

Administration of authorised persons under the Food Act 2006

Experience, expertise and procedural
requirements



Administration of authorised persons under the *Food Act 2006* - Experience, expertise and procedural requirements

Published by the State of Queensland (Queensland Health), May 2022

This document is licensed under a Creative Commons Attribution 3.0 Australia licence.



To view a copy of this licence, visit creativecommons.org/licenses/by/3.0/au

© State of Queensland (Queensland Health) 2022

You are free to copy, communicate and adapt the work, as long as you attribute the State of Queensland (Queensland Health).

For more information contact:

Food Safety Standards and Regulation, Department of Health, Queensland Health, PO Box 2368, Fortitude Valley BC QLD 4006, email foodsafety@health.qld.gov.au, phone (07) 3328 9310.

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

Contents

Summary	4
1 Appointment and approval of authorised persons	5
1.1 Instrument of appointment	5
1.2 Appointment conditions and limits of powers	5
1.3 Issue of identity card	6
2 Appropriate qualifications for authorised persons	7
2.1 Appropriate expertise	7
2.2 Experience	7
2.3 Qualifications that meet expertise and experience requirements	8
3 When an authorised person ceases to hold office	8
3.1 Resignation	8
3.2 Return of identity card	8
4 When an authorised person acts outside the limitations of their appointment	9
5 Other authorisations that may be required	9
Glossary	11

Summary

This document provides guidance on the appointment of an authorised person in accordance with the *Food Act 2006* (the Act). Information contained in this document includes legislative appointment criteria, guidelines for ensuring appointees are suitable and sufficiently qualified, powers of authorised officers, issuing of identity cards and circumstances when an authorised person ceases to hold office.

Persons seeking appointment under the Act will be required to undertake the required training and have the necessary qualifications and skills to undertake the function. Once these are satisfied, the person will need to complete an *Application for Appointment* form and have this authorised by their management.

1 Appointment and approval of authorised persons

An authorised person may be appointed under the Act by the chief executive (the chief executive of Queensland Health) or by the chief executive officer (the chief executive of a local government).

The chief executive may appoint any of the following persons as an authorised person:

- a public service officer or employee
- a health service employee
- a person prescribed under a regulation.

The chief executive officer may appoint a person as an authorised person under the Act for the local government and its area. That person may be:

- an employee of the local government; or
- if another local government consents - employee of the other local government; or
- other persons under contract to the local government.

The administering executive may appoint a person as an authorised person only if the administering executive is satisfied that the person has the necessary expertise or experience to be an authorised person.

1.1 Instrument of appointment

When appointing an authorised person under the Act, the administering executive must ensure the person is provided with an instrument of appointment.

The instrument of appointment is a document which is signed and dated by an authority head or designated delegate to evidence the appointment of a person under an Act.

1.2 Appointment conditions and limits of powers

When an authorised person is appointed under the Act, they have the powers given to them under the Act. The Act states that an authorised person is bound by the directions provided by the administering authority. The administering authority may limit the authorised person's authority by imposing conditions upon the instrument of appointment.

Alternatively, the administering executive may give the authorised person a signed notice detailing any conditions. Placing a condition on an instrument of appointment or issuing a signed notice may limit the authorised person's powers under the Act. A regulation may also limit the authorised person's powers.

When a local government is the administering authority, the authorised person only has power under the Act within the local government's boundaries. In the instance where an authorised person is appointed by two or more local authorities, they are subject to the directions of the chief executive officer of the local government for the area in which the authorised person is exercising their powers under the Act.

It should be noted that under the Act, an administering authority is under no obligation to limit the power of an authorised person.

Example: An administering authority has appointed a recent graduate who has completed a Bachelor of Applied Science (Environmental Health). The graduate has the necessary expertise but limited experience. Subsequently the administering authority decides to place a condition on the person's instrument of appointment. The condition states 'The authorised person may not apply to a magistrate for a warrant for a place without the consent of the person's supervisor'. Thus, the authorised person has no authority to apply for a warrant for a place without the express permission of his or her supervisor.

1.3 Issue of identity card

The administering executive is to provide each authorised person with an identity card. The identity card must contain–

- a) a recent photo of the authorised person; and
- b) a copy of the authorised person's signature; and
- c) the identification of the person as an authorised person under the *Food Act 2006*; and
- d) an expiry date for the card.

The Act does not prevent the administering executive from issuing a single identity card to authorise a person under various other pieces of legislation other than the *Food Act 2006*, provided that the person holds the required credentials to be authorised under the legislation. For example, the identity card may simultaneously authorise a person under the *Food Act 2006*, the *Environmental Protection Act 1994* and the *Local Government Act 2009*.

An identity card must be produced for inspection or displayed when exercising a power under the Act in relation to another person. An authorised person must–

- a) produce the authorised person's identity card for the other person's inspection before exercising the power; or
- b) have the identity card displayed so it is clearly visible to the other person when exercising the power.

If it is not practicable for the authorised person to produce or to display the identity card before exercising the power, the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.

2 Appropriate qualifications for authorised persons

When appointing an authorised person under the Act the administering executive needs to ensure the person has the necessary expertise and experience.

2.1 Appropriate expertise

When appointing a person under the Act, an administering executive should ensure that the person has qualifications that will provide them with the necessary expertise to monitor and enforce the Act.

In relation to food qualifications (which should be a minimum of an advanced diploma or equivalent), they should contain sufficient content to ensure that the person to be authorised understands the principles of food safety and hygiene.

In relation to regulation qualifications, they should provide the person with an understanding of enforcement principles and practices. It should be noted that expertise in enforcement practices could also be obtained through experience.

Example: A former police officer who obtains a Bachelor of Food Technology could be appointed as an authorised person under the Act.

2.2 Experience

A person to be appointed under the Act should also demonstrate that they have the necessary experience to monitor and enforce its provisions. Consideration needs to be given as to the types of food businesses located within the administering authority's jurisdiction.

Where the person to be authorised is unable to demonstrate the necessary experience, the administering authority needs to take measures that will provide the person with the experience required. One option is to establish a mentoring program. This would allow the newly authorised person to undertake their duties whilst having a more experienced authorised person provide guidance. Alternatively, it may be appropriate for the person to be given approval to attend a training course with a practical component to upgrade their skills.

2.3 Qualifications that meet expertise and experience requirements

Historically and currently, environmental health qualifications are seen as providing a suitable high standard of skills and knowledge in both food safety, hygiene, enforcement principles and practices.

Typically, the environmental health qualification also includes work experience placements. Where this has not occurred, consideration should still be given to providing employment to graduates with support in this area.

Environmental health qualifications that are considered appropriate in meeting both the expertise and experience component are those that are considered eligible to become a member of Environmental Health Australia, the relevant professional body. Further information regarding their accredited courses can be found at–
www.eh.org.au/workforce/accredited-courses.

3 When an authorised person ceases to hold office

The Act determines an authorised person to no longer hold office when any of the following occur–

- a) the term of office stated in a condition of office ends.
- b) under another condition of office, the authorised person ceases to hold office.
- c) the authorised persons resignation takes effect.

When any of the above occurs, the authorised person's authorisation under the Act ceases.

3.1 Resignation

An authorised person may resign by signed notice of their resignation given to the administering executive. When the authorised person's resignation takes effect, their authorisation under the Act ceases.

A person appointed under the Act as an authorised person by two administering executives may resign by signed notice given to one of the administering executives.

3.2 Return of identity card

When a person ceases to be an authorised person, the Act requires that the person's identity card be returned to the administering authority. The person is required to ensure the identity card is returned within 21 days after ceasing to be an authorised person. A penalty may be imposed for failing to return the identity card, unless the person has a reasonable

excuse. If appointed as an authorised person by two or more chief executive officers, the identity card must be returned to one of the chief executive officers.

4 When an authorised person acts outside the limitations of their appointment

An authorised person that has conditions imposed on their instrument of appointment by an appointing officer, must comply with these conditions. If the person fails to meet the conditions, the authorisation of the person to act under the Act would no longer be valid.

Example: The administrating executive requires the authorised person to be a member of a particular professional organisation to maintain their authorisation. The authorised person fails to maintain membership of the specific organisation. Therefore, the person is no longer authorised to utilise the powers in the Act.

Example: An authorised person has a condition imposed on their appointment which restricts them from applying for a warrant without the approval of their supervisor. The authorised person fails to comply with the condition and obtains a warrant without the approval of their supervisor. The action taken is not legal and could be challenged.

5 Other authorisations that may be required

Legislation other than the Act may impose requirements on authorised persons before they can enter certain premises. Authorised person should familiarise themselves with these requirements before entering the premises.

The administrating executive should ensure authorised persons meet any relevant requirements or additional training needs imposed by any other legislation.

Example: An authorised person may be required to obtain a blue card when entering a facility with children or hold appropriate workplace health and safety authorisation to enter construction sites.

Glossary

Term	Definition
Administering executive	<p>For a person appointed under this Act as an authorised person by the chief executive – the chief executive; or</p> <p>For a person appointed under this Act as an authorised person by a chief executive officer – the chief executive officer; or</p> <p>For a person appointed under this Act as an authorised person by two or more chief executive officers – the chief executive officers jointly.</p>
Authorised person	A person appointed as an authorised person under section 170 of the <i>Food Act 2006</i>
Chief executive	The chief executive of Queensland Health
Chief executive officer	The chief executive of a local government
Condition of office	A condition on which the authorised person holds office
Signed notice	A notice signed by the administering executive