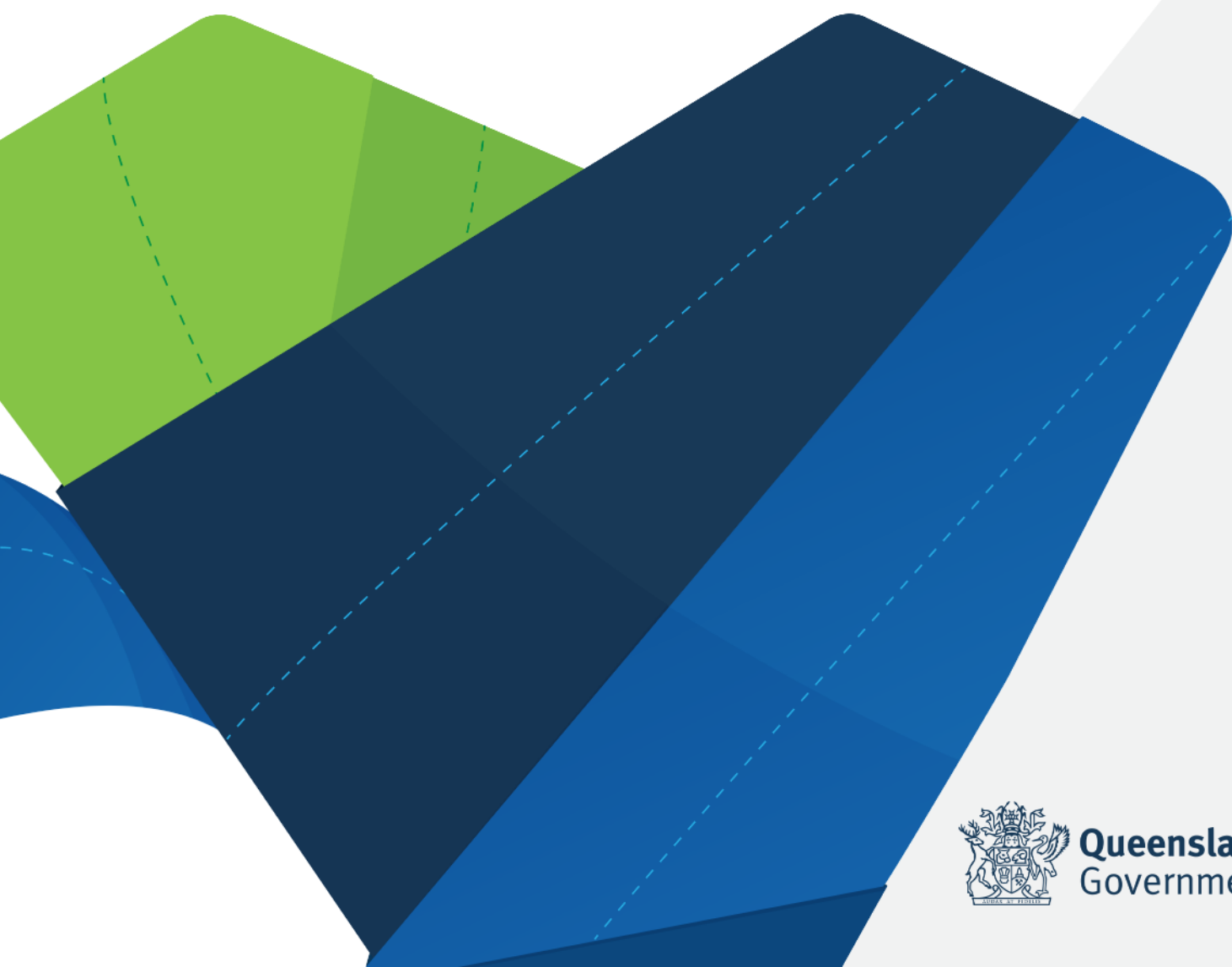


Monitoring and enforcement of the Food Act 2006



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An electronic version of this document is available at www.qld.gov.au/foodpantry

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Introduction

The *Food Act 2006* (the Act) is the primary food safety legislation in Queensland and applies to all Queensland food businesses. The objectives of the Act are to ensure food for sale is safe and suitable for human consumption, to prevent misleading conduct in relation to the sale of food and to apply the *Australia New Zealand Food Standards Code* (the Food Standards Code).

The Act manages food safety according to the level of risk that the food business presents to the community. The higher the level of risk, the higher the level of food safety regulation. Enforcement of the Act is the joint responsibility of Queensland Health and local government.

The Act 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 also contains reporting provisions for food businesses including suspected intentional contamination of food and the isolation of a prescribed contaminant in a food.

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

This guideline provides guidance on the division of responsibilities between local government and Queensland Health under the Act. The guideline outlines the parts of the legislation for which the regulatory agencies are responsible, examines various examples/issues relating to the safety of food encountered by the public and discusses the suite of enforcement tools available under the Act.

1 The division of responsibilities under the Food Act 2006

1.1 Division of responsibility between the agencies

The Act sets out the responsibilities of the State (Queensland Health) and local government in Chapter 1, Part 4 of the Act by specifying which provisions are administered by Queensland Health, which provisions are administered by local government, and which provisions are administered in partnership between the two agencies. The devolution of activities acknowledges that local government are best placed to monitor and enforce local issues. Statewide matters which impact all local government areas are monitored and enforced by Queensland Health.

Table 1 provides an overview of the division of responsibilities between Queensland Health and local government.

1.2 Queensland Health and local government joint responsibility for enforcement

Where both Queensland Health and local government have joint responsibility for administering the Act, it is important to minimise any potential confusion regarding enforcement of these provisions.

When determining whether Queensland Health or local government is responsible for enforcing the provisions for which they have joint responsibility, the primary consideration should be given to which organisation identified the breach of legislation.

Example

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, Queensland Health is responsible for acting upon the breach of the Act.

Alternatively, if the breach was 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 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.

Example	<p>A local government is undertaking inspections of temporary food premises at a local market and has arranged for Queensland Health to participate in the site visit. During an inspection of one of the temporary food premises, unsuitable food is found to be on display for sale, a breach of section 36(2). As the local government has coordinated the site visit, it has become the lead agency in this instance. Therefore, the local government would be responsible for undertaking the necessary action against the food business for a failure to comply with section 36 of the Act.</p>
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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.

Table 1 The division of responsibilities between Queensland Health and local government

Section/ Part	Description of provision	Queensland Health	Local government
Section 32	Handling of food in unsafe way	✓	✓
Section 33	Sale of unsafe food	✓	✓
Section 34	False description of food	✓	
Section 35	Handling and sale of unsafe food	✓	✓
Section 36	Handling and sale of unsuitable food	✓	✓
Section 37	Misleading conduct relating to sale of food	✓	
Section 38	Sale of unfit equipment or packaging or labelling material	✓	
Section 39 (1)	Compliance with Food Standards Code in relation to conduct of a food business or food intended for, or for sale		✓
Section 39(2)	Compliance with labelling requirements of the Food Standards Code	✓	
Section 39(3)	Compliance with requirement of Food Standards Code	✓	
Section 39(4)	Contravention by selling or advertising food in a way that fails to comply with Food Standards Code	✓	

Section/ Part	Description of provision	Queensland Health	Local government
Section 159	Check audits	✓	
Chapter 3	Licensing of food businesses		✓
Chapter 4	Food safety programs		✓
Chapter 5	Auditors	✓	
Chapter 6, other than s159	Audits of accredited food safety programs (excluding section 159)		✓
Chapter 6A	Display of nutritional information for food	✓	
Chapter 7, Part 4	Emergency powers of Chief Executive	✓	

1.2.1 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. Section 25 allows the chief executive of Queensland Health and the chief executive officer of a local government to come to an agreement about Queensland Health undertaking the administration or enforcement of the Act which is normally undertaken by a local government.

Example

A small local government only employs one person authorised under the Act. The authorised person is planning to go on annual leave. The local government can enter into an agreement with Queensland Health to ensure the continuation of services in the event of emergent food safety issues.

Queensland Health may also agree to a local government performing the administration or enforcement functions which Queensland Health is ordinarily responsible under the Act.

Example

A local government is undertaking inspections of temporary food premises at a local market and has arranged for Queensland Health to participate in the site visit. During an inspection of one of the temporary food premises, unsuitable food is found to be on display for sale, a breach of section 36(2). As the local government has coordinated the site visit, it has become the lead agency in this instance. Therefore, the local government would be responsible for undertaking the necessary action against the food business for a failure to comply with section 36 of the Act.

Some PHUs may be located a considerable distance from some of the population centres for which they are responsible. Subsequently, Queensland Health could enter into an agreement with a geographically remote local government to have their authorised person respond to emergent food safety issues for which Queensland Health is responsible. This would reduce the response time to the emergent issue, improving the service level to the community and meeting the obligations of the Act.

The Act does not prescribe a process of how an agreement between Queensland Health and a local government can be reached. Therefore, a partnership agreement can be made verbally or in writing. However, it is preferable for an agreement between Queensland Health 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 that should be addressed, including:

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

It should be noted that an agreement reached between Queensland Health and a local government to administer the Act in partnership would constitute a contract. Subsequently, relevant contract law will be applicable to any agreement that is entered.

1.3 Action by Queensland Health if local government does not administer and enforce the *Food Act 2006*

Section 26 of the Act provides Queensland Health with the ability to undertake the responsibilities that the Act gives to local government. Queensland Health 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:

- compliance with Chapter 3 of the Food Standards Code (Food Safety Standards)
- licensing of food businesses
- accreditation of food safety programs.

In the event that Queensland Health's chief executive is satisfied that the local government has not done, or sufficiently done, one of its responsibilities, two considerations must also be taken into account.

That is, Queensland Health's chief executive needs to be reasonably of the opinion that doing the thing that was not done, is necessary to:

- reduce a significant risk associated with the sale of unsafe or unsuitable food; or
- prevent a significant risk to public health or safety recurring.

In forming the opinion, the chief executive must have regard to:

- the potential consequences to the health of individuals; and
- the number of persons likely to be exposed to the risk.

When Queensland Health 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 prior to taking any action. Additionally, the local government's chief executive officer must be given a reasonable opportunity to take the necessary action prior to Queensland Health taking any action.

In the event that Queensland Health undertakes a responsibility normally administered by local government, the reasonable costs and expenses incurred become a debt payable by the respective local government to Queensland Health.

1.4 Delegation of power

The Act grants a number of powers to local government, chief executive officers of local government and to authorised persons for the purpose of application of the Act. Delegations relating to decision making generally sits with managers of environmental health services or senior environmental health officers.

Section 259 of the *Local Government Act 2009* (the LG Act) outlines that a chief executive officer of a local government may delegate the chief executive officer's powers to an appropriately qualified employee or contractor of the local government. Section 260 of the LG Act requires the chief executive officer to establish a register of delegations that contains the particulars prescribed under a regulation.

The LG Act specifies that delegation of local government powers must be undertaken by resolution.

2 Other food legislation in Queensland

The administration and enforcement of primary production activities is undertaken by Safe Food Production Queensland via the *Food Production (Safety) Act 2000*.

The main objectives of the *Food Production (Safety) Act 2000* are to establish Safe Food Production Queensland, to ensure the production of primary produce is carried out in a way that makes it fit for human or animal consumption, maintains food quality and provides for

food safety measures for the production of primary produce consistent with other State laws relating to food safety.

To ensure food businesses are not dual regulated for the one activity (dual regulation is where the same food business activity is regulated by two agencies), a food business is not considered a licensable food business under the Act if they hold accreditation under the *Food Production (Safety) Act 2000*. It should be noted that some food businesses undertaking a variety of activities may be required to comply with the two pieces of legislation for the relevant component of the food business.

Example

A large retail premises such as a supermarket requires a licence under the Food Act for the majority of the premises such as deli, bakery and other operations. Where the premises also contains a butchery component, they are also required to hold accreditation with Safe Food Production Queensland for the meat production. This is not considered dual regulation as the agencies only regulate the relevant component of the food business.

3 Potential food safety issues and the responsible enforcement agency

Table 2 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 Examples of food safety issues and the responsible agency

Issue	Example	Responsible agency
Foreign matter	Glass, metal, band-aid in food	Queensland Health
Labelling of food product	Ingredients not listed on the package	Queensland Health
Food composition issues	Presence of unidentified allergens, non-permitted preservatives or	Queensland Health
Misleading conduct by a food business	Misleading or deceptive advertising, packaging or labelling of food	Queensland Health
General food safety issues at retail premises	Staff smoking while handling food at a café or take away food shop	Local government
General food safety issues in a wholesale and retail distribution centre	Vermin infestation in warehouse	Local government

Issue	Example	Responsible agency
Primary produce and processing safety	Raw meat not refrigerated while transported	Safe Food Production Qld
Food safety issues at a retail butcher	Butcher staff not washing hands	Safe Food Production Qld

4 Authorised persons' powers and responsibilities

The following section discusses the various powers and responsibilities that authorised persons have including 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.

4.1 Production or display of identity card

Before exercising a power in relation to another person, section 171 requires an authorised person to produce their identity card for inspection by the person or display their identity card so it is clearly visible to the person, when exercising the power.

In the event it is not practical 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 the place 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.

4.2 Power to enter places

Section 175 allows authorised persons to enter a place in a number of circumstances including where the occupier of the place has consented to the entry or a public 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 the members of the general public.

An authorised person who has obtained a warrant from a court has the ability to enter the place specified in 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 when 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 or 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

Staff at a bakery are working (baking) at 3am. At this time the bakery is not open to the public, however, as the bakery is open for the purposes of preparing food, an authorised person may enter and inspect the premises at this time.

'Otherwise open for entry' includes 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.

5 General powers after entering places

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 Schedule 3 as including premises and vacant land.

A premises includes:

- a building or other structure
- a part of a building or other structure
- land where a building or other structure is situated
- a vehicle
- a food vending machine.

While searching a place, an authorised person may inspect, measure, test, photograph or film any part of the place or anything at the place. They may take a thing, or a sample of a thing, at the place for analysis.

A 'thing' is defined in the Macquarie dictionary as a material object without life or consciousness; an inanimate object.

Example

An authorised person has received a complaint about a 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 including any storerooms not located immediately adjacent to the shop front. However, the authorised person does not have the power to search any non-food related shops contained within the shopping centre.

5.1 Documents

The Act permits an authorised person to copy a document or part of 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 a 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

While 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 such as the sales details of contaminated food. The

authorised person requires the licensee to provide a copy of the document which is then retained as evidence.

It should be noted that section 199 of the Act requires that when an authorised person has taken a document so it can be copied, the authorised person returns the document to the person as soon as practical after copying it. When returning a document, it is recommended the authorised person obtain a receipt to prevent any later dispute about whether or not the document was returned.

The authorised person may also require the person responsible for keeping the document to certify the copy as a true copy of the document or a true copy of part of the document.

5.2 Assistance and equipment which may be taken to inspections

When undertaking inspections, section 182 provides that authorised persons may take into or onto the place any person, equipment and materials the authorised person reasonably requires for exercising 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 should not be taken to premises without ventilation equipment.

An authorised person 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.

5.3 Reasonable help

An occupier of a place or a person present at the place is required to give an authorised person reasonable help to exercise their powers under the Act.

When faced with a situation which may require the use of reasonable help, the authorised person needs to consider what level of assistance may be necessary. Careful consideration needs to be given to ensure that assistance is appropriate and will aid the authorised person to ensure compliance with the Act. The following examples outline situations of assistance being required which could be considered reasonable.

Example 1

While undertaking an inspection of a licensed 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 2

An authorised person wants to ensure that the meat slicer is being cleaned regularly and 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 can be inspected, would be considered an unreasonable request.

When requiring a person at a place to provide reasonable assistance, the 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 cold room above, it would be considered reasonable for the employee not to unlock the cold room door if the licensee was the only person who had a key and was not present at the premises.

5.4 Stopping or moving a motor vehicle

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.

There are a number of steps to be taken by an officer for stopping of motor vehicles where it is believed that a motor vehicle was involved in the commission of an offence. To stop or move a vehicle, the authorised person should:

- ask or signal the person in control of the motor vehicle to stop the motor vehicle and to bring it to a convenient place, within a reasonable distance.
- wear a safety vest or tabard where possible.
- make the direction as clearly as possible. Below are examples of hand signals used by Queensland Police Service. If the authorised person has a loud hailer, this may be used to provide direction where necessary.

The person must comply with the direction unless they have a reasonable excuse.

After stopping a food vehicle, an authorised person is required to immediately produce their identity card and must state that they are 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 would be considered 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.



An authorised person may also give directions that a stationary vehicle not be moved, or be moved and kept at a stated reasonable place, whether or not the vehicle is moving. The authorised person must warn the person it is an offence not to comply with the direction, unless the person has a reasonable excuse.

Example

The vehicle has become a traffic hazard as the area where the vehicle is parked has become a clearway. An authorised person may direct that the vehicle be moved to a suitable location to continue the investigation.

5.5 Power to require information

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. The employee is required to answer the question.

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 the situation. Section 184(2) states that it is a reasonable excuse for an individual to fail to comply with the requirement if complying might incriminate them.

5.6 Dealing with seized things

An authorised person who enters a place without the consent of the occupier and without a warrant, i.e. the food premises is open to the public, may seize a thing only if the authorised person reasonably believes the thing is evidence of an offence against the Act.

If an authorised person enters a place which can only be entered with consent or warrant, the authorised person may only seize things that relate to the purpose the authorised person told the occupier that consent was required, or that is evidence for which the warrant was issued.

However, an authorised person may also seize anything else if the authorised person reasonably believes the thing is evidence of an offence against the Act and the seizure is necessary to prevent the thing from being hidden, lost or destroyed, or used to continue, or repeat the offence.

5.6.1 Securing and supporting a seized thing

After seizing a thing, an authorised person may move the thing from the place it was seized or leave the thing at the place taking reasonable action to restrict access to it.

Example

An authorised person seizes a meat slicer which is unable to be dismantled to be cleaned properly and there is food product evident in the blades. The authorised person seizes the meat slicer so that it cannot be continued to be used, leaving it at the place. The authorised person advises the occupiers that the meat slicer is seized and may not be used, places a sign on the slicer indicating it has been seized and places some seizure tape on the machine.

If an authorised person seizes a thing and restricts access to it, a person must not tamper with the thing or with something restricting access to it without the authorised person's approval.

To enable a thing to be seized, an authorised person may require the person in control of it to take it to a specified place by a certain time and if necessary, require the person to remain in control of it at the specified place for a reasonable time. If this notification is given orally, it must be confirmed by written notice as soon as practicable.

Example

An authorised person seizes a pallet of packaged refrigerated goods which do not comply with labelling and compositional requirements of the Food Standards Code. The authorised person requires the manager of the food business to take the seized food to a particular refrigerated storage facility by close of business the following day and to remain at the facility until the authorised person secures the product and provides a receipt.

If an authorised person has required a person to take a thing to a stated place, the authorised person may also require the person to return the thing to the place from which it was taken.

5.6.2 Receipts for seized things

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 that 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 then 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.

Example

While undertaking an inspection of a licensed premises an authorised person locates two loaves of bread which are mouldy. The authorised person determines that the bread will be seized, however due to their value and decomposed nature, no receipt is issued.

5.6.3 Forfeiture of seized things

A seized thing is forfeited to Queensland Health or a local government if the authorised person who seized the thing:

- cannot find its owner, after making reasonable inquiries; or
- cannot return it to its owner, after making reasonable efforts.

Regard must be given to the seized thing’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 phoning the owner, visiting the premises where the food 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 along with placing an advertisement in a locally circulated newspaper or on the enforcement agency’s website.

Upon forfeiture of the thing, the thing becomes the property of the chief executive or chief executive officer and they may deal with the thing however they consider appropriate. This includes, but is not limited to, disposing or destroying the thing.

However, before dealing with the forfeited thing, 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.

5.6.4 Access to seized things

Under section 195 of the Act, Queensland Health and local government is required to ensure that a seized thing is available for inspection (or if it is a document, to be copied) by its owner, until the seized thing is forfeited, destroyed or returned. However, this requirement does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

5.6.5 Chain of custody

Authorised persons should ensure that seized things are kept in an appropriate manner to ensure that they remain secure, cannot be tampered with and reduce the chance of deterioration.

Enforcement agencies should develop a system that is capable of demonstrating that the chain of custody for seized things has not been broken. A secured storage area or container in which seized things 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). A log should be kept showing when the seized thing was originally placed in the storage area. Subsequent log entries should demonstrate each time a thing is removed and replaced (date, time, who, and reason). This is of great importance if the seized thing is to be used as evidence in legal proceedings.

5.7 Power of destruction

Section 196 provides that an authorised person may destroy a thing which has been seized if the thing consists wholly or partly of contaminated or decomposed matter. The thing may also be destroyed if the authorised person reasonably believes the thing poses an immediate risk to public health or safety.

When an authorised person is determining whether a thing is ‘wholly or partly contaminated or decomposed’ they should have regard to whether the seized thing 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 that the tomatoes are ‘partly contaminated’ and subsequently destroys them.

An ‘immediate risk to public health or safety’ includes where a thing such as a food, equipment or utensils that if consumed or used would cause injury, be harmful or adversely affect anyone 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 seize the drinks then destroy them.

When destroying a seized thing, the authorised person must ensure that the thing 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.

Example

For example, placing the seized item in a rubbish bin would not be considered adequate to destroy the item. Taking the item to the Council landfill and having the compactor (or other plant) destroy the thing would be sufficient.

6 Emergency powers

6.1 Emergency powers of authorised person

Chapter 7, Part 2, Division 8 – Emergency powers of authorised persons, is not dependent on a food business being licensed. This division instead refers to imminent risk of death or serious illness of any person from food being handled or sold in connection with a food business (section 203(b)).

Under this division, section 204 provides that an authorised person may enter a place without a warrant or the consent of the occupier and direct a person at the place to take stated reasonable action in relation to the food which may be attributed to imminent risk of death or serious illness via section 205.

If a direction in relation to the food is given orally, the authorised person must as soon as practical confirm the decision by providing a written notice to the person.

Example

Information is received regarding a recalled product due to glass fragment contamination is still being used within a food business.

6.2 Emergency powers of chief executive

Chapter 7, Part 4 – Emergency powers of chief executive allows the chief executive to make an order to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

This part of the Act details the nature of the orders that may be made and provides details about recall orders which may require the recall and/or disposal of food which is considered unsafe.

It should be noted that a person is able to seek compensation from the chief executive if they suffer a loss as a result of an order made under this part and the person considers there were insufficient grounds for making the order.

Examples of when emergency powers of the chief executive may be executed include:

- system failure in pasteurisation technique resulting in unsafe food produced requiring consumer level recall of product

- a food handler is diagnosed with a serious illness such as Shiga toxin-producing E. coli (STEC) and an order dealing with contaminated food is necessary
- a direction to prohibit a particular food such as a sports supplement associated with significant negative health effects from being sold or advertised.

Part 2, Division 8 of Chapter 7 of the Act provides authorised persons with emergency powers. The emergency powers may be used only if an authorised person is satisfied on reasonable grounds:

- a) a food business is being carried out at a place, other than a place, or part of a place, used for residential purposes; and
- b) it is necessary to exercise the emergency powers to avoid an imminent risk of death or serious illness of any person from food being handled or sold in connection with the food business.

Example

Compensation may 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 they have acted dishonestly or negligently.

6.3 Power and procedure for entry

An authorised person may enter a place without a warrant or the consent of the occupier in an emergency situation, provided they meet a number of conditions or make a reasonable attempt to meet the following requirements:

- the authorised person must show the occupier their identity card. Alternatively, they 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 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.

However, if an authorised person reasonable believes there is an imminent risk of death or serious illness, they may enter immediately without complying with the above requirements.

Example

An authorised person has received a report from a member of staff at a food business that the cold room containing high risk food including raw egg mayonnaise 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 an aged care luncheon that day. It may be considered appropriate to use a level of force to gain access to the cold room.

6.4 Emergency power in relation to food

If an authorised person has exercised emergency powers, they may:

- direct a person at the place to take specified action within a specified timeframe; or
- take reasonable steps; or
- authorise another person to take reasonable steps.

Example

Using the above example, once access is gained to the cold room, an authorised person may direct an employee at the premises to dispose of potentially hazardous food which is above 5°C within a 2 hour timeframe, documenting the type and quantity of food disposed.

The direction may be given orally or in writing, however, if the direction is given verbally, a written notice must be given as soon as practical confirming the direction.

When directing a person to take reasonable steps in a reasonable timeframe, the person must be advised that it is an offence to not comply with the direction without a reasonable excuse.

6.5 How power may be exercised

When faced with a situation that 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 that the minimum level of force is used.

Example

An authorised person attempting to access a padlocked cold room of a food premises is refused access by the staff. The staff will not unlock the padlock. The authorised person believes that the locked cold room contains potentially hazardous food that if used could result in serious illness. The authorised person could cut the lock with bolt cutters. Breaking the door down when less destructive measures are available would not be considered reasonable force.

Before using force, an authorised person must inform the person of the steps that the authorised person is able to take in relation to emergency powers.

6.6 Notice of damage

In the event that an authorised person, or a person acting under the direction or authority of the authorised person, damages property while exercising or attempting to exercise a power under the Act, the authorised person must immediately give notice of the details of the damage to the person who appears to be owner of the damaged property.

Should it be impracticable for the authorised person to give notice to the owner, the notice must be placed in a conspicuous position and in a reasonably secure way at the place where the damage occurred.

In the event that the authorised person believes that the damage to the property was the result of a latent defect in the property or circumstances beyond their control, this belief may be stated in the notice. The requirement for notice of damage does not apply if the authorised person reasonably believes the damage is trivial.

Example

When inspecting a premises an authorised officer opens a cupboard, and the already loose door handle comes off. This damage would be considered trivial and not require the authorised person to provide a notice of damage.

6.7 Compensation

In the event that a person incurs a loss or expense because an authorised person uses or attempts to use a power as an authorised person under of the Act, the person may apply for compensation, except if the power was the power under section 196 to destroy a seized thing.

If the loss or expense was the result of the power being exercised, by Queensland Health, compensation is to be claimed against Queensland Health.

If the loss or expense was the result of a power being exercised, by a local government, the claimant may seek compensation from the local government. The person making the claim may only seek compensation from the local government that exercised the power, not another local government that 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.

7 Warrants

7.1 Applying for a warrant

An authorised person may apply to a magistrate for a warrant to enter a place.

The authorised person must prepare a written application that states the grounds on which the warrant is sought. The written application must be sworn, this means the application must be signed by a Justice of the Peace under oath as to the truthfulness of the application taken.

It is important to ensure copies of documents relating to the need for the warrant are made available at the time the magistrate is considering the application. The magistrate may refuse to consider the application until the applicant gives the magistrate all the required information in the way the magistrate requires. For example, the magistrate may require additional information supporting the application be given by statutory declaration including copies of previous improvement notices, photographs, documents or records that provide a history of previous and relevant noncompliance.

The authorised person needs to ensure that when applying for a warrant, they make it clear to the magistrate what is required. For example, include information outlining the evidence that may need to be seized, samples that may need to be taken, or other actions considered necessary to remove or reduce the risk to public health or prevent it from recurring.

7.1.1 Application for warrant by electronic communication

An application for a warrant for a place may be made by telephone, fax, email, radio, videoconferencing or other form of electronic communication in urgent situations or other special circumstances.

Example

An electronic application for warrant may be appropriate when the authorised person is in a remote location and it is not possible to attend a court in person.

7.2 Accessing a Justice of the Peace

Justices of the Peace' are available at court houses and other community signing sites usually found at locations such as major shopping centres, libraries, universities and hospitals.

A search function for Justice of the Peace located in your area including those available after hours, can be undertaken on the Department of Justice and Attorney-General's website at www.justice.qld.gov.au/justice-services/justices-of-the-peace/jps-search.

7.3 Accessing a magistrate

Magistrates Court contact details including email addresses and operating hours are available on the Department of Justice and Attorney-General's website at www.courts.qld.gov.au/contact-us/courthouses.

During business hours, it is recommended authorised persons contact the relevant magistrate's court to request information as to the availability of magistrates to consider the matter.

To contact a magistrate out of hours it is recommended you contact your local police station to obtain the relevant details.

7.4 Procedure before entry

Prior to entering a place using a warrant, there are a number of things an authorised person must do or reasonably attempt to do. This includes:

- identify themselves to a person present at the place who is an occupier of the place by producing either their identity card or other document evidencing their 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.

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 hindered, 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 person enters the food preparation area without officially identifying themselves or providing a copy of the warrant to the occupier, so as to prevent the effective execution of the warrant.

7.5 Safety during enforcement of the warrant

An authorised person may exercise powers under the warrant with help and using force that is reasonable in the circumstances. Although an authorised person has the legal authority to enter a place, no entry should ever be pursued that would put an authorised person at risk. Entry should be undertaken according to the occupational health and safety and human resource policies of the authorised person’s employer. It is for this reason that when an entry is to be made in accordance with a warrant, the following precautions are recommended:

- Entry should not be made without first advising the authorised person’s supervisor of when, where and who will be present for the entry.
- A warrant should not be given and enforced by only one person. If entry is to be gained pursuant to a warrant, there should always be two or more people present for the entry. This is for both safety and evidentiary purposes.
- If there is any perceived risk to personal safety, the authorised person’s supervisor is to be called and if necessary, the police are to be contacted to have them in attendance while the warrant is executed.
- The authorised persons executing the warrant should have a means of communication such as a telephone or radio with them while executing the warrant.

Example

The licensee of a particular food business has a history of threatening violence towards authorised persons. When the person is undertaking an inspection of the

food business, they may have a police officer enter the premises and accompany them during the inspection.

7.6 Use of force during entry

Any force used should always be equal to the minimum level of force required to enter. To avoid the inappropriate use of force and to maintain a high level of accountability, the following requirements are suggested:

1. If force is required, the authorised person's supervisor should be contacted to seek approval to use force and, if necessary, the police should be requested to attend.
2. If force is used to gain entry and damage occurs to any property, a Notice of damage must be completed as per section 212 of the Act and a copy immediately left with the owner of the property. For this purpose, 'owner' includes the person in possession or control of the property. If possible, photographs should be taken by the authorised person of the damage and these provided to their supervisor.
3. If permission is obtained from the supervisor and force is used to gain entry, it is good practice for the authorised person to provide a report to the supervisor as soon as possible. Included with the report should be:
 - a copy of the completed Notice of damage form
 - why force was necessary
 - what force was used
 - what (if any) damage resulted in the use of force
 - what evidence was obtained
 - who was present during the execution of the warrant
 - any other relevant information.

8 Monitoring of the Food Act 2006

Queensland Health and local government authorised persons are required to monitor and enforce the provisions of the Act. This part of the guideline is intended to provide guidance and clarification on monitoring the Act.

It is important to remember that monitoring activities are essentially evidence gathering activities and any material gathered through monitoring may become evidence.

Monitoring activities may include:

- spot checks (inspections)
- surveillance
- comparison of data over time
- audits.

8.1 Local laws about administration of the Act

The Act prevents local government from making a local law which relates to a provision of the Act unless it is necessary to carry out or give effect to the local government's administration or enforcement of the Act.

Example

A local law that sought to impose additional structural requirements to a food premises would not be permitted.

8.2 Inspection of food premises

While the Act does not specify that inspections must be undertaken, in order to determine whether a food business is compliant with the requirements of the Act and the Food Standards Code, inspections should be undertaken by the relevant enforcement agency to monitor compliance with the Act.

An inspection is used to assess compliance with legislative requirements where the standard is fairly prescriptive and where no or minimal documentation or records are required to be kept by the food business. The National Food Safety Audit Policy defines an inspection as 'the examination of food or systems for control of food, raw materials, processing and distribution, including in-process and finished product testing, to verify that they conform to regulatory requirements.'

Inspections may be performed routinely or as a result of a complaint, they may be scheduled or unannounced. It is considered appropriate that the number of inspections undertaken annually at each licensed food business, be based upon risk.

Section 31 of the Act allows local government to make a resolution or local law about fees payable for providing a service or taking action under the Act, provided the fee is not more than the cost to the local government.

While low risk food businesses are not required to have a licence under the Act, they are still required to produce safe and suitable food and comply with the requirements of the Act and Code and can be inspected to check compliance.

Section 31 does not restrict that fees may only be charged to licensed food businesses, therefore, local government may charge a fee to undertake an inspection of any food business.

8.3 Audits of high-risk food businesses

High-risk food businesses are required to develop and implement a food safety program which is audited at a specified frequency in addition to holding a licence and having a food safety supervisor.

An audit is used to assess systems. In respect to food safety programs, audits are intended to assess whether the program has been implemented and if it is being complied with. The *National Food Safety Audit Policy* defines an audit as 'a systematic, independent and

documented process for obtaining evidence and evaluating it objectively to determine the extent to which the audit criteria are fulfilled’.

Compliance audits conducted in accordance with the frequency set by a local government are scheduled audits, that is, they are planned with the food business. A compliance audit, of an accredited food safety program, means an audit of the program by an approved auditor to ensure the carrying on of the food business to which the program relates complies with the program and the food standards code, standards 3.2.2 and 3.2.3.

Auditors are required to provide a copy of the audit report to the food business and the relevant local government within 14 days of undertaking the audit. It is expected that local government review these audit reports and follow up any nonconformances identified taking appropriate compliance or enforcement action where necessary.

Further information relating to the accreditation and auditing of food safety programs can be found in the document *Management of Food Safety Programs, Food Act 2006* available at www.qld.gov.au/foodpantry.

Having audits undertaken of a food businesses food safety program does not remove the option for local government to inspect a premises.

9 Offences

Sections 32-40 of the Act specify offences relating to food. Other provisions within the Act relating to the conduct of a food business also contain offences and are contained throughout the Act.

It is important to understand how to identify offences under the Act to ensure the appropriate evidence is collected during the monitoring stage prior to any enforcement action being taken.

9.1 Identifying the elements of an offence

Example

The offence of ‘sale of unsafe food’ (section 32) has the following elements, for which supporting evidence must sought for each, to prove the offence in court:

- time
- date
- place
- person
- sale
- food

In order to determine if an offence has occurred, the specific criteria or elements of an offence must be identified and proven beyond reasonable doubt to establish criminal responsibility.

The first step to establishing an offence is to identify each element.

9.2 Investigation of an offence

An investigation is an objective inquiry and assessment of an act, omission, situation or event with a view to assigning responsibility for that act, omission, situation or event.

During an investigation, the investigator (in this case, the authorised person) seeks to collect and evaluate all the available evidence relevant to an inquiry.

The authorised person ideally seeks to establish evidence of three facts:

1. that an alleged offence has actually been committed
2. the identity of the alleged offender
3. the whereabouts of the alleged offender.

An investigation is usually triggered by receiving a complaint or other information.

To successfully carry out an investigation so as to enforce the relevant provision of the Act, certain processes should be adhered to. It is recommended that authorised persons consult with and communicate decisions and activities relevant to the investigation to their supervisor throughout the investigation.

An investigation should answer the following questions:

1. Who
 - committed the offence
 - reported the offence
 - witnessed the offence
2. What
 - offence has been committed
 - was the witness/complainant doing at the time
3. When
 - did the offence occur (date and time)
 - was the offence reported
4. Where
 - the offence was committed
5. How
 - the offence was committed
6. Why
 - the offence was committed.

During an investigation activities that may be undertaken include:

- listing and recording of observations including, if appropriate:
 - demographic factors
 - descriptions of offenders and/or witnesses
 - climate and geography of the environment or place of the investigation
- identification of witnesses and/or offenders
- interview of witnesses and/or offenders
- taking of statements
- collection, recording, marking and storage of evidence, ensuring chain of custody.

10 Defences relating to food

The Act provides a number of defences for offences under Chapter 2 of the Act in certain circumstances, these are discussed below.

10.1 Defence relating to publication of advertisements

In the event a person in a business who normally publishes or arranges the publication of advertisements for the business, publishes or arranges to publish an advertisement in contravention of the requirements of the Act, they are entitled to the defence provided in section 42. This defence, however, does not apply if the person:

- a) should have reasonably known that the publication of the advertisement was an offence, or
- b) is the owner of the food business or is otherwise engaged in the conduct of the food business, or
- c) has previously been advised in writing by the chief executive that the publication of an advertisement of that type would constitute an offence.

10.2 Defence relating to food for export

Section 43 provides a defence relating to food intended for export. If the food is to be sold overseas, and the food complies with the standards applicable in the country the food is exported to, then a defence is proven.

However, in the event that the food intended to be exported is sold in Queensland, this defence is not applicable and the food is required to comply with the requirements of the Act and Code.

10.3 Defence of due diligence

This section provides that in a proceeding for an offence under Chapter 2 of the Act, it is a defence to prove that the person exercised all due diligence to prevent the commission of the offence by the person or another person under the person's control.

The dictionary in schedule 3 of the Act defines the term 'exercised all due diligence' to include taking all reasonable precautions.

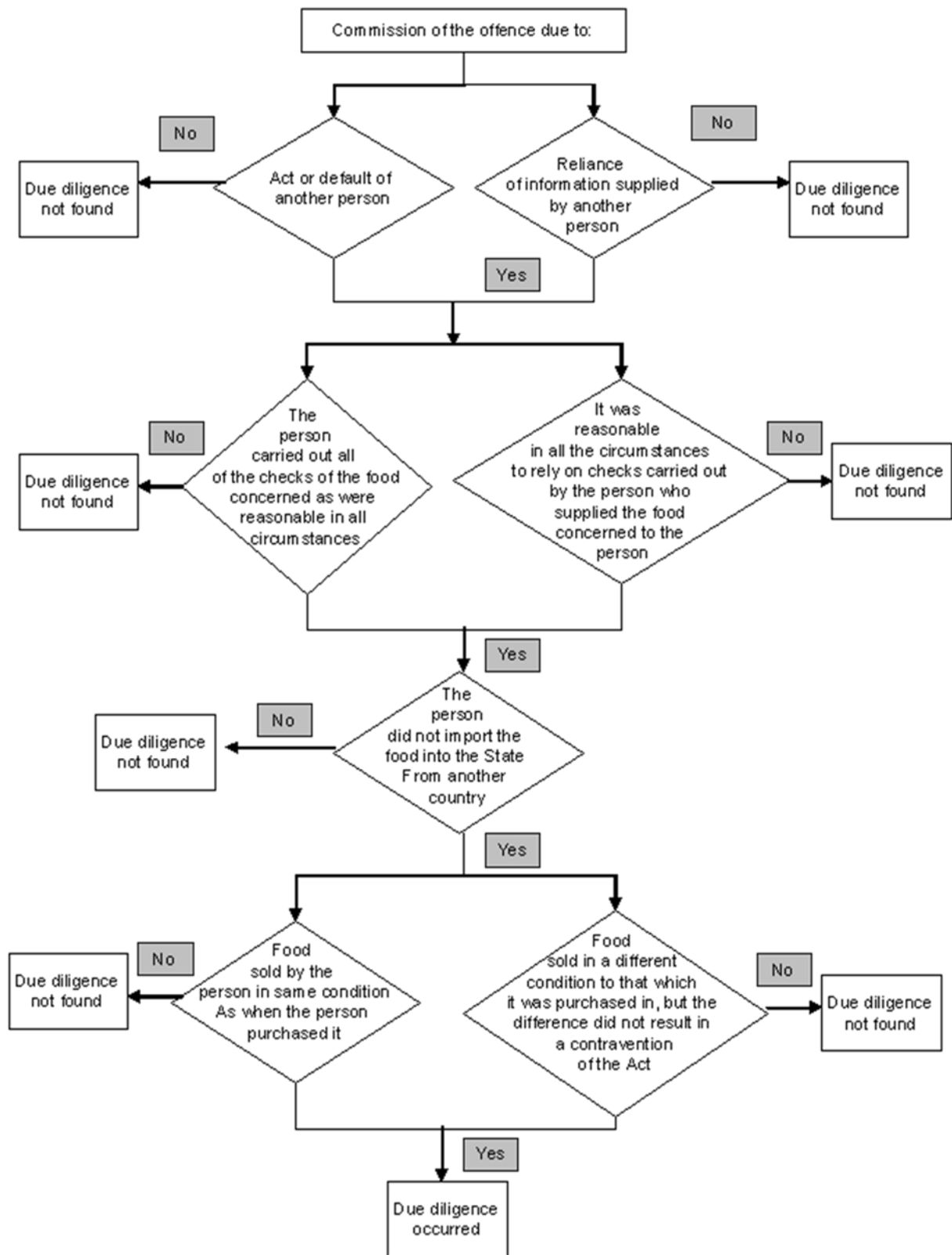
Section 44 of the Act provides ways in which a person may show that they have exercised due diligence. Figure 1, below, provides an outline of the processes involved in establishing that due diligence actually took place. It should be noted however, that Figure 1 does not limit the ways in which a person can demonstrate due diligence.

Example

In proceedings against a licensee for an alleged breach of the Act, the licensee demonstrates that they complied with an accredited food safety program that had been regularly audited and found to be compliant under the Act, 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, 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.

Figure 1 Due diligence defence



11 Evidence

Evidence is information and the process of investigation. It can be described in terms of:

1. gathering information
2. recording information
3. passing on that information.

Evidence in terms of the prosecution of an offender, is the information which is provided to the court to demonstrate a breach. However, the term 'evidence' is also used to describe information which is intended to be placed before a court.

In order to identify what evidence is required, it is necessary to analyse the incident, complaint or circumstances and identify what offence or breach is relevant.

To prove an offence in court, evidence supporting each element of the offence must be presented.

Basic forms of evidence available to authorised persons during an investigation include:

1. taking notes and/or electronic recording of conversations and observations
2. taking photographs or video recordings
3. searching the scene of the event or alleged offence including vehicles if necessary
4. examination of exhibits
5. interviewing witnesses including complainants (taking statements)
6. taking samples for analysis
7. copying documents
8. information received from members of the public or colleagues
9. an inspection of records
10. interviewing the alleged offender.

While improvement notices and infringement notices are considered a lower enforcement option, should these be escalated or elected to be heard in court, evidence collected by the relevant enforcement agency must prove the offence and be considered robust enough to prove the elements. That is, any evidence collected irrespective of the initial action to be taken should be regarded as evidence which may be presented to court.

12 Mobile food premises

The Act has a series of provisions that relate to food businesses operating from mobile food premises. This section of the document discusses the enforcement action that a second local government may take, communication between local governments about mobile food premises and what action that may be taken by the local government that issued the licence.

12.1 Action that may be taken by second local government

Mobile food vendors often operate in more than one local government area. The Act allows mobile food businesses to obtain one licence to operate throughout Queensland. All local governments have an obligation to investigate and enforce compliance with the Act by mobile food businesses operating within their boundaries irrespective of whether they issued the licence.

The Act specifies that if a mobile food business operates in a local government area other than the local government that issued their food licence, the second local government has all of the same powers as the local government that issued the licence. However, a second local government that did not issue the licence may not cancel, suspend, impose conditions on, or take similar action in relation to the licence.

Therefore, the second local government may issue an improvement notice, prescribed infringement notice or prosecute for an offence under the Act but cannot suspend the mobile food business licence.

Example

A mobile food business is licensed by local government A. The licensee is able to operate within any local government area within Queensland. While operating the mobile food business within local government B, a local government authorised person uses their power to undertake an inspection of the premises. During that inspection a number of breaches of the Act are identified. Local government B's authorised person 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 of local government B then issues an improvement notice to the 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, local government B's authorised person initiated procedures to commence a prosecution for the non-compliance with the Act.

12.2 Notification to first local government

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

Notification should take place where the licensee has failed to comply with conditions imposed on the mobile food business by the issuing authority. When advising the local government that issued the licence, the second local government should ensure that the information provided is of sufficient detail and quality to allow the first local government to

take appropriate action. It is critical that the information supplied has sufficient detail to establish that all the elements of the contravention can be proven.

Information supplied should include:

1. date and time of the contravention
2. what was done, or omitted to be done, that was a contravention of the licence condition
3. which licence condition was contravened
4. who contravened the licence condition
5. the name of the authorised person who witnessed the contravention
6. licensee's name
7. vehicle licence number (if applicable)
8. trading name of the mobile food business
9. where the contravention took place
10. any other information the second local government considers relevant to assist the first local government take the appropriate action.

In certain circumstances, the second local government may wish to advise another local government of action it has taken against a mobile food premises. The second local government would only be able to notify a subsequent local government which is not the licensing authority where it is necessary to ensure compliance with the Act and ensures public health or safety.

Example

An authorised person employed by local government B undertakes an inspection of a mobile food premises licensed by local government 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 local government C the following week.

Local government B's authorised person subsequently notifies local government C of the breaches of the Act and the action taken. This allows local government 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 local government B is also forwarded to local government A, so that the licensing authority has a complete record of enforcement action taken against the mobile food premises.

After receiving advice from the second local government that the licensee of a mobile food business has undertaken an action or has omitted to do something that would be a contravention of the licence, the first local government 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 consider whether sufficient information has been supplied by the second local government. In the event that the first local government considers that insufficient information has been supplied, it should seek further information from the second local government.

If the first local government believes on the basis of the information provided to it, that they cannot demonstrate all the elements of the contravention have taken place, it is not obliged to take further action.

In the event that sufficient information to establish a contravention of licence conditions has been provided, the first local government has an obligation to act on the breach.

13 Enforcement of the Food Act 2006

The Act provides a suite of enforcement tools which are designed to be used to ensure compliance with the Act. The enforcement process is designed as an escalation process ultimately leading to prosecution.

The following is an overview of enforcement options available under the Act and examples of where it would be appropriate to use each enforcement option.

13.1 Improvement notice

An authorised person is able to give an improvement notice if the authorised person reasonably believes:

1. a person carrying on the food business is contravening a provision of the Act or has contravened a provision in circumstances that make it likely that the contravention would continue or be repeated; and
2. the matter is capable of being rectified and it is appropriate to give the person an opportunity to remedy the matter; and
3. if the person is a licensee - a local government has not given a show cause notice to the person under section 79 relating to the contravention.

Example

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

If correcting the contravention, or having it remedied, within the time stated in the notice would be likely to stop the person's food business from operating, the notice must be approved by the local government before it is given to the person.

Example

A food business is given a notice to remove all existing flooring in the food business and replace it with a suitable covering that can be effectively cleaned and unable to absorb grease, food particles or water. This notice would need to be approved by the local government.

Improvement notices are required to contain certain information as identified in section 209. Authorised persons must ensure that notices include the following information:

- that the authorised person reasonably believes that 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 the authorised person reasonably believes is being, or has been, contravened
- a brief description of how the relevant provision is being, or has been, contravened
- the reasonable period in which the contravention is to be remedied
- that it is an offence to fail to comply with the improvement notice without a reasonable excuse.

The notice may also state the reasonable steps the authorised person considers necessary to remedy the contravention or to avoid further contravention of the relevant provision.

Example

An improvement notice is issued to a food business after food past its use-by date was observed available for sale. The improvement notice may include that a documented stock rotation procedure should be implemented to prevent this offence occurring again.

The authorised person must keep a copy of the improvement notice.

If an authorised person is satisfied the person has complied with the improvement notice, they must record the date of compliance on the authorised persons copy of the improvement notice and give a copy to the person if requested.

Examples of when it would be considered appropriate to issue an improvement notice include:

1. minor to moderate cleanliness issues such as a build-up of grease in the exhaust canopy
2. minor structural defects such as cracked tiles
3. using cracked or chipped plates
4. ineffective pest control in a limited area such as ineffective exclusion at the store entry
5. not maintaining paper towel at a hand wash basin to allow for effective drying of hands.

13.2 Prescribed infringement notices

The issuing of a prescribed infringement notice (PIN) is an enforcement option which authorised persons may use without progressing a prosecution through the court system.

Prescribed infringement notices may only be issued for offences that fall within the guidelines for eligible offences that have been acknowledged as infringement notice offences in the *State Penalties Enforcement Regulation 2000* (SPE Regulation).

Prescribed infringement notices are discussed in further detail in *16 – Prescribed infringement notices*.

The State Penalties Enforcement Registry (SPER), which is part of the Department of Justice and Attorney-General is responsible for the collection and enforcement of unpaid infringement notice fines, court-ordered penalties, offender debt recovery orders and offender levies.

SPER 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 online fines system. It is recommended local government refer to those publications should they require further guidance which may not be provided in this document.

13.3 Suspension or cancellation of licence

Section 78 of the Act outlines the grounds that are considered acceptable to suspend or cancel a licence whether or not the suspension is immediate.

When considering if there is a significant risk to public health under section 78(1)(b), regard must be given to the potential consequences for the health of the individuals and the number of persons likely to be exposed to the risk as defined in section 26(3).

Examples of when it would be considered appropriate to suspend or cancel a licence include:

1. A licensee is no longer considered a suitable person to hold a licence following a successful prosecution
2. a licensee has contravened a condition of licence, by not having a food safety supervisor for the food business. An improvement notice was issued for this contravention which the food business failed to comply with
3. a food business has repeated cleanliness issues which require significant cleaning to be undertaken
4. there are a number of maintenance issues to be rectified including replacement of cracked tiles, servicing and calibration of cold room and repair of walls in the food preparation area to ensure they are easy and effectively cleaned.

13.4 Show cause notice

When considering suspending or cancelling a licence, a show cause notice must be issued under section 79 of the Act. A show cause notice must state:

4. The action the local government proposes to take
5. the grounds for the proposed action
6. an outline of the facts and circumstances forming the basis for the grounds
7. if the proposed action is suspension of the licence – the proposed suspension period
8. that the licensee may within a stated period (not more than 21 days) make written representation to the local government why the proposed action should not be taken.

If the licensee makes a written representation about a show cause notice issued, the local government must consider all of the representations. If the local government believes grounds for suspension or cancellation of licence no longer exists after considering the written representations, they must not take any further action in relation to the show cause notice and give the licensee a notice that no further action is to be taken about the show cause notice.

Example

A show cause notice is issued to a licensee proposing to suspend a licence for a 1 month period so an appropriate food safety supervisor can be nominated for the food business.

The licensee makes written representation that the store manager has completed recommended competencies and identifies how they are reasonably available to food handlers in the food business and local government.

Local government consider this action meets the requirements of the Act and consider no further action is warranted in relation to the show cause notice.

13.5 Immediate suspension of licence

Section 83 of the Act is used to suspend a licence immediately and can only be used where grounds exist to suspend the licence (as per section 78) and it is necessary to suspend the licence immediately because there is an immediate and serious risk to public health and safety.

Example

An inspection identified a significant pest infestation with rodent faeces evident throughout the food storage and preparation areas. Action is taken to immediately suspend the licence until the premises has been appropriately cleaned, contaminated stock removed and appropriate pest control has been undertaken.

Where local government decides a suspension should be immediate, section 83(2)(a) of the Act requires that a show cause notice and information notice be given to the licensee at the same time. The show cause notice effectively gives the licensee an opportunity to respond or 'show cause' why the action should not be taken providing natural justice.

Other examples of where it may be considered appropriate to immediately suspend a licence include:

1. A cold room has ceased working and there is no other means of keeping potentially hazardous food under temperature control
2. monitoring of non-reticulated water supply identifies unsuitable water quality
3. significant cleaning issues including building up of grease in ovens, on walls and floors and behind benches
4. a fire in an adjoining business has caused serious smoke and water damage to the food premises
5. evidence of pest control chemicals such as rat bait in food.

13.6 Enforcement strategy risk matrix

When determining what type of enforcement response is required when investigating a breach, an assessment of the risk involved should be undertaken. The following tables provide an indication of the risk level and ultimately the response level required.

		Escalating Human Health or Safety Impacts (Actual or Potential)				
		Level 1 (Low/no harm)	Level 2	Level 3	Level 4	Level 5 (Severe harm)
Diminishing likelihood of compliance (Compliance history / willingness and capacity to comply)	Category A (High level of compliance expected)	Education Verbal/Written warning	Verbal/written warning	Improvement Notice	Infringement Notice Improvement Notice	Immediate Suspension of Licence Infringement Notice Prosecution
	Category B	Verbal/written warning	Improvement Notice	Improvement Notice Infringement Notice	Immediate Suspension of Licence Infringement Notice	
	Category C	Improvement Notice	Improvement Notice Infringement Notice	Infringement Notice Show Cause Notice		
	Category D	Improvement Notice Infringement Notice	Infringement Notice Improvement Notice		Infringement Notice Prosecution	
	Category E (Low level of compliance expected)	Infringement Notice Improvement Notice	Infringement Notice Show Cause Notice			

Note 1: It is important to remember that the default enforcement options indicated in the above enforcement matrix are a guide only. Enforcement responses should be undertaken in accordance with the enforcement strategy risk matrix but are subject to the exercise of officer discretion where appropriate in the circumstances.

Note 2: Officers must always refer to the relevant legislation to determine whether a particular enforcement option (e.g., infringement notice) is permitted for a particular offence.

Note 3: If deviating from the above default enforcement options, the decision must be clearly documented and validated by the responsible officer.

13.6.1 Levels of Escalating Human Health or Safety Impacts

(Actual or Potential)

LEVEL 1 (Low Risk)

- Non-compliance that does not result or is unlikely to result in any human health or safety impact; and/or
- Minor administrative non-compliance.

Example

- labelling errors/omissions NOT including allergen labelling, lot identification or name/address of food business
- food containing an ingredient/additive in quantities less than prescribed in the Food Standards Code (other than infant formula)
- date marking, NIP present but not in correct format
- minor cleaning or minor maintenance issues.

LEVEL 2

- Non-compliance/ minor non-compliance resulting in a minor, temporary threat to human health or safety and/or
- Moderate administrative non-compliance.

Example

- labelling errors/omissions only to lot identification or name/address of food business
- presence of non-permitted additives
- unsubstantiated health claims
- cleaning issues likely to be the result of prolonged poor hygiene practices
- an accumulation of maintenance/cleaning issues which require a level of intervention to address these concerns.

LEVEL 3

- Non-compliance resulting in a moderate, temporary threat to human health or safety; and/or
- Major administrative non-compliance; and/or
- Moderate organisational and regulatory scheme risk.

Example

- labelling errors/omissions relating only to declaration of allergens
- food/medicine interface areas
- prohibited health claims
- an accumulation of cleaning, maintenance, pests and other requirements which are not immediate to remedy.

LEVEL 4

- Non-compliance resulting in a significant threat to human health or safety (may be temporary or ongoing); and/or
- Significant organisational and regulatory scheme risk.

Example

- food containing an additive or ingredient that is not permitted by the Food Standards Code and is prohibited for sale/use in Australia by other relevant legislation (MDMA in protein powders)
- food for sale past its use-by date
- an accumulation on non-compliances that could contribute to a serious and immediate risk to human health e.g. pest activity. Generally, pest activity is also associated with maintenance issues (pest entry points), cleaning issues (food source for pests) and insufficient sanitation.

LEVEL 5 (High Risk)

1. Known or likely human health impact that is severe in effect, i.e., resulting in death and/or long-term human health consequences; and/or
2. Extremely high organisational and regulatory scheme risk.

Example

- isolation of a prescribed contaminant in a food that is available to the public
- suspected intentional contamination of food
- food available for sale after instigation of a recall on the grounds of immediate risk to public health and safety
- non-compliances which pose a serious and immediate threat to the health of the public e.g., rodent activity in which contamination of food and surfaces has occurred. Generally, pest activity is also associated with maintenance issues (pest entry points) cleaning issues (food source for pests) and insufficient sanitation.

13.6.2 Categories of Likelihood of Compliance

(Compliance history/willingness and capacity to Comply)

CATEGORY A - Indications of future and ongoing compliance are very high (low risk)

- No known previous occurrences of non-compliance
- good, demonstrated awareness of and/or capacity to meet regulatory requirement and/or
- reasonable and cooperative attitude.

CATEGORY B - Indications of future and ongoing compliance are uncertain

- Few previous occurrences of non-compliance and/or

- questionable awareness of and/or capacity to meet regulatory requirement.

CATEGORY C - Indications of future and ongoing compliance are unlikely

- Numerous previous occurrences of non-compliance; and/or
- little or no awareness of and/or capacity to meet regulatory requirement.

CATEGORY D - No indication of future and ongoing compliance

- Wilful violation of regulatory requirement and/or
- little or no demonstrated willingness or capacity to meet regulatory requirement.

CATEGORY E - No indication of future and ongoing compliance (high risk)

- Hindering or obstructing an authorised person
- refusing to furnish required information and/or
- intentionally including false or misleading information in any required document
- technical non-compliance.

13.6.3 Level of Action

Education, verbal warning, written warning

- Low risk assessment that is expected to have a high level of compliance
- Unlikely to result in any human health or safety impact.

Improvement notice

- Non-compliance/minor non-compliance that does not result, or is unlikely to result, in any human health or safety harm; and/or
- minor administrative non-compliance.

Infringement notice

- Indications of previous, current and ongoing non-compliance and/or
- wilful non-compliance and/or
- moderate, temporary threat to human health or safety.

Immediate suspension of licence

- Immediate and serious risk to public health or safety
- false or misleading representation or declaration.

Show cause notice

- No indication of future and ongoing compliance (high risk)
- the licensee is not, or is no longer, a suitable person to hold the licence.

Prosecution

- Significant threat to human health or safety which may be temporary or permanent and/or
- known or expected ongoing noncompliance.

14 Injunctions

The Act provides both Queensland Health and local government with 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 sections examine the components relating to injunctions.

14.1 Application for an injunction

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.

14.1.1 Who may apply for an injunction

Section 223 of the Act 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.

It is important to note that the *Local Government Act 2009* allows a chief executive officer of a local government to delegate the chief executive officer's powers to another employee of the local government. This also applies to section 223 of the Act.

Further information relating to the delegation of powers is included in section 1.4 *Delegation of power* above.

14.1.2 District Court's powers

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.

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

14.2 Terms of injunction

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 from 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 of the injunction have been met.

14.3 Undertakings as to damages or costs

No undertakings as to damages or costs may be requested to be made where the chief executive of Queensland Health or the chief executive officer of a local government seeks an injunction. However, it is important to note that a Court can order compensation if it is deemed appropriate.

15 Prosecutions

Prosecutions are the final level in the escalating process of enforcement tools available under the Act. Prosecutions are usually recommended where there is a significant threat to human health or safety whether temporary or permanent, or there is a known or expected ongoing non-compliance or a repeat offender.

The decision to prosecute is not one to be taken lightly. There are three main considerations when reviewing the decision to prosecute:

- whether or not the evidence available is capable of establishing each element of the offence

- whether or not it can be said that there is reasonable prospect of conviction
- whether or not any discretionary factors dictate that the matter should proceed in the public interest.

It is the decision of the relevant enforcement agency whether or not a prosecution for a breach or breaches of the Act are initiated.

15.1 Evaluation of evidence

When evaluating the evidence available to the relevant enforcement agency, the following points should be considered:

- admissibility/relevance
- defendant admissions/fairness
- witness
- motive
 - credibility
 - memory
 - availability
- possible defences
- potential conflicts
- whether identity is an issue.

15.2 Discretionary criteria

Discretionary criteria which could be considered when reviewing a prosecution include:

- sufficiency of evidence
- public interest
- seriousness
- legal advice
- special categories
 - juveniles
 - aged/infirm
 - mental illness/stress
 - complainant's attitude
 - internal policy consideration.

15.3 Public interest

When considering public interest, issues to be considered include:

- seriousness/triviality/technicality
- mitigating or aggravating circumstances
- age and health of the offender
- background
- time limitations
- culpability of offender
- effect on public order and morale
- public concern
- length/expense of a trial
- alternatives to prosecution.

16 Prescribed infringement notices

Prescribed infringement notices (PINs) may only be issued for offences that fall within the guidelines for eligible offences and that have been acknowledged as infringement notice offences in the SPE Regulation. Only certain offences under the Act have been prescribed as PIN offences. For the most up to date list of PIN offences, refer to Schedule 1 of the SPE Regulation available at www.legislation.qld.gov.au.

The issuing of a PIN is an enforcement option which an authorised person may use without the necessity of progressing a prosecution through the court system. PINs are generally used for minor offences.

PINs are issued under section 13 of the *State Penalties Enforcement Act 1999* (SPE Act). The penalty of the breach (which is also indicated on the notice) is prescribed in the SPE Regulation and as such cannot be varied.

A PIN is required to be in a form approved by the administering authority and state certain information identified in section 15 of the SPE Act.

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

It should be noted that the fact that an infringement notice has been, or could be, served on a person for an offence, does not affect the starting or continuation of a proceeding against the person or anyone else in a court for the offence.

16.1 Offences for which a PIN can be issued

As noted above, the SPE Regulation lists the offences under the Act that are PIN offences and their corresponding fine.

Fines in Queensland are based on a system of penalty units. A penalty unit is a set amount of money used to calculate the monetary value of a fine. The fine is calculated by multiplying the value of 1 penalty unit by the number of penalty units set for that offence. The value of a penalty unit automatically indexes each year.

Example

With a value of one penalty unit being \$143.75, the fine for an offence with a penalty of 5 penalty units is \$718.00 ($\$143.75 \times 5 = \718.75). If the monetary value of the penalty for an infringement notice is not a multiple of \$1, the amount is rounded down to the nearest \$1).

Prosecution through the Courts may be considered appropriate for repeat offences as well as for 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.

It is considered appropriate that not more than two PINs are issued to the same person or company for the same offence within a 12 month period. The reason for this is that, the alleged offender would be considered a repeat offender and a court hearing in relation to a repeat offender would likely result in a more appropriate fine being ordered by the magistrate.

Examples of when a PIN may be an appropriate enforcement tool include when:

- a food business is found reusing food which had already been served to another customer (unsuitable food)
- a food business has not complied with their accredited food safety program, by not recording cold room temperatures as required in their program
- a licensee is found to be not displaying their licence in a prominent position at the premises so it is easily visible to persons at the premises
- a licensee has not ensured that their outdoor garbage bins have tight fitting lids in order to keep flies and other pests away
- a licensee does not allow an authorised person to have access to the food business premises during normal business hours preventing the authorised person from conducting an investigation into an alleged offence
- a licensee has not returned their licence to their Council within 7 days after they received an information notice stating that their licence has been cancelled or suspended
- failure to comply with an improvement notice requiring a cleaning roster to be developed and implemented.

16.1.1 Issuing a PIN for failure to comply with an improvement notice

The SPE Regulation, Schedule 1, identifies section 209(7) of the Act as an offence, if paragraph (b) of the penalty applies. Section 209(7)(a) states that the maximum penalty if a contravention of the relevant provision is an offence, the maximum penalty for contravening the relevant provision applies. This means that if a matter included in an improvement notice is its own offence under the Act, then a PIN cannot be issued for failing to comply with an improvement notice under section 209(7)(b).

Example

If a licensee does not continue to have a food safety supervisor for the food business (section 86(2)), in the first instance local government may wish to issue an improvement notice giving the licensee 30 days to nominate a suitably qualified person as the food safety supervisor.

If the licensee does not comply with the improvement notice, a PIN for failure to comply with an improvement notice (section 209(7)) cannot be issued as the offence is its own offence under the Act (section 86(2)). A PIN can, however, be issued for failing to have a food safety supervisor under section 86(2).

Example

An improvement notice is issued requiring a licensee to develop and implement a cleaning roster due to the food premises having been found in an unclean state during a number of inspections over a period of time demonstrating there are ongoing cleaning issues 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. As developing and implementing a cleaning roster is not an offence under the Act, a PIN can be issued under section 209(7)(b) for failing to comply with the improvement notice.

When an improvement notice is an offence under the Act, but not registered as a PIN offence under the SPE Regulation, a PIN is not able to be issued as the offence is considered too serious for a PIN to be issued and other enforcement action should be considered.

Example

Issuing an improvement notice requiring a person to not sell equipment that if used for the purpose it was designed or intended to be used would make, or be likely to make, the food unsafe (section 38(1)(a)), such as selling a meat slicer which cannot be dismantled to be cleaned, therefore being likely to make food unsafe.

This is an offence under the Act with a maximum penalty of 500 penalty units, however, is not an offence under the SPE Regulation. So, while the improvement notice may not be complied with, a PIN cannot be issued and other enforcement action such as prosecution or an injunction should be considered due to the seriousness of the offence.

16.2 Procedural phases

There are a number of steps to be taken by an authorised person when issuing a PIN, these are discussed in the following sections.

16.2.1 General comments

It is important that:

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

A PIN must be issued in accordance with Section 39 of the *Acts Interpretation Act 1954*, which states that, if an Act requires or permits documents (including an infringement notice) to be served on a person, that the documents may be served by either of the following means:

- on an individual
 - by delivering it to the person personally
 - 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 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. Multiple PINs can be sent by registered post in the one envelope.

16.2.2 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 Act *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 Act
- display or produce to the person their identity card (section 171 of the Act)

- establish who the alleged person/entity is, and therefore 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 Act under which the alleged offence has been committed
- 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 PIN be defended.

16.2.3 Issuing a PIN at the time of the offence (on-the-spot)

When issuing a PIN at the time of the offence, an authorised person must:

- ensure sufficient evidence has been gathered to prove that the offence has been committed (see step 2 in section 16.2.4 below) and that such evidence has been obtained using the appropriate powers and warnings under the Act
- inform the alleged offender that you believe that they have committed an offence under the Act
- describe to the alleged offender the breach and what must be done to rectify it (provide a timeframe)
- 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 (see section 197(2) of the Act)
- when making the requirements under section 197(2) of the Act, 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 (see section 197(3) of the Act). 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.

16.2.4 Issuing a PIN other than at the time the offence is noted

When issuing a PIN at a time other than when the offence is committed, an authorised person must:

1. **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. That is, 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.com.au) be completed in order 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.

2. Gather evidence to support the issue of the PIN

- once an authorised person has identified that an offence has been committed under the Act, the authorised person should investigate the offence and obtain as much evidence as possible so as to prove that the offence has been committed.
- examples of evidence may be in the form of photographs, statements, detailed notes made in official notebooks, 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 in the event the alleged offender decides to elect to have their case heard in Court.

3. Complete the PIN

a) 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 (licensee). Ensure the correct business name and registered address is used
- in the case of a body corporate, issue the infringement notice 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 an infringement notice to a body corporate or corporation (company).

b) Time and date of the offence

- enter the time and date of the offence.

c) Location of offence

- the location of offence must be the full and correct street address and postcode at which the offence occurred. The postal address is not to be used in this section.

d) Identifying particulars

The 'identifying particulars of the offence' section must be completed. The following information needs to be included on the infringement notice:

- the section of the Act that has been breached

- the offence code number (e.g., QH201- offence code numbers are assigned by each enforcement agency to each offence for which an infringement notice can be issued, and will vary from one agency to another. For each agency, offence code numbers are registered with SPER.)
- 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 infringement notice book for ease of reference.

e) Penalty

- enter the 'fine' amount.

4. Details of service

There is no statutory requirement which states the timeframe in which an infringement notice is to be served from the date of the offence. However, it is considered good practice for infringement notice to be issued within 10 working days of the breach occurrence or as soon as practicable thereafter.

The issuing officer must:

- record sufficient details to enable the enforcement agency to identify the officer who issued the infringement notice. This may include a printed name and/or signature and/or official seal number and/or officer code, in the allocated sections of the infringement notice.
- enter the date the infringement notice is issued.

16.2.5 Registering a PIN

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

The enforcement agency's register should include the following information:

- PIN 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
- 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

- place the enforcement agency's copy of the PIN with any associated documents or evidence relative to the breach, on the relevant file.

16.3 Administrative requirements for PINs

16.3.1 Cancelling a PIN

Each enforcement agency must determine who will have authority to make decisions relating to the amendment, cancellation and/or re-issuing of a PIN. A local government develops its delegations register, which details what authorities its employees have.

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 the PIN amended, cancelled or re-issued.

A PIN should be cancelled if it contains one or more critical errors (mistakes of fact), as described below (in this instance the officer should then issue a new infringement notice 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 (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
- served on the incorrect person or entity.

16.3.2 Re-issuing a PIN

When re-issuing a PIN, the issuing officer should:

- 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 infringement notice 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 re-issue
- issue the new PIN to the alleged offender in the appropriate manner 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 re-issue of the PIN. Failure to do this could result in the cancelled PIN being forwarded for enforcement to SPER after the required payment time has elapsed.

16.3.3 Withdrawing a PIN

The enforcement agency may withdraw a PIN at any time before the fine is paid or otherwise discharged under the SPE Act.

The enforcement agency must:

- serve on the alleged offender a withdrawal notice in the approved form; and
- repay to the alleged offender any amount paid to the enforcement agency for the offence; and
- if prescribed particulars of the PIN offence are registered with SPER, give to SPER a copy of the withdrawal notice.

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.

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).

16.4 Actions by enforcement agency

There are actions that should be taken after an alleged offender elects one of the options:

1. Payment in full within the allotted period:

- no further action; and
- record the PIN payment on the relevant register.

2. Voluntary instalment plans

If the enforcement agency approves an application to pay a PIN fine by instalments, the enforcement agency must give to the SPER for registration, the following particulars–

- a) the full name, address and telephone number, if known, of the alleged offender

- b) the offence and the date and place of offence
- c) the PIN number
- d) the amount of the PIN fine
- e) any other known particulars that help identify the alleged offender.

3. 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 Act expires (generally 12 months from date of offence).

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
- register outstanding debt with SPER for action, even if the payment is received after 28 days from the date of issue (a registration fee for the PIN will apply).

Refer outstanding debt to SPER:

- if the alleged offender has not, within 28 days after the date of the PIN, taken any action as required under the SPE Act, as set out in 'Options for alleged offenders' above, the enforcement agency may, at no fee, give to the SPER for registration, a certificate for the relevant PIN in the approved form.

Materials to support this guideline

The Queensland Government Food Pantry has developed resources to assist consumers, food businesses and regulators and is located at www.qld.gov.au/foodpantry. Guidelines and reports specifically for local government regulators are available at www.publications.qld.gov.au/dataset/food-safety-documentation-for-local-government-officers as well as the local government secure site www.health.qld.gov.au/eholocalgov.