exercised due diligence.

Figure 1: Due Diligence Defence on page 18 provides an outline of the processes involved in establishing that due diligence actually took place.

It should be noted that Figure 1 does not limit the ways in which a person can demonstrate due diligence.

**Example**

In proceedings against a licensee for an alleged breach of the Act, the licensee demonstrates that the person complied with an accredited food safety program that had been regularly audited and found to be compliant under the Act or another type of quality assurance program. Thereby, establishing that the licensee had exercised due diligence.

When a person is attempting to demonstrate due diligence by using a scheme such as a quality assurance program or an industry code of practice, they must be able to establish that the scheme was designed to manage food safety hazards based on recognised Australian national or international standards, or codes or guidelines specifically designed for that purpose. The person must also maintain and keep appropriate documentation to prove that the system has been implemented and is being used.

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7 The Macquarie dictionary defines the word, 'manage' as meaning: 'to handle or control'.
Figure 1: Due Diligence Defence

Commission of the offence due to:

- Act or default of another person
  - Reliance on information supplied by another person
    - Due diligence not found
    - Yes
    - No
      - Due diligence not found
      - Yes
        - No
          - Due diligence not found
          - Yes
            - No
              - Due diligence not found
              - Yes
                - No
                  - Due diligence not found
                  - Yes
                    - No
                      - Due diligence not found
                      - Yes
                        - No
                          - Due diligence not found
                          - Yes
                            - No
                              - Due diligence not found
                              - Yes
                                - No
                                  - Due diligence not found
                                  - Yes
                                    - Due diligence occurred

Reliance on information supplied by another person
- It was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person
  - Due diligence not found
  - Yes
    - No
      - Due diligence not found
      - Yes
        - No
          - Due diligence not found
          - Yes
            - No
              - Due diligence not found
              - Yes
                - No
                  - Due diligence not found
                  - Yes
                    - No
                      - Due diligence not found
                      - Yes
                        - No
                          - Due diligence not found
                          - Yes
                            - No
                              - Due diligence not found
                              - Yes
                                - Due diligence occurred

Due diligence not found
- The person carried out all of the checks of the food concerned as were reasonable in all circumstances
  - Yes
    - No
      - Due diligence not found
      - Yes
        - No
          - Due diligence not found
          - Yes
            - No
              - Due diligence not found
              - Yes
                - No
                  - Due diligence not found
                  - Yes
                    - No
                      - Due diligence not found
                      - Yes
                        - No
                          - Due diligence not found
                          - Yes
                            - No
                              - Due diligence not found
                              - Yes
                                - No
                                  - Due diligence not found
                                  - Yes
                                    - Due diligence occurred

The person did not import the food into the State from another country
- Yes
  - No
    - Due diligence not found
    - Yes
      - No
        - Due diligence not found
        - Yes
          - No
            - Due diligence not found
            - Yes
              - No
                - Due diligence not found
                - Yes
                  - No
                    - Due diligence not found
                    - Yes
                      - No
                        - Due diligence not found
                        - Yes
                          - No
                            - Due diligence not found
                            - Yes
                              - Due diligence occurred

Due diligence occurred
Mobile food premises

The Food Act 2006 has a series of provisions that relate to mobile food premises. This guideline will discuss what action a Local Government who does not issue the mobile food licence may undertake, communicating between Local Governments about mobile food premises, and what action that may be taken by the Local Government which issued the licence.

Action that may be taken by second Local Government (Section 90)

Mobile food vendors often operate in more than one Local Government area. The Act allows mobile vendors to obtain one licence which allows them to operate throughout the State of Queensland. All Local Governments have an obligation to investigate and enforce compliance with the Act of mobile food premises within their boundaries.

The Act specifies that should a mobile food vendor operate in a Local Government area other than the local authority, who issued their food licence, the second Local Government may utilise all of the same powers that are available to the Local Government who issued the licence. However, there is one exemption to this. This exemption being, a second Local Government who did not issue the licence, cannot amend, impose conditions, cancel or suspend the licence.

Therefore, the second Local Government may issue an improvement notice or prosecute an offence under the Act but not suspend the mobile food premises licence.

Example

A mobile food premises is licensed by Shire Council A. The licensee is able to operate within any Local Government area within Queensland. While operating the mobile food premises within Shire Council B the Shire's authorised officer uses his power to undertake an inspection of the premises. During that inspection a number of breaches of the Act are identified. Shire B's authorised officer assesses the enforcement tools available (e.g. improvement notice, seizure, prosecution etc.) and determines that an improvement notice is the most appropriate tool. The authorised person is then able to issue an improvement to licensee requiring that certain corrective actions be taken.

After completing a follow up inspection, it was found the licensee had not undertaken the corrective action required by the improvement notice. After considering the implications of the non-compliance, Shire B's authorised officer initiated procedures to commence a prosecution for the failures to comply with the Act.

Notification to first Local Government (Section 91)

As a second Local Government is unable to impose conditions, suspend or cancel a mobile food premises licence other mechanisms have been developed to address this need. Section 91 allows the second Local Government to notify the local authority which issued the mobile premises licence of any contravention of the Act which occurred in second Local Government's jurisdiction.

The second Local Government needs to carefully consider when it is appropriate to notify the local authority who issued the licence. This being because there is a number of enforcement tools which can be used prior to notifying the first Local Government.

Notification should take place where the licensee has failed to comply with conditions imposed on the mobile food business by the issuing authority. It should be noted that Section 91 limits the ability of the second Local Government to advise the first Local Government of something the licensee has done or omitted to do which contravenes a licence condition. However, Section 272(3) permits an authorised person to share confidential information where it is for a purpose under the Act and ensures public health or safety. The disclosure of confidential information may only be to:

- the State
- a department

8 Where the Act refers to, ‘the second Local Government’ it means the local authority who did not issue the licence.
9 It should be noted that the Act defines mobile premises as, “...premises that are a vehicle from which a person sells unpackaged food by retail”. A definition of what a vehicle is also provided. Vehicles are anything, whether operational or not, used to carry anything or person by land, water or air. Therefore, for the purposes of the Act, charter boats are considered to be mobile food premises.
Monitoring and enforcement

Example

An authorised person employed by Shire Council B undertakes an inspection of a mobile food premises which is licensed by City Council A. During the inspection the authorised person identifies several significant breaches of the Act which the proprietor is directed to rectify. The authorised person also learns that the mobile food premises plans to operate in Shire Council C the following week.

Shire B’s authorised officer subsequently notifies Shire Council C of the breaches of the Act and the action taken. Thus allowing Shire C to ensure that the Act is being complied with and that there are no public health and safety issues occurring while the mobile food premises is operating within its area of responsibility.

A report from Shire B is also forwarded to City Council A so that the licensing authority has a complete record of enforcement action taken against the mobile food premises.
**Action that may be taken by first Local Government (Section 92)**

After receiving advice from the second Local Government that the licensee of a mobile food premises has undertaken an action or has omitted to do something that would be a contravention of the licence, the first local authority must consider the seriousness of the breach, the number of contraventions and the frequency of failures to comply with licence conditions when determining what action to take.

The first Local Government must also consider whether sufficient information has been supplied by the second local authority. In the event that the Local Government that issued the relevant licence considers that insufficient information has been supplied, it must seek further information from the second local authority. The first local authority must have regard to the additional information supplied (or not supplied) by the second Local Government when determining the course of action to taken.

Should the first Local Government believe on the basis of the information provided to it, that it cannot demonstrate all the elements of the contravention have taken place, it is not obliged to take further action. However, in the event that sufficient information to establish a contravention of licence conditions has taken place, the first Local Government has an obligation to act on the breach.

**Authorised persons powers and responsibilities**

The following provisions will discuss the various powers and responsibilities that authorised persons have. Included within the discussion will be the requirement to produce an identity card, powers to enter places, general and emergency powers, dealing with seized things, improvement notices and dealing with damage to property.

**Production or display of identity card (Section 171)**

While authorised persons often develop a relationship with proprietors, managers or staff of food premises and may not need to display ID when entering the premises because these individuals know who the officer is and why they are there. An authorised person must continue to display their identity card when undertaking an inspection. This is essential in the event that evidence for a legal action is required to be taken.

However, in the event that is not practicable for the authorised person to comply with the requirement to produce or display their identity card before exercising a power, the authorised person must produce the identity card for the other person’s inspection at the first reasonable opportunity.

**Example**

An authorised person responding to a serious complaint about a food premises has accidentally left their identity card at the Local Government’s administration building. Due to the seriousness of the matter at hand, the authorised person determines that the risk of delaying the investigation outweighs the benefits of returning to the administration office to retrieve the identity card.

Subsequently, the authorised person proceeds with the investigation without producing or displaying the identity card during the site visit. The authorised person returns to the premises at the earliest opportunity and produces their identity card for the licensee and staff.

However, in the event the authorised person is entering a place that is a public place and the entry is made when it is open to the public their identity card does not have to be shown or displayed. Furthermore, the authorised person is not considered to have used a power requiring that the identity card be shown or displayed if entry to land or premises is being made for the purpose of contacting the occupier.

**Power to enter places (Section 175)**

Section 175 allows authorised persons to enter a place in a number of circumstances. An instance where an authorised person may enter a place includes the situation where the occupier of the place has consented to the entry.
The Act allows an authorised person to enter a public place. This entry must be done when the place is open to the public.

**Example**

An authorised person may enter a food court at a shopping centre, when the centre is opened to members of the general public.

An authorised person who has obtained a warrant from a court has the ability to enter the place specified within the warrant. In these instances, the authorised person must ensure that they comply with any conditions outlined in the warrant.

A place that is a premises where a food business is being undertaken, may be entered by an authorised person. This may be done when either the food business is open for carrying on the food business or is otherwise open for entry. An authorised person cannot insist on undertaking an inspection of a food business when the premises is closed and no food business activities are being undertaken. Unless a warrant or the consent of the occupier have been obtained.

A food business that is open for carrying on the business, includes those situations where food is being prepared or handled by staff, but the business is not selling food to the public.

**Example**

The staff at a bakery are baking at 3 am in the morning. At this time the bakery has not opened to the public. As the bakery is open for the purposes of preparing food, the Act provides an authorised person with the power to enter and inspect the premises at this time.

Otherwise open for entry, includes those situations where the food business is not preparing, handling or selling food, but the business remains open.

**Example**

A restaurant closes to customers between its lunch and dinner trading hours. However, the proprietor remains at the restaurant between these times to complete bookwork, take bookings and receive deliveries. Therefore, an authorised person would be able to enter the premises for the purposes of undertaking an inspection.

It should be noted that the power to enter a food business does not include any part of the premises at which a person resides.

**Example**

An authorised person undertaking an inspection of a corner store may enter all parts of the business where food is stored, prepared or sold. However, the residence at the rear of the premises where the proprietor lives may not be entered during the inspection.

**Warrants – procedure before entry (Section 181)**

Prior to entering a place using a warrant, there are a number of criteria an authorised person must undertake. These being:

- the authorised officer must identify themself using either their identity card or other document evidencing the appointment
- provide a copy of the warrant to the person at the place
- tell the person that the authorised person is permitted by the warrant to enter the place
- give the person the opportunity to allow immediate entry to the place without using force.
However, in the event that the authorised person has reasonable grounds to believe that immediate entry to the place is required to ensure that the effective execution of the warrant is not frustrated. The authorised person does not need to comply with the above requirements.

**Example**

Upon entering a food business with a warrant, the authorised person hears a voice coming from the food preparation area say, “Quick the Health Inspector is here, get rid of...”. Subsequently, the authorised officer enters the food preparation area without officially identifying herself or providing a copy of the warrant to the occupier so as to prevent the frustration of the effective execution of the warrant.

**General powers after entering places (Section 182)**

**The meaning of ‘place’**

Section 182(3)(a) of the Act allows an authorised person to search any part of a place when monitoring and enforcing compliance with the Act. A ‘place’ is defined in the legislation as including premises and vacant land. The Act also defines what a premises is.

Premises are defined as including:
- a building or other structure; and
- a part of a building or other structure; and
- land where a building or other structure is situated; and
- a vehicle.

**Example**

An authorised person has received a complaint about a reasonably suspected food business located in a shopping centre. The authorised person has the power to enter the particular business and search any part of the business when investigating an alleged breach of the Act. However, the authorised person would not have the power to search any non-food related shops contained within the shopping centre.

**Documents**

The Act permits an authorised person to copy a document relating to the food operations or take the document so that it can be copied.

The Acts Interpretation Act 1954 defines a document as including:
- any paper or other material on which there is writing; and
- any paper or other material on which there are marks, figures, symbols or perforations having meaning for a person qualified to interpret them; and
- any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).

**Example**

Whilst undertaking an inspection of a licensed food business, an authorised person becomes aware of a document being retained on a data stick which contains evidence of a breach of the Act. The authorised person requires the proprietor to provide a copy of the document which she then retains as evidence.

It should be noted Section 199 requires that when an authorised person has taken a document so it can be copied, the authorised person must return it as soon as practicable to the person from whom the document was obtained. When returning a document it is recommended the authorised person obtain a receipt to prevent any latter dispute about whether or not the document was returned.
Monitoring and enforcement

Assistance and equipment which may be taken to inspections
When undertaking inspections, authorised persons are able to bring those people, equipment or materials deemed reasonably necessary to exercise a power under the Act.

What is considered reasonably necessary may vary from premises to premises and will be related to individual circumstances. For instance, an authorised person should always have a pen and notebook to record the results of inspections. However, an anemometer would only be required when inspecting food businesses with an exhaust canopy and would not be taken to premises with no ventilation equipment.

Authorised persons may also take another person into a food business. As with equipment and materials, the need to have another person present will vary according to the circumstances.

Example

An authorised person wishes to inspect a premises where the proprietor does not speak English. As the authorised person and the proprietor do not speak a common language, the Act allows an authorised person to arrange for an interpreter to be present during the inspection and translate the conversation.

Example

The licensee of a particular food business has a history of threatening violence towards a Local Government's employees. When the authorised person is undertaking an inspection of the food business, he may have a police officer enter the premises and accompany him during the inspection.

Reasonable help
The Act provides an occupier of a place or a person present at the place with an obligation to give an authorised person reasonable help to exercise their powers under Section 182(a) to (e).

When faced with a situation which may require the use of reasonable help, the authorised person needs to consider what level of assistance is necessary. Careful consideration needs to be given to ensure that assistance is appropriate and will aid the authorised person in ensuring the Act is complied with.

The following examples outline situations of assistance being required which could be considered reasonable.

Example

During an inspection of a food business an authorised person encounters a locked door on a coldroom. The authorised person reasonably suspects that food used at the premises is being stored in the coldroom. Subsequently, the authorised person requires an employee of the business to unlock the door, so that the coldroom can be inspected.

Example

An authorised person wants to ensure that the meat slicer is being cleaned regularly. She requests the proprietor of the business to demonstrate how the slicer is dismantled and cleaned.

While there are a variety of situations in which assistance can be legitimately required by an authorised person, some requests would be considered unreasonable.

Example

An authorised person directs the licensee of a food business to immediately hire a forklift to move a heavy piece of equipment so that the wall surfaces behind the equipment could be inspected.
When requiring a person at a place to provide reasonable assistance, an authorised person must warn the person that it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse. A reasonable excuse will vary according to situation. In the example of the coldroom above, it would be considered reasonable for the employee not to unlock the coldroom door if the licensee was the only person who had a key and was not present at the premises.

**Power to require questions be answered**

The Act provides an obligation on the occupier of a place or a person at the place to answer questions so an authorised person can determine whether the Act is being complied with.

**Example**

During an inspection, an authorised person asks an employee of a food business how the meat slicer is cleaned and whether the task of cleaning is in the cleaning schedule.

When requiring a person at a place to provide information, an authorised person must warn the person that it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse. A reasonable excuse will vary according to situation. Section 184(2) states that it is reasonable for an individual not to answer a question, if responding to the query may incriminate them.

**Stopping or moving motor vehicle (Section 185)**

An authorised person has the authority to ask or signal a person in charge of a motor vehicle to stop the vehicle. This power may be used if the authorised person suspects on reasonable grounds, or is aware, that a thing in or on the vehicle may provide evidence of the commission of an offence against the Act.

**Example**

An authorised person has received a consumer complaint alleging that when purchasing an ice-cream cone from an ice-cream van the person observed the van was in an unhygienic condition and was infested with cockroaches. Whilst driving, the authorised person encounters the ice-cream van travelling in a similar direction and uses their power to signal the van to pull off the road, allowing an investigation of the alleged offences to be undertaken.

After stopping a food vehicle, an authorised person is required to immediately identify himself or herself using their identity card. Furthermore, the authorised person must state that the person is exercising their powers under the Act.

It is an offence to fail to comply with an authorised person’s request or signal without a reasonable excuse. It is considered to be a reasonable excuse for the person not to comply with the authorised person’s signal if obeying would have endangered the person or someone else. The person would also have to obey the request or signal as soon as it is practicable to do so.

An authorised person can give directions that a stationary vehicle not be moved, or be moved and kept at a stated reasonable place. It is an offence to fail to comply with a direction without a reasonable excuse.

**Example**

The vehicle has become a traffic hazard, and a police officer instructed the vehicle be moved. By remaining where it is it creates an offence under another Act, Regulation or Local Law. For instance, the location where the vehicle is parked has become a clearway.

**Receipts for seized things (Section 192)**

An authorised person is required to issue a receipt for a seized thing to the person from whom the thing was seized. However, if this proves impractical, the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a secure way.
The authorised person is required to generally describe each thing seized and its condition.

Example

While undertaking an inspection of a licensed premises, an authorised person locates a crate of fruit that contains partly decomposed oranges and apples. The authorised person determines the fruit will be seized. Once seized, a receipt is produced which states “24 oranges which are partly decomposed and 19 partly decomposed apples” have been seized. The receipt is given to the licensee.

In the event that a thing is seized for which it is impracticable or unreasonable to give a receipt due to the thing’s nature, condition and value, a receipt would not need to be issued.

**Forfeiture of seized things (Section 193)**

Before a thing which has been seized can be forfeited to the State or a Local Government, the authorised person who seized the object must make:

- reasonable efforts to return it to the owner
- reasonable inquiries to locate its owner.

What constitutes reasonable efforts to return the item, or reasonable inquiries to locate the owner, will vary depending upon the seized item’s nature, condition and value.

For instance, an item of food which had been seized and subsequently has deteriorated would not warrant significant efforts being undertaken to return the item or locate the owner. Steps taken may involve the authorised person telephoning the owner, visiting the premises where the item was seized from or sending a letter to the owner. However, a piece of equipment that had a monetary value of $20,000 would require significantly more effort to locate the owner or return it. Steps taken could involve the measures listed above and placing an advertisement in a locally circulating newspaper or on the enforcement agency’s website.

Once an item has become forfeit, the chief executive or the Local Government’s chief executive officer may deal with the item as they consider appropriate. This includes disposing or destroying the item. However, before dealing with the forfeited item, the chief executive or chief executive officer must satisfy themselves that disposing or destroying it would not prejudice the outcome of an appeal under the Act which they are aware of.

**Access to seized things (Section 195)**

Queensland Health and Local Governments are required to ensure a seized item is available for inspection by its owner. In the event the seized thing is a document, the authorised officer must allow the owner to copy it if requested.

Authorised persons should ensure seized items are kept in an appropriate manner to ensure that they do not degrade, are not tampered with and are kept in a secure manner.

Enforcement agencies should develop a system to demonstrate the chain of custody for seized items has not been broken. A secured storage area or container in which seized items can be kept should be maintained. Access to the secured storage area should be limited to a controlled number of staff. Preferably one person only should have access at any given time. A log should be kept showing when the seized item was originally placed in the storage area. Subsequent log entries should demonstrate each time an item is removed and replaced (date, time, who, and reason). This is particularly important if the seized item is to be used as evidence in legal proceedings.

**Power of destruction (Section 196)**

An authorised person may destroy a thing which has been seized if it consists wholly or partly of contaminated or decomposed matter. The thing may also be destroyed if the authorised person reasonably believes the item posses an immediate risk to public health or safety.
When an authorised officer is determining whether a thing is ‘wholly or partly contaminated or decomposed’ the officer should have regard to whether the seized food item is decayed, deteriorated or putrefied.

**Example**

An authorised person has seized a box of tomatoes. The tomatoes, on average, have 50% of their surface area covered in mould. The authorised person determines the tomatoes are ‘partly contaminated’ and subsequently destroys them.

‘Immediate risk to public health or safety’ involves any item such as a food item, ingredients, equipment or utensils, etc. that if consumed or used would be injurious, harmful or adversely affect those members of the public who consumed or otherwise came into contact with it.

**Example**

An authorised person has seized several pallets of bottled drinks from a batch which have been contaminated with glass fragments. The glass fragments contained within the bottles pose a safety risk to any individual who may consume the product. Therefore, the authorised person is able to immediately destroy the seized drinks.

When destroying a seized thing, the authorised person must ensure that the item is completely destroyed and cannot be consumed or used by another person. This is considered vital to ensure that there is no possibility of any risk to public health or safety. For example, placing the thing in a rubbish bin would not be adequate. Taking the thing to the Council’s landfill and having the compactor (or other plant) destroy the item would be sufficient.

**Application of div 8 (Section 203)**

This section provides authorised persons with access to emergency powers. The emergency powers may be used only where an authorised person is satisfied that they are necessary to avoid an imminent risk of death or serious illness of any person from food being handled or sold on the premises.

The emergency power may not be used at a place or part of a place used only for residential purposes.

It should also be noted that compensation will be payable under section 213 if the emergency power is not used properly. The authorised person may also not be protected from liability under section 274 if the officer has acted dishonestly or negligently.

**Power and procedure for entry (Section 204)**

An authorised person may enter a place without a warrant or consent of the occupier in an emergency situation provided he/she meets a number of conditions or makes a reasonable attempt to meet the requirements. These being:

- the authorised person must show the occupier their identity card. Alternatively he/she may have the identity card displayed so that the card is clearly visible to the proprietor or staff when seeking entry
- the authorised person must or make a reasonable attempt to tell the occupier that the authorised person is permitted under the Act to enter the place
- give the occupier the opportunity to allow the authorised person immediate entry to the place without using force.

In certain circumstances an authorised person may dispense with meeting these requirements. This may occur if the authorised officer reasonably believes that there is an imminent risk of death or serious illness which can be mitigated by immediate entry to the place.

**Example**

An authorised officer has received a report from a member of staff at a food business that the coolroom containing high-risk food broke down the previous afternoon resulting in the food not being under sufficient temperature control for an extended period of time. The complainant advised that the proprietor is still planning to use the food at a catering function for a high-risk group.
**How power may be exercised (Section 206)**

When faced with a situation which may require the use of reasonable force, the authorised person needs to consider what level of force is necessary. Careful consideration needs to be given to ensure the minimum level of force is used.

Example

An authorised person attempting to access a padlocked area of a food premises is refused access by the staff. The staff will not unlock the padlock. The authorised person believes that the locked area contains things that if used could result in serious illness. The authorised person could use sufficient force to remove the padlock by cutting the lock with bolt cutters. Breaking the door down when less destructive measures are available would not constitute reasonable force.

**Improvement notice (Section 209)**

An authorised person is able to give an improvement notice to a food business proprietor if the authorised person reasonably believes that:

- a person carrying on the food business is contravening a provision of the Act or has contravened same in circumstances which make it likely that the contravention would continue or be repeated
- the matter is capable of being rectified and it is appropriate to give the person an opportunity to rectify the matter
- if the person is a licensee, a Local Government has not given a show cause notice to the person under section 79.

Example

At the conclusion of an inspection of a licensed premises, an authorised person determines that an improvement notice is to be served. This is because the food preparation facilities are in an unclean state which may affect the safety of the food being handled or sold.

Improvement notices are required to contain certain information. Authorised persons must ensure notices they issue include:

- that the authorised person reasonably believes the person is contravening the Act or has contravened the Act in circumstances that make it likely the breach will continue or be repeated
- the provision(s) the authorised person reasonably believes is being or has been contravened
- a brief description of how the relevant provision(s) has been or is being breached
- the timeframe in which the contravention is to be resolved
- that it is an offence to fail to comply with a notice without a reasonable excuse.

The notice may also state the reasonable steps the person must take to rectify the matter, and may include measures to prevent recurrence of the matter that is to be rectified.

Example

An improvement notice issued by an authorised person identifies that a food business’ refrigeration and hot food storage are not keeping food products out of the temperature danger zone. Included within the notice are the reasonable steps considered necessary to resolve this defect. These being:

- providing staff with training regarding the temperature danger zone
- purchasing a thermometer accurate to +/-1°C
- undertaking regular temperature checks of the hot and cold storage units
- recording the temperatures in a log
- recording corrective action taken if required.
Notice of damage (Section 212)

If an authorised person damages property while exercising or purporting to exercise a power, he or she must immediately give notice to the person who appears to be owner of the damaged property. The notice must outline the particulars of the damage. Should it be impracticable for the authorised person to give notice to the owner, the notice must be placed in a conspicuous position and reasonably secured so that the owner of the damaged property may find it.

The requirement to provide notice also applies where the damage has occurred as the result of actions of an individual acting under the direction or authority of an authorised person.

If authorised person believes the damage to the item was the result of circumstances beyond his or her control or was the result of a latent fault in the item, this belief may be recorded in the notice.

Compensation (Section 213)

If a person incurs a loss or expense because an authorised person uses or purports to use a power under Part 2 of Chapter 7 of the Act, the person may apply for compensation. However, it should be noted a person cannot claim compensation if the loss or expense was the result of a seized thing being destroyed in accordance with Section 198 – Power of destruction.

If the loss or expense was the result of the power being exercised by the by State, compensation must be claimed against the State. Should the power have been exercised by a Local Government, the claimant may seek compensation from the Council. The person making the claim may only seek compensation from the Local Government which exercised the power, not another council which was unconnected to the use of the power.

The provisions to which compensation is applicable include:

- Powers of entry
- General powers after entering
- Stopping moving vehicles
- Seizing evidence
- Power to obtain information
- Emergency powers
- Improvement notices.

Injunctions

The Food Act 2006 provides both Queensland Health and Local Government the ability to apply to a court for an injunction to prevent or reduce the possibility of a serious danger to public health. The following provisions examine the sections relating to injunctions.

Application of part 5 (Section 222)

Where a person has committed, is committing or proposes to commit a serious food offence (such as handling food in an unsafe way, the sale of unsafe food or the false description of food) the chief executive of Queensland Health or the chief executive officer of a Local Government may seek an injunction to prevent or reduce the possibility of a serious danger to public health.

Example

An authorised person provides a report to the chief executive officer of a Local Government which outlines how a licensed food business is handling food in an unsafe way. After considering the report, the chief executive officer determines there is sufficient risk to the public’s health to require immediate action. Subsequently, the chief executive officer applies to the District Court for an injunction to mitigate the adverse consequences of a serious danger to public health.
Who may apply for an injunction (Section 223)

This section provides the chief executive of Queensland Health or the chief executive officer of a Local Government may apply to the District Court for an injunction in relation to the conduct mentioned in section 222.

District Court’s powers (Section 224)

The District Court has the power to hear and decide an application for an injunction which either restrains a person from engaging in certain conduct or requires a person to do an act or thing.

Example

A District Court imposes an injunction which requires the licensee of a food business to cease selling a food product that has been falsely described. Furthermore, the Court’s injunction directs the licensee to initiate a consumer level food recall.

The District Court has the ability to grant an interim injunction until the application is finally determined.

Example

An application has been placed before the District Court requesting an injunction that requires a licensee to cease trading. The application is based upon the alleged handling of unsafe food. While the matter is being heard, the Court imposes an interim injunction that prevents the sale of the food which has been allegedly handled in an unsafe manner.

It should be noted that District Court may exercise these powers at any time whether or not a prosecution for the serious food offence has been initiated.

Terms of injunction (Section 225)

The District Court may grant the injunction on the terms the court considers appropriate. Where the Court deems it appropriate, an injunction may be issued which prevents a person for carrying on a food business. This may be done whether or not the food business is a part of another business.

An injunction issued will remain in force until the time stated expires or the stated terms and conditions have been met.

Undertakings as to damages or costs (Section 226)

No undertakings as to damages or costs may be required to be made where the chief executive or the chief executive officer of a Local Government seeks an injunction under this part. However, it is important to note a Court can order compensation should it deem it appropriate.

Miscellaneous

This part of the guideline will discuss any miscellaneous provisions contained within the guideline.

Particular premises taken to be within Local Government area (Section 275)

For the purposes of the Act, any premises that are on the foreshore, a river, harbour or other waters and not normally considered within a Local Government’s area, are taken to be within the area of the Local Government whose area is nearest the premises. However, premises which are operated by the Australian Defence Force or another country are exempted from this section.

Premises are defined in the Act as including:

(a) a building or another structure; and

(b) a part of a building or other structure; and
(c) land where a building or other structure is situated; and
(d) a vehicle.

Schedule 3 of the Act defines a vehicle as anything, whether operational or not, used to carry anything or any person by land, water or air.

Therefore, charter boats, sports fishing vessels, house boats, etc., that sell food fall under the jurisdiction of Local Government.

**PART 3 – Prescribed infringement notices under the Food Act 2006**

**Issuing of prescribed infringement notices**

**Introduction**

This guideline will assist authorised persons in issuing prescribed infringement notices under the Food Act 2006.

It should be noted that the State Penalties Enforcement Registry (SPER) which is part of the Department of Justice and Attorney-General (JAG) and which may be utilised for collection and enforcement of unpaid infringement notice fines, have produced publications which provide detailed guidance for enforcement agencies in relation to matters pertaining to enforcing fines in Queensland, the SPER registration process and the fines online system. It is recommended that enforcement agencies refer to those publications should they require further guidance which may not be provided in this guidance document. The website link to SPER where these publications can be found is www.sper.qld.gov.au

*Note:* for the purpose of this guidance document, infringement notices are referred to as prescribed infringement notices (PINs)

- the term “authorised person” which is used in this guidance document, describes an officer duly appointed under the Food Act 2006 and
- the term “supervisor” which is used in this guidance document, describes an authorised person’s immediate manager.

**Guidance**

Enforcement agencies have several enforcement options available under the Food Act 2006 which may be used to ensure compliance of the Food Act 2006. Some of these options include the issuing of improvement notices, the issuing of PINs and prosecutions through the court system. It is therefore considered appropriate to initially establish which enforcement action should be taken so as to achieve the desired outcome. The desired outcomes must relate to the purposes of the Food Act 2006 which includes, amongst other things, ensuring food for sale is safe and suitable for human consumption.

The issuing of a PIN is an enforcement option which authorised persons may use without the necessity of progressing a prosecution through the court system.

PINs may only be issued for offences that fall within the guidelines for eligible offences and that have been acknowledged as PIN offences in the State Penalties Enforcement Regulation 2000. Therefore, only certain offences under the Food Act 2006 have been prescribed as PIN offences. (Refer to table one below, for a list of offences which have been prescribed as PIN offences).
PINs are issued under Section 13 of the *State Penalties Enforcement Act 1999*. The penalty of the breach (which is also indicated on the notice) is prescribed in the *State Penalties Enforcement Regulation 2000* and as such can not be varied.

A PIN provides the alleged offender with the opportunity to pay the penalty in full (within a minimum of 28 days) or to elect to have the offence heard by a Court.

For penalties of $150 or greater, the alleged offender can pay $60 within the specified time frame and apply to pay the remainder by instalments. Enforcement agencies must accept a part payment of $60 within the specified time frame if the penalty is over $150. The remainder of the debt can be lodged with SPER for collection.

*Note:* prosecution through the Courts may be considered appropriate for repeated PIN offences as well as for PIN offences which are considered to be of a non-minor nature. That is, offences which could pose an imminent and serious risk to public health and safety.

*Additional Note:* it would be considered appropriate not to issue more than two (2) PINs to the same person for the same offence within a period of twelve (12) months. The reason for this would be that, for instance, a court hearing in relation to a repeated offender could likely result in a more appropriate fine being ordered by a magistrate.

**Offences for which a PIN may be issued**

The *State Penalties Enforcement Regulation 2000* lists offences under the *Food Act 2006* that can be PIN offences.

The following table lists the sections of the *Food Act 2006* which are PIN offences and indicates the enforcement agency which has responsibility for issuing PINs under those sections. The penalty units listed in the table are the penalties which have been prescribed in the *State Penalties Enforcement Regulation 2000* for each of the sections and can not be varied.

**Table One**

<table>
<thead>
<tr>
<th>Section</th>
<th>Short / Common Description of Offence</th>
<th>Infringement Notice Fine (Penalty Units)</th>
<th>Responsible Enforcement Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 3 Licences for particular food businesses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part 2 Offences about carrying on licensable food businesses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S51(1)</td>
<td>Contravention of a condition of licence.</td>
<td>$1,500.00 (20)</td>
<td>Local Government</td>
</tr>
<tr>
<td>Chapter 3 Licences for particular food businesses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part 6 Suspension or cancellation of licences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S84(2)</td>
<td>Failure to return the licence to the local government within 7 days.</td>
<td>$150.00 (2)</td>
<td>Local Government</td>
</tr>
<tr>
<td>Chapter 7 Monitoring and enforcement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part 2 Powers of authorised persons</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S183(1)</td>
<td>Failure to give an authorised person reasonable help.</td>
<td>$375.00 (5)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S184 (1)</td>
<td>Failure to give an authorised person information.</td>
<td>$375.00 (5)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S185 (5)</td>
<td>Failure to comply with an authorised person's request or signal to stop or move a motor vehicle.</td>
<td>$375.00 (5)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S185(9)</td>
<td>Failure to comply with an authorised person's direction not to move a motor vehicle or to move the motor vehicle to a stated place.</td>
<td>$375.00 (5)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S189(1)</td>
<td>Tampering or attempting to tamper with a seized thing.</td>
<td>$750.00 (10)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S190(4)</td>
<td>Failure to comply with an authorised person's requirement to enable a thing to be seized.</td>
<td>$750.00 (10)</td>
<td>State &amp; Local Government</td>
</tr>
</tbody>
</table>
### Table One

<table>
<thead>
<tr>
<th>Section</th>
<th>Short / Common Description of Offence</th>
<th>Infringement Notice Fine (Penalty Units)</th>
<th>Responsible Enforcement Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>S191(2)</td>
<td>Failure to comply with an authorised person's requirement to return a thing to the place from which it was taken.</td>
<td>$750.00 (10)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S198(1)</td>
<td>Failure to comply with an authorised person's requirement to provide name or address.</td>
<td>$375.00 (5)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S200(1)</td>
<td>Failure to comply with an authorised person's requirement to produce a document.</td>
<td>$375.00 (5)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S201</td>
<td>Failure to comply with an authorised person's requirement to certify a copy of a document.</td>
<td>$375.00 (5)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S202(3)</td>
<td>Failure to comply with an authorised person's requirement to give information about an offence at a stated reasonable time and place.</td>
<td>$375.00 (5)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S207</td>
<td>Failure to comply with an authorised person's direction to take stated reasonable steps within a stated reasonable period in an emergency.</td>
<td>$1,500.00 (20)</td>
<td>State &amp; Local Government</td>
</tr>
<tr>
<td>S209(7), if paragraph (b) of the penalty applies</td>
<td>Failure to comply with an improvement notice.</td>
<td>$1,500.00 (20)</td>
<td>State &amp; Local Government</td>
</tr>
</tbody>
</table>

### Chapter 8 Analysis of things

#### Part 2 Other matters about analysis of things

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>S235</td>
<td>Using information on a certificate of analysis for a thing to advertise or otherwise promote the thing.</td>
<td>$375.00 (5)</td>
</tr>
</tbody>
</table>

### Chapter 11 Miscellaneous

#### Part 3 Prescribed contaminants in food

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>S270(2)</td>
<td>Failure to notify the chief executive about an isolation of a prescribed contaminant.</td>
<td>$750.00 (10)</td>
</tr>
<tr>
<td>S271(6)</td>
<td>Failure to comply with the chief executive’s direction about identifying the source of, and preventing or minimising the risk to public health or safety caused by, the prescribed contaminant.</td>
<td>$750.00 (10)</td>
</tr>
</tbody>
</table>

The following scenarios are examples of where a PIN may be an appropriate enforcement tool to use.

### Table Two

<table>
<thead>
<tr>
<th>Section</th>
<th>Scenario</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIN issued by Local Government</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Section 51(1) – Contravention of a condition of licence where Section 69 of the Food Act 2006 sets out conditions of licences

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 69(1)(a) – licensee must comply with the Food Act 2006 – in a broader sense, a licensee must ensure food for sale is safe and suitable for human consumption (See meaning of unsafe and unsuitable under S20 &amp; S21 of the Food Act 2006).</td>
<td>PIN may be issued if a licensee of a mobile food vehicle has been found storing ready to eat food in a way that has resulted in the food being contaminated with a cleaning chemical. (unsafe)</td>
<td>20 penalty units ($1,500.00)</td>
</tr>
<tr>
<td></td>
<td>PIN may be issued if a licensee has been found reusing food which had already been partly consumed. (unsuitable)</td>
<td></td>
</tr>
<tr>
<td>Section 69(1)(b) – if the licensee is required to have an accredited food safety program, the licensee must comply with the accredited program and allow an auditor to have reasonable access to the licensee’s premises under the licence to conduct audits under this Act.</td>
<td>PIN may be issued if a licensee has not complied with their accredited food safety program by, for instance, not recording cold room temperatures as required in their program.</td>
<td>20 penalty units ($1,500.00)</td>
</tr>
<tr>
<td></td>
<td>PIN may be issued if a licensee has not allowed an auditor to have reasonable access to their premises.</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Scenario</td>
<td>Penalty</td>
</tr>
<tr>
<td>---------</td>
<td>----------</td>
<td>---------</td>
</tr>
<tr>
<td>Section 69(1)(c)(i) – licensee (for fixed or temporary premises) must display their licence, or a copy of the licence, in a prominent position at the premises so it is easily visible to persons at the premises.</td>
<td>PIN may be issued if a licensee has been found not displaying their licence, or a copy of the licence, in a prominent position at their premises so it is easily visible to persons at their premises.</td>
<td>20 penalty units ($1,500.00)</td>
</tr>
<tr>
<td>Section 69(1)(c)(ii) – licensee (for mobile premises) must display details of the licence, in a prominent position on the premises so that details are easily visible to persons at the premises.</td>
<td>PIN may be issued if a licensee has been found not displaying details of their licence, in a prominent position on their premises so that the details are easily visible to persons at their premises.</td>
<td>20 penalty units ($1,500.00)</td>
</tr>
<tr>
<td>Section 69(1)(c)(iii) – licensee must ensure the licensee's premises under the licence complies with the Food Standards Code, Standard 3.2.3 (Food premises and equipment).</td>
<td>PIN may be issued if a licensee has not ensured that their outdoor garbage bins have tight fitting lids in order to keep flies and other pests away (Food Standards Code, Standard 3.2.3 S6(b)).</td>
<td>20 penalty units ($1,500.00)</td>
</tr>
<tr>
<td>Section 69(1)(d) – licensee must allow an authorised person to have reasonable access to the licensee's premises under the licence during normal business hours for the food business under the licence.</td>
<td>PIN may be issued if a licensee has not allowed an authorised person to have access to their premises during normal business hours so as to allow the authorised person to conduct an investigation into an alleged offence.</td>
<td>20 penalty units ($1,500.00)</td>
</tr>
<tr>
<td>Section 69(1)(e) – licensee must comply with any other reasonable conditions the Local Government has considered appropriate for the food business under the licence.</td>
<td>PIN may be issued if a licensee, for example, has been found cooking pizzas and one of their condition of licence is that the licensee is not permitted to conduct any cooking at the premises stated in the licence until approval for such activities has been obtained.</td>
<td>20 penalty units ($1,500.00)</td>
</tr>
<tr>
<td>Section 84(2) – Failure to return licence to the local government within 7 days</td>
<td>PIN may be issued if a licensee has not returned their licence to their Council 7 days after they received an information notice stating that their licence has been cancelled or suspended.</td>
<td>2 penalty units ($150.00)</td>
</tr>
</tbody>
</table>

**PIN issued by Local & State Government**

| Section 209(7) if paragraph (b) of the penalty applies – Failure to comply with an improvement notice |
| Section 209(7) – The person must comply with the improvement notice unless the person has a reasonable excuse. | PIN may be issued in a situation where it has been found that a licensee/person has not complied with a specific requirement of an improvement notice and where an offence (as prescribed under the Act) is not being committed. For example, an improvement notice may have been issued which states that a cleaning roster was to be developed and implemented due to the food premises having been found in an unclean state which may affect the safety of the food being handled or sold. A follow up inspection reveals that the premises is in a spotless condition (i.e. no offence is being committed), however a cleaning roster has not been developed and as such, the improvement notice has not been complied with. | 20 penalty units ($1,500.00) |

PIN may be issued in a situation where a licensee/person has not complied with an improvement notice which states that they must develop and implement a temperature log. (Note: if, for example, it has been found that potentially hazardous food for sale is not being stored at the correct temperature and the licensee can not show that a safe alternative system is in place (for example, a food safety program etc.), the authorised person may, in addition to issuing the PIN and if it considers necessary, use their powers under Chapter 7 Part 2 of the Food Act 2006 “Powers of authorised persons”, seize and destroy or direct the licensee/person to destroy the food which is believed to be able to pose an immediate risk to public health or safety (Section 196 of the Food Act 2006) because it was not stored at the correct temperature).
**Procedural phases**

There are a number of steps to be taken by an officer when issuing a PIN.

**Phase 1 – General comments**

It is important that:
- the PIN book is kept secure at all times; and
- each PIN is completed correctly, clearly and legibly (an incorrect or illegible PIN may result in the notice having to be reissued, withdrawn or being challenged in Court and rejected).

A PIN must be issued in accordance with Section 39 of the *Acts Interpretation Act 1954*, where it states that, for reasons that the *Food Act 2006* permits documents (e.g. PINs) to be served, that the documents be served in the following manners (at the time of the offence (on-the-spot) or another time):
- on an individual
  - by delivering it to the person personally, or
  - by leaving it at, or by sending it by registered post or facsimile to the address of the place of residence or business of the person last known to the person serving the document.
- on a body corporate
  - by leaving it at, or sending it by registered post or facsimile to the head office, a registered office or a principal office of the body corporate.

*Note:* service by post is deemed to be effected if the PIN has been posted by registered post provided by Australia Post. If a PIN that has been sent by registered post is returned, it is deemed to have been served.

When sending a PIN by registered post, the “YES” tick box for delivery confirmation should be marked.

Where more than one offence is being committed for which a PIN can be issued, a separate PIN must be issued for each offence.

*Note:* multiple PINs can be sent by registered post in the one envelope.

**Phase 2 – Before a PIN can be issued**

An authorised person must:
- ensure they have entered the place in accordance with Chapter 7 Part 2 of the *Food Act 2006 “Powers of authorised persons”*;
- inform the person of their name, the name of the enforcement agency that they are from (e.g. Queensland Health) and that they are authorised under the *Food Act 2006*;
- display or produce to the person their identity card (Section 171 of the *Food Act 2006*);
- establish who the alleged person/entity is, and thus the responsible party, to whom a PIN should be issued. If unsure as to who the responsible party is, do not issue the PIN on-the-spot;
- establish the section/s of the relevant legislation under which the alleged offence has been committed; and
- be satisfied beyond reasonable doubt that the elements of the offence, for which the PIN is to be issued, can be proven. Judgement should be exercised by an authorised person to ensure that enough evidence has been collected so as to be able to prove the elements of the offence, should the penalty be defended.

**Phase 3 – Issuing a PIN at the time of the offence (on-the-spot)**

- Ensure sufficient evidence has been gathered to prove that the offence has been committed (see second dot point under Phase 4 below) and that such evidence has been obtained using the appropriate powers and warnings under the *Food Act 2006*.
- Inform the alleged offender that you believe that they have committed an offence under the legislation.
Describe to them the breach and what must be done to rectify it (provide a time frame). (Note: the offender may be reminded that another PIN could be issued to them should they not have rectified the breach in the time frame stated).

If required, in order to determine/verify the person's name and address, the authorised person may require the person to state the person's full name and address (Section 197(2) of the Food Act 2006).

When making the requirements under Section 197(2) of the Food Act 2006, the authorised person must warn the person that it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse (Section 197(3) of the Food Act 2006). Failure by the authorised person to do this and failure to use the exact words, will mean this evidence is invalid and the PIN should not be issued.

Inform the alleged offender that such an offence attracts a fine.

Complete all applicable sections of the PIN.

Tear-off the original copy of the PIN and hand it to the alleged offender.

Inform the alleged offender that the payment options are printed on the back of the PIN. If the PIN book contains a telephone number, the alleged offender should also be advised of this number to call, should they have any further enquiries.

Phase 4 – Issuing a PIN other than at the time the offence is noted

Determine who is the responsible party

If the alleged offender is a corporation or the owner of a registered business, the PIN must be issued to the responsible party. In other words, the PIN is to be issued to the corporation if the alleged offender is a corporation or to the persons carrying on the business if the alleged offender is a business. It is recommended that a search, using CITEC Confirm (www.confirm.citec.com.au), be completed to determine the correct details of the responsible party (that is, the correct details of the corporation or the persons carrying on the business).

If the alleged offender is an individual (for example an employee or the food safety supervisor of the food business), ensure the PIN can in fact be issued. That is, certain offences specifically relate to the licensee and therefore can only be issued to a licensee.

Gather evidence to support the issue of the PIN

Once an authorised person has identified that an offence has been committed under the Food Act 2006, the authorised person should investigate the offence and obtain as much evidence as possible so as to prove that the offence has been committed.

It should be noted that the same amount and type of evidence should be obtained when investigating an offence, whether the alleged offender will be issued with a PIN or an improvement notice or with a complaint and summons.

Examples of evidence may be in the form of photographs, statements, detailed notes made in official note books, tape recordings, video images, documents etc.

Evidence collected for the issuing of a PIN should be kept secure and retained for at least 12 months lest the alleged offender decides to elect to have their case heard in Court.

Complete the PIN

Alleged offender details

In the case of a corporation (company), issue the PIN to the company. Ensure the correct company name and registered address is used.

In the case of a business, issue the PIN to the person carrying on the business. Ensure the correct business name and registered address is used. \(\text{Note: a PIN can only be issued to one person. The authorised person must determine who the more responsible party is if there are several persons carrying on the business. If this can not be established, issue the PIN to the person whose name appears first in the business search).}\)

In the case of a body corporate, issue the PIN to the body corporate name, not the name of a Director or single body corporate member. Ensure that the correct registered business name and address is used.
To assist the State Penalties Enforcement Registry (SPER) to recover fine costs, if determined or available, fill in the "Date of Birth", "Phone Number", and the entire "Identification Used" sections. These only need to be completed in the case of an individual. The "Given Name/s" section is not required when issuing a PIN to a body corporate or corporation (company).

**Time and date of offence**
- Enter the time and date of the alleged offence.

**Location of offence**
- The location of the offence must be the full and correct street address and postcode at which the offence occurred. The Postal Address is not to be used.

**Identifying particulars of the offence and code**
- The "Identifying Particulars of the Offence" section must be completed. The following information needs to be included on the PIN:
  - the section of the *Food Act 2006* which has been breached;
  - the offence code number (e.g. QH201 – note: offence code numbers are assigned by each enforcement agency, to each offence for which a PIN can be issued, and will vary from one agency to another); and
  - the short/common description of the offence e.g. "Contravention of a condition of licence". A recommendation is to print the short/common descriptions of the offences on the inside cover of the PIN book for ease of reference.

**Penalty**
- Fill in the "Fine" amount.

**Details of service**
- There is no statutory requirement which states the timeframe in which a PIN is to be served from the date of the offence. However, it is considered good practice for PINs to be issued within 10 working days of the breach occurrence or as soon as practicable thereafter.
- The issuing officers must record sufficient details so as to enable the enforcement agency to identify the officer who issued the PIN. This may include a printed name and/or signature and/or official seal number and/or officer code, in the allocated sections of the PIN.
- Enter the date the PIN is issued.

**Phase 5 – Register the PIN**

It is recommended that enforcement agencies monitor the statuses of the PINs that have been issued. As such, the enforcement agency should develop a register which contains details of all the PINs that have been issued.

The enforcement agency's register should include the following information:
- infringement notice number;
- defendant's name;
- place of offence;
- issue date;
- offence short code;
- description of offence;
- applicable Act or Regulation;
- relevant section number;
- name of authorised person; and
- status of the PIN (i.e. unpaid, paid, referred to SPER, etc.).
The issuing officer is to:

- ensure that the details of the defendant and the PIN offence are entered onto the enforcement agency’s database within 24 hours of issuing the PIN, or, if the officer is away from the office, at the first available opportunity; and
- place the enforcement agency’s copy of the PIN with any associated documents or evidence relative to the breach, on the relevant file.

**Withdrawing a PIN (This includes the cancellation and the reissuing of a PIN)**

See guidelines within this guidance document in relation to withdrawing PINs.

**Non Payment of PINs**

See guidelines within this guidance document in relation to the administration requirements for PINs.

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**Withdrawing prescribed infringement notices (PINs)**

### Introduction

This guideline will assist authorised persons withdrawing prescribed infringement notices (PINs) which have been issued under the *Food Act 2006*. This includes the amendment and the reissuing of a PIN where there are critical errors.

### Cancelling a PIN

Each enforcement agency must determine who will have authority to make decisions relating to the amendment, cancellation and/or reissuing of a PIN.

#### Example

A local government develops its delegations register, which details what authorities its employees have. The register outlines that once a PIN has been issued to an alleged offender, only the issuing officer's supervisor may make the decision to have a PIN amended, cancelled and reissued.

A PIN should be cancelled and a new PIN issued when it contains one or more types of critical errors, as described below (in this instance the officer should then issue a new PIN with the correct details included):

- no date or incorrect date of alleged offence;
- no date of issue;
- no location or incorrect location of alleged offence;
- no penalty indicated;
- no offence indicated;
- incorrect penalty indicated;
- incorrect offence indicated;
- incorrect offence location indicated;
- incorrect date of offence in respect of allegation section only. (Note: An incorrect date written on the bottom of the PIN where the issuing officer signs his/her name, does not invalidate the notice);
- incorrect business address;
- if the address is an overseas address (e.g. of a visitor);
- incorrect time of alleged offence; or
- served on the incorrect person or entity.
Reissuing a PIN

- Obtain approval to cancel the PIN and issue a new PIN in accordance with the enforcement agency’s policy or delegations register.
- Identify the PIN as being cancelled on the copy contained within the PIN book and in the enforcement agency’s PIN register. The authorised person should ensure that the date and time of when the PIN was cancelled are noted on all copies of the PIN. Any changes on a PIN should also be signed or initialled.
- Notify the person in charge of the PIN register that the PIN has been cancelled.
- Complete a new PIN with the correct details for reissue.
- Issue the new PIN to the alleged offender in the appropriate manner\(^{10}\) and include a covering explanatory letter.
- The authorised person should notify those responsible for managing unpaid PINs within their enforcement agency of the cancellation and reissue of the PIN. Failure to do this could result in the cancelled PIN being forwarded for enforcement to the State Penalties Enforcement Registry (SPER) after the required payment time has elapsed.

Withdrawing a PIN

The enforcement agency may withdraw a PIN when:

1. a decision is made to commence proceedings and issue a complaint and summons against the alleged offender in Court;
2. the alleged offender or another person makes a request in writing to the enforcement agency to withdraw the PIN;
3. the enforcement agency makes a decision to withdraw a PIN for other reasons; or
4. the enforcement agency makes a decision to withdraw a PIN because the PIN, with critical errors, has been cancelled and a replacement issued.

Note: a PIN is to be withdrawn when the alleged offender chooses to have the matter heard in Court.

All requests from the alleged offender to withdraw a PIN should be in writing and referred to the enforcement agency’s appointed delegate for a decision. A written response to the alleged offender’s request should be sent once the decision has been made. The authorised person should be formally advised of the decision.

Administration requirements for PINs

Introduction

This guideline will assist authorised persons in relation to administration requirements for PINs issued under the Food Act 2006.

Options for alleged offenders

A person issued with a PIN may elect one of the following options:

- payment of the fine in full within 28 days of issue of the PIN;
- voluntary instalment plans when the fine is greater than $150;
- election of proceedings to be heard in a Court (the alleged offender must contact the enforcement agency and lodge a court election in writing. Note: the offender can elect to have the matter heard in Court even after the details of an unpaid PIN have been sent to SPER); or
- do nothing.

Actions by enforcement agency

\(^{10}\) Refer to guidelines within this guidance document in relation to the issuing of PINs for details on how to serve a PIN on an offender.
The enforcement agency may take the following actions, after an alleged offender elects one of the options:

**Payment of a PIN in full within allotted period**
- no further action; and
- record PIN payment on the relevant register.

**Voluntary instalment plans**
- where the PIN is greater than $150 the alleged offender pays $60 within 28 days and applies to pay the remainder by instalments;
- the enforcement agency, if it chooses, may lodge the remainder of the debt with SPER for recovery at no cost to the enforcement agency or alleged offender.

**Election to have proceedings heard in Court (court election)**
- once an alleged offender lodges a court election with the enforcement agency, within 28 days after the PIN is issued, the enforcement agency must accept that election to have the offence heard by a Court;
- an alleged offender may choose to contest the PIN and have the matter heard in Court, after the details of the PIN have been referred to SPER. This option is available to the alleged offender up until the time the summary proceedings under the *Food Act 2006* expires (generally 12 months from date of offence).

**Election to have proceedings heard in Court (decision of the enforcement agency)**
- if an authorised person decides to refer a matter to Court, the enforcement agency must then withdraw the PIN and commence proceedings against the alleged offender in Court (i.e. proceed with issuing a complaint and summons to the alleged offender).

**At any time before a PIN is paid in full**
The enforcement agency may take one of the following actions at any time before a PIN is paid in full:
- amend and cancel the PIN and issue a new PIN where appropriate;
- withdraw the PIN and take no further action against the alleged offender;
- withdraw the PIN and commence prosecution proceedings against the alleged offender; or
- register outstanding debt with SPER for action, even if the payment is received after 28 days from the date of issue (a registration fee, as determined by SPER, for each PIN may apply).

**Referring outstanding debt to SPER**
The enforcement agency can refer an outstanding debt to SPER after the allowed period for payment has expired, or when an alleged offender has been approved for a voluntary instalment plan. The procedure for referring the debt to SPER is by lodging a default certificate (combined details of the offence, the alleged offender, the infringement notice, and the unpaid fine) and the registration fee (if applicable).
PART 4 – Material to support this guideline

Queensland Health has developed a range of materials to support enforcement agencies in implementing the Food Act 2006 relevant to the information in this guideline. These are referenced below and are located in the relevant sections of this folder.

**Standard Resources for EHOs**

- Contact lists for population health units and Safe Food Queensland
- Sample of a prescribed infringement notice (PIN)
- Offence provisions under the Food Act 2006 for which prescribed infringement notices (PINs) can be issued

**Standard forms**

- 3.1 Improvement notice
- 3.2 Notice – Power to give directions
- 3.3 Notice – Power to require information
- 3.4 Show cause notice – Cancellation or suspension of licence
- 3.5 Information notice – Cancellation of licence
- 3.6 Information notice – Suspension of licence
- 3.7 Information notice – Ending show cause process for the cancellation or suspension of licence
- 3.8 Receipt for seized thing(s)
- 3.9 Notice to support seizure
- 3.10 Consent to enter a place
- 3.11 Notice of damage