

Queensland



FOOD ACT 1981

**Reprinted as in force on 5 May 1994
(includes amendments up to Act No. 66 of 1992)**

Reprint No. 1

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 5 May 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (Pt 4, Div 2)
- update references (Pt 4, Div 3)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- use gender neutral office names (s 25)
- correct spelling and use different spelling consistent with current legislative drafting practice (s 26)
- use standard punctuation consistent with current legislative drafting practice (s 27)
- use expressions consistent with current legislative drafting practice (s 29)
- use conjunctives and disjunctives consistent with current legislative drafting practice (s 28)
- reorder definitions consistent with current legislative drafting practice (s 30)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current legislative drafting practice (s 35)
- omit provisions that are no longer required (s 39)
- omit unnecessary referential words (section 41)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43)
- correct minor errors (s 44).

Also see Endnotes for—

- **details about when provisions commenced**
- **any provisions that have not commenced and are not incorporated in the reprint**
- **further information about editorial changes made in the reprint, including—**
 - **Table of changed names and titles**
 - **Table of changed citations and remade laws**
 - **Table of obsolete and redundant provisions**
 - **Table of corrected minor errors**
 - **Table of renumbered provisions.**

Queensland



FOOD ACT 1981

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	5
2	Commencement	5
5	Interpretation	5
6	Declaration of certain substances to be or not to be food	10
7	Entry and inspection of Crown premises	10
8	Power of Chief Health Officer to make orders directed to local government	10
PART 2—OFFENCES IN CONNECTION WITH THE SALE AND PREPARATION OF FOOD		
9	Prohibition on sale of certain food	11
10	Prohibition on preparation for sale of certain food	11
11	Prohibition on packing for sale of certain food	11
12	Protection for purchasers of food	12
13	Sale of food not complying with prescribed standard	12
14	False packing or labelling of food	13
15	False advertising	13
16	Prohibition on dispatch of certain food	14
17	Adulteration of food and exemptions in certain cases	14
PART 3—LABELLING REQUIREMENTS		
18	Labelling requirements generally	16
19	Further labelling requirements	16

**PART 4—HYGIENE REQUIREMENTS AND CONTROL OF
FOOD PREMISES AND OTHER PLACES, FOOD VEHICLES
AND APPLIANCES**

20	Prohibition of cultivation and the like of food in certain circumstances . . .	17
21	Powers with respect to unclean food store, food vehicle or appliance	18
22	Food vending machines	21

PART 5—ADMINISTRATION AND ENFORCEMENT

23	Administration of Act	22
24	Authorised officers	22
25	Power of Chief Health Officer to act in emergency	23
26	Duty of local government	24
27	Certain vehicles deemed to be within the area of a local government	25
28	Powers of authorised officers	25
28A	Duty of police officers	29
29	Procedure on taking samples	29
30	Offences with respect to authorised officers and articles	31
31	Duties of officer upon seizure and detention of article	33
32	Keeping and storage of certain articles	33
33	Remedy in respect of articles seized	34
34	Destruction or other disposal of seized food	35
35	Liability for costs and expenses of storage or destruction or other disposal of seized article	36
36	Authorisation and duties of analysts	37
37	Supply of results of analysis	38
38	Prohibition of use of result of analysis for certain purposes	38
39	Power of delegation	38
40	Secrecy	39

PART 6—MISCELLANEOUS PROVISIONS

41	Defence in respect of food for export	40
42	Liability of defendant for certain costs and expenses	40
43	Power of court to order forfeiture	40
44	Offences generally and penalty	41
45	Proceedings for offences	42

46	Analyst's certificate to be evidence	43
47	Independent analysis	44
48	Protection of information and reports	44
49	Probative effect of second contravention etc.	44
50	Liability for offence by employee	45
51	Liability for offence by body corporate	46
52	Right of defendant to have third person before court	47
53	Protection against liability	48
54	Mode of service of documents	49
55	Evidentiary provisions	49
56	Orders in council	52
57	Regulations	52
58	Authorisation of certain officers	53
	SCHEDULE 2	54

SUBJECT MATTER FOR REGULATIONS

ENDNOTES

1	Index to Endnotes	61
2	Date to which amendments incorporated	61
3	List of legislation	61
4	List of annotations	62
5	Table of changed names and titles	64
6	Table of changed citations and remade laws	65
7	Table of obsolete and redundant provisions	65
8	Table of corrected minor errors	65
9	Table of renumbered provisions	66

FOOD ACT 1981

[as amended by all amendments that commenced on or before 5 May 1994²]

An Act to consolidate and amend the law relating to the preparation and sale of food, to make provision for securing the wholesomeness and purity of and fixing standards for food and for other purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Food Act 1981*³⁻⁹.

Commencement

2.(1) The Governor in Council by proclamation—

- (a) may appoint a date on which this Act shall commence; or
- (b) may appoint dates on which the provisions of this Act specified in the proclamation shall commence.

(1A) Dates specified in this section may be appointed in the 1 proclamation or in different proclamations.

(2) This Act or a provision thereof specified in the proclamation shall commence on the date appointed by proclamation made under this section for the commencement of this Act or, as the case may be, that provision.

Interpretation

5.(1) In this Act—

“advertisement” means—

Food Act 1981

- (a) words, whether written or spoken;
- (b) a pictorial representation or design;
- (c) any other representation by any means whatever;

used or apparently used to promote directly or indirectly the sale or disposal of food;

“analysis” means an examination carried out by an analyst;

“analyst” means a person authorised by or under this Act to carry out analyses for the purposes of this Act;

“animal” includes a bird, fish, crustacean, mollusc or reptile;

“appliance” means the whole or a part of any utensil, machinery, instrument, apparatus or other thing used or capable of being used in or for preparing, packing, storing, handling, conveying, serving, selling or supplying food and includes a thing specified in this definition used or capable of being used in cleaning any other such thing so specified;

“appropriate designation” means a name or description or name and description sufficiently specific in each case to indicate the true nature of the food to which it is or they are, applied;

“article” means—

- (a) food;
- (b) an appliance;
- (c) a package;
- (d) material used in packing food;
- (e) the whole or a part of anything, including a food vehicle, used for or in connection with the sale or conveyance for sale of food;
- (f) labelling or advertising material used or capable of being used in connection with the sale of food;

“authorised officer” means a person—

- (a) appointed by section 24(1); or
- (b) authorised under section 24(2) to exercise the powers of an authorised officer;

“Chief Health Officer” means the Chief Health Officer of the department;

Food Act 1981

“Chief Health Officer” means the Chief Health Officer, Department of Health appointed under the *Health Act 1937* and includes the Deputy Chief Health Officer, Department of Health so appointed or a person for the time being performing the duties of the Chief Health Officer;

“corresponding law” means a law of another State or a Territory of the Commonwealth declared by order in council to be a law that makes provision substantially similar to a provision of this Act or the regulations;

“drug” means a substance used as a medicine or in the composition or preparation of a medicine whether for internal or external use;

“examine” includes weigh, count, test and measure;

“food” means a substance or matter ordinarily consumed or intended for human consumption, and includes—

- (a) drink;
- (b) chewing gum;
- (c) any ingredient, food additive or other substance that enters into or is capable of entering into or is used in the composition or preparation of food;
- (d) any other substance for the time being declared by order in council to be food, but does not include a substance used only as a drug or declared by order in council not to be food;

“food store” means any premises or other place kept or used for the sale or preparation, packing, storing, handling, serving or supplying for sale of food;

“food vehicle” means a vehicle kept or used for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food;

“food vending machine” means a machine or mechanical device used or capable of being used for selling or supplying food without intervention or attention by or on behalf of the vendor at the time of the sale or supply;

“ingredient” includes an ingredient of an ingredient;

“label” includes any tag, brand, mark, statement in writing, representation,

Food Act 1981

design or other descriptive matter on or attached to or used or displayed in connection with or accompanying food or a package of food;

“package” means anything in or by which food is wholly or partly cased, covered, enclosed, contained or packed;

“premises” includes land whether or not appurtenant to a building, a building or part thereof or any tent, stall or other structure whether permanent or temporary;

“prepare” includes manufacture, process or treat;

“proprietor”—

(a) in relation to a food store—means the owner or, where the owner is not the occupier, the occupier of the food store and includes a person in charge or apparently in charge of the food store;

(b) in relation to a food vehicle—means—

(i) where the vehicle is not the subject of a hire purchase agreement—the owner;

(ii) where the vehicle is the subject of a hire purchase agreement or otherwise hired or leased—the hirer or lessee under that agreement;

and includes a person in charge or apparently in charge of the vehicle;

(c) in relation to an appliance—means—

(i) where the appliance is in or at a food store—the proprietor of the food store;

(ii) where the appliance is in or on a food vehicle—the proprietor of the food vehicle;

“publish” means insert in a newspaper or other publication, send to a person by post or otherwise, deliver to a person, leave upon premises or any other place in the occupation of a person, disseminate by broadcast, telecast or projected image whether moving or still or bring to the notice of the public in any other manner;

“Regional Health Authority” has the same meaning as in the *Health Services Act 1991*;

“sample” includes any part or unit of a sample;

“sell”, when used in relation to food, includes—

- (a) barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for or on sale, send, forward or deliver for sale or cause or permit to be sold or offered for sale; or
- (b) sell for resale; or
- (c) supply or use pursuant to an agreement or arrangement or a contract together with accommodation, service or entertainment in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment;

“servicing”, when used in relation to a food vending machine, means stocking or replenishing that machine with food;

“substance” includes any mixture or compound;

“vehicle” means a device whether or not operational that is usually a means of conveyance by land, water or air and includes any cart, caravan, trailer, bicycle, motor vehicle, railway carriage or wagon, ship, boat, barge, hulk, aircraft, airship or air cushion vehicle.

(2) The Governor in Council by order in council may declare a law of a State or Territory of the Commonwealth to be a corresponding law for the purposes of this Act.

(3) This Act applies in relation to food—

- (a) offered as a prize or reward whether in connection with entertainment or for the purpose of advertisement or in furtherance of trade or business or otherwise, as if the food were or had been exposed for sale by each person offering the prize or reward;
- (b) given away for the purpose of advertisement or in furtherance of trade or business, as if the food were or had been sold by the person giving away the food;
- (c) that is exposed or deposited in premises or any other place for the purpose of being so offered as a prize or reward or given away, as if the food were or had been exposed for sale by the occupier of the premises or other place.

(4) Where an enactment of this Act and any local law of a local government relate to the same subject matter, both the enactment and the local law shall be given full force and effect and shall be complied with but if, in respect of a particular subject matter, there is inconsistency between an enactment of this Act and any local law, the enactment shall prevail and, to the extent of the inconsistency, the local law shall have no force or effect.

Declaration of certain substances to be or not to be food

6. The Governor in Council by order in council may declare to be or not to be food any substance consumed by humans or represented as being for human consumption.

Entry and inspection of Crown premises

7. The Governor in Council by order in council may authorise or direct the local governments specified in the order to enter premises or classes of premises the property of the Crown and therein to carry out such inspections of those premises or classes of premises or any vehicle or appliance found therein and to discharge therein such functions or duties imposed by or under this Act on local governments in connection with premises or other places, vehicles or appliances as are specified in the order.

Power of Chief Health Officer to make orders directed to local government

8. The Chief Health Officer may make orders directed to a local government with respect to all acts, matters and things required by or under this Act to be performed or done by local governments and that local government shall comply with every order so made.

PART 2—OFFENCES IN CONNECTION WITH THE SALE AND PREPARATION OF FOOD

Prohibition on sale of certain food

9. A person who sells food that is—

- (a) unfit for human consumption; or
- (b) adulterated; or
- (c) damaged, deteriorated or perished;

commits an offence against this Act.

Maximum penalty—50 penalty units.

Prohibition on preparation for sale of certain food

10.(1) A person who prepares for sale food that is—

- (a) unfit for human consumption; or
- (b) adulterated; or
- (c) damaged, deteriorated or perished;

commits an offence against this Act.

Maximum penalty—100 penalty units.

(2) A person who prepares for sale food for which there is a prescribed standard commits an offence against this Act unless that food complies with that standard.

Maximum penalty—60 penalty units.

Prohibition on packing for sale of certain food

11.(1) A person who packs for sale food that is—

- (a) unfit for human consumption; or
- (b) adulterated; or
- (c) damaged, deteriorated or perished;

commits an offence against this Act.

Maximum penalty—50 penalty units.

(2) A person who packs for sale food for which there is a prescribed standard commits an offence against this Act unless that food complies with that standard.

Maximum penalty—40 penalty units.

Protection for purchasers of food

12.(1) A person who sells food that is not of the—

- (a) nature; or
- (b) substance; or
- (c) quality;

of the food demanded by the purchaser commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) A person who sells food that does not comply with the standard prescribed for the food demanded by the purchaser commits an offence against this Act.

Maximum penalty—40 penalty units.

(3) Where a person demands food by a name prescribed for a food for which there is a prescribed standard, it shall be taken that the person has demanded food that complies with that standard.

Sale of food not complying with prescribed standard

13. A person who sells food—

- (a) that bears or has attached to it or is in a package that bears or has attached to it a name prescribed for a food; or
- (b) that is otherwise designated or represented as being a food;

for which there is a prescribed standard commits an offence against this Act

unless the food complies with the prescribed standard.

Maximum penalty—40 penalty units.

False packing or labelling of food

14.(1) A person who packs for sale or labels for sale food in a manner that is false or misleading in any particular or deceptive commits an offence against this Act.

Maximum penalty—60 penalty units.

(2) A person who sells food that is packed or labelled in a manner that is false or misleading in any particular or deceptive commits an offence against this Act.

Maximum penalty—50 penalty units.

(3) A person who packs for sale or labels for sale food in a manner contrary to or otherwise than in compliance with this Act commits an offence against this Act.

Maximum penalty—40 penalty units.

(4) A person who sells food that is packed or labelled in a manner contrary to or otherwise than in accordance with this Act commits an offence against this Act.

Maximum penalty—40 penalty units.

False advertising

15.(1) Subject to subsection (3), a person who, for the purpose of effecting or promoting the sale of food, publishes or causes to be published an advertisement that is false or misleading in any particular or deceptive commits an offence against this Act.

Maximum penalty—60 penalty units.

(2) In a prosecution for an offence defined in subsection (1) against a vendor or any manufacturer, producer or importer of food, the onus of proving that the manufacturer, producer or importer did not publish or cause to be published the advertisement in question shall lie on the defendant.

(3) It is a defence to a charge of an offence defined in subsection (1) for

the defendant to prove—

- (a) that the defendant did not know and could not with reasonable diligence have ascertained that the advertisement in question was false or misleading in any particular or deceptive; or
- (b) that, being a person whose business it is to publish or to arrange for the publication of advertisements, the defendant received the advertisement in question for publication in the ordinary course of business and did not personally make or cause to be made a material alteration to that advertisement.

Prohibition on dispatch of certain food

16. A person who in or from Queensland sells food that is to be dispatched outside Queensland and that is—

- (a) food that is—
 - (i) unfit for human consumption; or
 - (ii) adulterated; or
 - (iii) damaged, deteriorated or perished; or
- (b) food that is packed or labelled contrary to or otherwise than in compliance with this Act;

whether the sale is effected or to become effective in Queensland or elsewhere commits an offence against this Act.

Maximum penalty—50 penalty units.

Adulteration of food and exemptions in certain cases

17.(1) For the purposes of this Act, food shall be deemed to be adulterated where—

- (a) it is labelled or otherwise represented as being food of a particular class or description and—
 - (i) contains or is mixed or diluted with a substance in a quantity that diminishes in any manner any of its properties as compared with such food in a pure state and an undeteriorated condition; or

Food Act 1981

- (ii) has had a constituent wholly or partly extracted or removed from it so that its properties as compared with such food in a pure state are diminished; or
- (b) it contains a substance prescribed as prohibited generally or in relation to that food; or
- (c) the regulations specify that food generally or food of the class or description concerned is to contain no more than a specified quantity or proportion of a particular substance and the food contains more than that quantity or proportion; or
- (d) it is prepared in a manner whereby damage, deterioration or inferiority is or may be concealed; or
- (e) it is wholly or partly the product of a diseased animal or one that has died naturally or, in the case of a warm-blooded animal, otherwise than by slaughter; or
- (f) it is labelled or otherwise represented as being food of a particular class or description and it has been prepared, stored or otherwise dealt with so that its taste or smell is not the taste or smell ordinarily associated with food of that class or description; or
- (g) it is injurious to health, dangerous or offensive; or
- (h) a package or thing included in a package or anything or matter with which food comes into contact consists wholly or partly of a substance that may render the food injurious to health, dangerous or offensive; or
- (i) it contains a foreign substance or matter.

(2) The Governor in Council by order in council may declare that a food of a description specified in the order, which, but for the order, would be deemed to be adulterated in a particular referred to in subsection (1)(a) or (i) shall not be deemed to be adulterated for the purposes of this Act if it is in a condition specified in the order.

(3) While it continues in force, such an order in council shall be given full force and effect for the purposes of this Act.

PART 3—LABELLING REQUIREMENTS

Labelling requirements generally

18.(1) Subject to subsections (3) and (4), every package of food intended for sale shall bear on it a label setting out in the manner prescribed the following particulars—

- (a) where there is a standard prescribed for the food and a name has been prescribed to be used in relation to that food—the prescribed name and, in any other case, an appropriate designation;
- (b) the name and business address in Australia of the vendor, manufacturer or packer or, in the case of imported food—the name and business address in Australia of the importer;
- (c) such other particulars as are prescribed.

(2) Food other than packed food that is displayed for sale shall be labelled in accordance with the regulations.

(3) The regulations may prescribe—

- (a) the food or class or description of food to which; or
- (b) the circumstances in which;

all or any of the provisions of subsection (1) or (2) shall not apply.

(4) Subsection (1) shall not, unless the regulations otherwise prescribe in relation to food of a specified class or description, apply where the food was packed before or at the time of sale and in the presence of the purchaser.

Further labelling requirements

19.(1) Regulations made under the power conferred by Schedule 2, clause 16 may require that the label specified in section 18 shall also set out all or any of the following particulars—

- (a) a statement of the ingredients of the food in such detail as is prescribed;
- (b) the place of manufacture of the food;
- (c) the country of origin of the food;

(d) in the manner prescribed, a date marking in respect of the food.

(1A) Regulations referred to in subsection (1) may apply such requirements to all or any food or food of a specified class or description and may prescribe different provisions with respect to foods of different classes or descriptions.

(2) For the purposes of subsection (1)(d), the regulations may specify in relation to food of a specified class or description the period from the date of packing during which the food in the package that is stored in a specified manner may reasonably be expected to retain without appreciable deterioration its normal wholesomeness, nature, substance and quality.

(3) A statement of ingredients on a label on a package of food shall set out the ingredients present in that food—

- (a) in the manner prescribed; or
- (b) where the manner is not prescribed—in descending order of their relative proportion by weight.

(4) Save where the regulations otherwise prescribe, a label on a package of food shall not set out a statement in relation to any particular ingredient present in the food in the package unless the proportion by weight in which such ingredient is present in the food is also set out.

(5) An article that is sold or described on any label or advertisement as food for animals shall not be described on the label or otherwise as suitable or safe for human consumption unless it is prepared, packed and sold in accordance with this Act.

PART 4—HYGIENE REQUIREMENTS AND CONTROL OF FOOD PREMISES AND OTHER PLACES, FOOD VEHICLES AND APPLIANCES

Prohibition of cultivation and the like of food in certain circumstances

20.(1) The Chief Health Officer may by order in writing prohibit the cultivation, taking, harvesting or otherwise obtaining of food or food of a specified class or description set forth in the order in or from an area

specified in the order where the Chief Health Officer is of the opinion that food generally or food of a specified class or description if cultivated, taken, harvested or otherwise obtained in or from that area may be dangerous or injurious to persons who may consume that food.

(2) A person shall not cultivate, take, harvest or otherwise obtain food or food of the specified class or description set forth in an order under subsection (1) in or from an area to which that order applies unless the person has first obtained the approval in writing of the Chief Health Officer.

Maximum penalty—100 penalty units.

Powers with respect to unclean food store, food vehicle or appliance

21.(1) Where the Chief Health Officer or a local government is satisfied from an inspection made or caused to be made by the Chief Health Officer or the local government or from the report of an authorised officer that any food store, food vehicle or appliance is in an unclean or insanitary condition, the Chief Health Officer or the local government may, by order in writing served on the proprietor of the food store, food vehicle or appliance, direct that the food store, food vehicle or appliance specified in the order be put into a clean and sanitary condition to the satisfaction of an authorised officer within such time as is specified in the order.

(2) Where, after the expiration of the period specified in an order under subsection (1), of the food store, food vehicle or appliance to which that order relates has not been put into a clean and sanitary condition to the satisfaction of an authorised officer, the Chief Health Officer or local government concerned may, by a further order in writing served on the proprietor of the food store, food vehicle or, as the case may be, appliance, direct that—

- (a) the food store shall not be kept or used for the sale or preparation, packing, storing, handling, serving or supplying for sale of food;
- (b) the food vehicle shall not be kept or used for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food;
- (c) the appliance shall not be used in or for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food or in the cleaning of any other appliance;

until an authorised officer has given to the proprietor of the food store, food vehicle or, as the case may be, appliance a certificate in writing that the food store, food vehicle or appliance has been put into and is in a clean and sanitary condition.

(3) A further order under subsection (2) may specify conditions with respect to the keeping or use of the food store, food vehicle or appliance in question for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food and, where that order so specifies, that food store, food vehicle or appliance shall not be kept or used otherwise than in accordance with those conditions.

(4) The proprietor of any food store, food vehicle or appliance on whom a further order under subsection (2) is served may at any time after the date of service of that order request in writing the Chief Health Officer or, as the case may be, local government concerned to cause the food store, food vehicle or appliance the subject of the further order to be inspected by an authorised officer.

(4A) In the case of any food vehicle or appliance the place for carrying out the inspection shall be one specified by the Chief Health Officer or the local government concerned.

(5) Where an authorised officer upon the completion of an inspection by the officer of any food store, food vehicle or appliance following a request under subsection (4) refuses to give to the proprietor a certificate under subsection (2) in respect of the food store, food vehicle or appliance so inspected, the proprietor may, within 14 days after the date of the refusal, appeal to a Magistrates Court constituted under the *Justices Act 1886* against that refusal.

(5A) An appeal under subsection (5)—

- (a) shall be instituted and conducted as prescribed;
- (b) shall not operate as a stay of a further order made under subsection (2);
- (c) shall not affect the liability of a person for an offence defined in subsection (7).

(5B) The court shall hear and determine the appeal and its decision thereon shall be final and without appeal.

(5C) Costs of and incidental to the appeal shall be in the discretion of the

court.

(6) Where any food store, food vehicle or appliance in respect of which a request has been made under subsection (4) has not been inspected within a period of 2 days after receipt of the request by the Chief Health Officer or, as the case may be, local government concerned, it shall be deemed for the purposes of subsection (7) that a certificate in respect of the food store, food vehicle or appliance has been given to the proprietor under subsection (2) at the expiration of that period unless a notice has been served on the proprietor within that period stating that the failure to inspect has been due to the act, default or neglect of the proprietor.

(7) Where a further order under subsection (2) has been served on the proprietor of any food store, food vehicle or appliance and—

- (a) a certificate in respect of that food store, food vehicle or appliance has not been given subsequently under that subsection or deemed to have been given under subsection (6); or
- (b) an appeal under subsection (5) against the refusal of an authorised officer to give a certificate has not been allowed;

a person who—

- (c) contrary to the further order—
 - (i) keeps or uses the food store for the sale or preparation, packing, storing, handling, serving or supplying for sale of food;
 - (ii) keeps or uses the food vehicle for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food;
 - (iii) uses the appliance in or for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food or in or for the cleaning of any other appliance; or
- (d) fails to comply with a condition of the further order;

commits an offence against this Act.

Maximum penalty—100 penalty units.

(8) An order under subsection (1) or a further order under subsection (2) may be made with respect to—

- (a) any food store, food vehicle or appliance specified in the order or further order; or
- (b) a food store or food vehicle so specified and all appliances contained therein or appliances so specified and contained therein; or
- (c) all appliances contained in a food store or food vehicle so specified.

Food vending machines

22.(1)¹ *A person who uses or intends to use a food vending machine for the purpose of selling or supplying food shall register and at all times keep registered that machine with the local government in whose area the machine is or is to be used.*

(1A) *The Chief Health Officer by signed writing may exempt from the operation of subsection (1) any machine or class of machine specified in the writing.*

(2) *A food vending machine shall be registered only in the name of some person who, the local government concerned is satisfied, receives or shares in or intends to receive or share in the proceeds of the sale or supply of food from the food vending machine.*

(3) *A local government shall not register or keep registered a food vending machine that sells or supplies food that does not comply with or contravenes this Act.*

(4) *A person shall not install or use a food vending machine in, at or on premises or any other place or any vehicle other than the premises, other place or vehicle approved by the local government in question and specified in the certificate of registration with respect to that machine, in force at the material time.*

(4A) *A local government when considering the suitability of any premises or other place or any vehicle for the purposes of subsection (4) shall have regard to the provisions of this Act with respect to the wholesomeness and purity of food.*

¹ This provision had not commenced on or before the reprint date.

(5) *For the purposes of this Act, food that is sold or supplied through a food vending machine shall be deemed to be sold or supplied—*

- (a) *by the person in whose name the machine is or is required to be registered under this Act or, if the machine is not required to be registered, by the person who receives or shares in the proceeds of the sale or supply of food from the machine;*
- (b) *on the day when and at the place where the food is received by the purchaser.*

(6) *Where under or for the purposes of this Act the purchaser of food (whether for analysis or otherwise) is required or authorised to give or deliver to a person a notice or part of a sample of food and the food was sold or supplied to the purchaser through a food vending machine, the notice or part of a sample shall be deemed to be sufficiently given or delivered for the purposes of this Act if the notice or part is given or delivered personally or by registered post to a person in whose name the machine is or is required to be registered under this Act or, whether or not the machine is so registered, to a person then present who admits to being in charge of the machine.*

PART 5—ADMINISTRATION AND ENFORCEMENT

Administration of Act

23. This Act shall be administered and its provisions shall be enforced by the Minister and subject to the Minister by the Chief Health Officer.

Authorised officers

24.(1) An inspector or medical officer of health under the *Health Act 1937* is an authorised officer.

(2) The Chief Health Officer may authorise any of the following to exercise the powers of an authorised officer—

- (a) an officer of the department;

(b) an officer of a Regional Health Authority nominated by the Authority;

(c) an officer of a local government nominated by the authority.

(3) An authorisation under subsection (2)—

(a) must be in writing; and

(b) may be of general application or be limited to a particular purpose; and

(c) may be revoked at any time by the Chief Health Officer.

(4) Each authorised officer must be issued with an identity card containing a recent photograph of the officer.

(5) The identity card must be issued by—

(a) if the authorised officer is an officer of the department—the Chief Health Officer; and

(b) if the authorised officer is an officer of a Regional Health Authority—the Regional Health Authority; and

(c) if the authorised officer is an officer of a local government—the local government.

(6) An authorised officer exercising powers under this Act in relation to another person must produce the authorised officer's identity card on demand by the other person.

Power of Chief Health Officer to act in emergency

25. In a case of emergency or sudden necessity of the existence of which the Chief Health Officer is the sole judge, the Chief Health Officer, by order in writing—

(a) may forbid the production, preparation, sale or supply of food of the class or description specified in the order—

(i) absolutely; or

(ii) otherwise than in accordance with such conditions as the Chief Health Officer stipulates, specified in the order;

(b) may cause food of the class or description specified in the order—

- (i) to be destroyed or otherwise disposed of in such manner as the Chief Health Officer thinks fit;
 - (ii) to be examined at such place and in such manner as the Chief Health Officer stipulates, specified in the order;
 - (iii) to be held or isolated in such place as the Chief Health Officer stipulates, specified in the order;
- (c) may forbid the removal of food ordered to be held or isolated under paragraph (b)(iii) from the place in which it is so held or isolated.

Duty of local government

26.(1) The local government of an area within which or part of which this Act is in force shall superintend and see to the execution of Part 4 and, if required by the regulations so to do, shall superintend and see to the execution of such regulations and, where the Chief Health Officer makes orders under this Act, shall superintend and see to the execution of such of those orders as the Chief Health Officer determines and in any case shall do and provide such acts, matters and things as are necessary for the purpose in question.

(1A) The Governor in Council by order in council may exclude from the operation of subsection (1) such classes of food stores, food vehicles or appliances as are specified in the order and during the continuance in force of such order a local government shall not, in respect of such classes of food stores, food vehicles or appliances, exercise the powers or authorities or discharge the functions or duties conferred or imposed upon it by or under this Act.

(2) This section does not operate to prevent the Chief Health Officer from exercising the powers or authorities or discharging the functions or duties conferred or imposed on a local government under subsection (1) in a case where the Chief Health Officer is satisfied that the local government concerned has failed to do so or where, for any other reason, the Chief Health Officer considers it desirable to do so.

Certain vehicles deemed to be within the area of a local government

27.(1) Any vehicle lying within any river, harbour or other waters not within the area of a local government shall for the purposes of this Act be deemed to be within the area of such local government as the Governor in Council, by order in council, declares and, where no such declaration has been made, of the local government whose area is nearest to the place where the vehicle is lying.

(2) This section does not apply to a vehicle that is under the command or charge of an officer holding Her Majesty's commission or that is the property of the government of a foreign state or country.

Powers of authorised officers

28.(1) For the purposes of this Act and subject to subsection (6), an authorised officer—

- (a) may, subject to subsection (2), enter any premises or other place in or at which the officer believes on reasonable grounds any article is sold or prepared, packed, stored, handled, served or supplied for sale and therein—
 - (i) may make such investigation and inquiry as are necessary to ascertain whether this Act is being complied with;
 - (ii) may make an inspection and examination thereof and of articles, fittings or fixtures found including anything that the officer believes on reasonable grounds is used or capable of being used for or in connection with the sale or preparation, packing, storing, handling, serving or supplying for sale of any article;
 - (iii) may, subject to section 29(6), take and remove therefrom any article or samples of any article;
 - (iv) may open or order to be opened any container used for the conveyance of goods, or any package or other receptacle of any kind that the officer believes on reasonable grounds contains any article;
 - (v) may require a person to produce to the officer any licence, registration, permit, approval, certificate or authority under

Food Act 1981

this Act granted and issued to that person or alleged by that person to have been granted and issued to the officer or any books, accounts, records or documents and may inspect, examine and make copies of or extracts from any licence, registration, permit, approval, certificate or authority or any book, account, record or document so produced or remove it for the purpose of making a copy thereof or extracts therefrom;

- (vi) may seize and detain for such time as is necessary any article found by means of or in relation to which the officer believes on reasonable grounds this Act has been contravened;
 - (vii) may mark, fasten, secure or seal—
 - (A) an article found;
 - (B) any door, gate or opening that the officer believes on reasonable grounds affords access to an article;
 - (viii) may take and remove therefrom anything or sample of anything, other than an article, found that the officer believes on reasonable grounds may be used as evidence in a proceeding under this Act;
 - (ix) may question any person to ascertain whether this Act is being complied with and require that person to answer any question put;
 - (x) may take such photographs or films or audio or visual recordings as the officer considers necessary;
- (b) may at any time purchase food from a person selling or preparing, packing, storing, handling, serving, supplying or conveying for sale food by payment or offer of the current market value of that food;
- (c) may require a person found by the officer committing an offence against this Act or who the officer believes on reasonable grounds has committed an offence against this Act or whose name and address are in the officer's opinion reasonably required to state the person's full name and the address of the person's usual place of residence and, if the officer suspects on reasonable grounds that a name or address so stated is false, may require the person to

Food Act 1981

produce evidence of the correctness thereof;

- (d) may in a case where the officer is obstructed or believes on reasonable grounds that the officer may be obstructed in the exercise of the powers or authorities or the discharge of the functions or duties conferred or imposed upon the officer by or under this Act call to the officer's aid—
 - (i) another authorised officer;
 - (ii) a police officer, whereupon it shall be the duty of a police officer so called to assist the officer as required and a police officer so assisting shall have the same powers and authorities as are conferred upon an authorised officer under this Act;
- (e) may stop, detain and search any vehicle used or that the officer believes on reasonable grounds is being or is likely to be used for the conveyance of any article or in or on which the officer believes on reasonable grounds any article is sold or prepared, packed, stored, handled, served or supplied for sale and may exercise in relation to that vehicle any of the powers or authorities and discharge any of the functions or duties conferred or imposed upon the officer by or under this subsection;
- (f) may call to the officer's aid a person who the officer thinks is competent to assist the officer in the exercise of the officer's powers or authorities or the discharge of the officer's functions or duties and a person so acting in aid, while so acting, shall have the same powers and authorities as are conferred upon an authorised officer under this Act;
- (g) may use such force as is reasonably necessary in the exercise of the powers or authorities or the discharge of the functions or duties conferred or imposed upon the officer by or under this Act;
- (h) may exercise such other powers or authorities and discharge such other functions or duties as are prescribed.

(2) Before an authorised officer enters a part of any premises or other place which part is used exclusively as a dwelling house the officer shall, save where the officer has the permission of the occupier of that part to the officer's entry, obtain from a justice a warrant to enter.

(2A) A justice who is satisfied upon the complaint of an authorised officer that there is reasonable cause to suspect—

- (a) that in any premises or other place an offence against this Act has been, is being or is likely to be committed;
- (b) that there is in any premises or other place anything in respect of which an offence against this Act has been, is being or is likely to be committed;

may issue a warrant directed to an authorised officer to enter the premises or other place named in the warrant for the purpose of exercising therein the powers and authorities conferred upon an authorised officer by or under this Act.

(2B) A warrant shall be, for the period of 1 month from the date of its issue, sufficient authority for the authorised officer and all persons acting in aid of the officer—

- (a) to enter the premises or other place specified in the warrant; and
- (b) to exercise therein the powers and authorities conferred upon an authorised officer by or under this Act.

(2C) For the purposes of subsections (2) to (2B), premises that are used as a dwelling house do not include the curtilage of those premises.

(3) For the purpose of gaining entry to any premises or other place, an authorised officer may call to the officer's aid such persons as the officer thinks necessary and those persons, while acting in aid of an authorised officer in the lawful exercise by the officer of the officer's power of entry, shall have a like power of entry.

(4) Where an article is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale during the night-time, an entry and inspection under this section may be made at all reasonable times during the daytime or night-time but otherwise such entry and inspection shall be made at all reasonable times during the daytime.

(5) A person is not obliged under this Act to answer any question or give any information or evidence tending to criminate the person.

(6) The powers and authorities conferred and the functions and duties imposed by or under this Act on an authorised officer who is an officer of a local government shall be exercised or, as the case may be, discharged by

that officer only within the area of the local government of which the officer is an officer or on any vehicle deemed under section 27 to be within that area for the purposes of this Act and only so far as the exercise of those powers or authorities and the discharge of those functions or duties are required for or directed towards the discharge of a function or duty imposed on the local government by or under this Act.

Duty of police officers

28A.(1) It shall be the duty of every police officer who finds any person committing an offence against this Act to demand from that person the person's name and the address of the person's usual place of residence and to report the fact of such offence and the name and address of the usual place of residence of the person as soon as conveniently may be to the Chief Health Officer.

(2) A person who refuses to state the person's name and the address of the person's usual place of residence when required by a police officer so to do, or who in the opinion, based on reasonable grounds, of the officer states a false name or address of the person's usual place of residence may, without any other warrant than this Act, be arrested by the officer and taken before justices, there to be dealt with according to law.

(3) A person who refuses to state the person's name and the address of the person's usual place of residence or states a false name or address of the person's usual place of residence commits an offence against this Act.

Maximum penalty—125 penalty units.

Procedure on taking samples

29.(1) Where an authorised officer takes or otherwise obtains a sample of food with the intention that it be submitted for analysis, the officer shall, before or as soon as practicable after obtaining the sample, inform the owner of the food comprised in the sample or, if the owner is not present or readily available, the person from whom the sample was obtained or the person having charge of that food of the officer's intention to have the sample analysed.

(2) The authorised officer shall comply with all regulations that prescribe the number of samples to be obtained or a method of obtaining samples or

of dealing with samples obtained in relation to the class or description of food concerned or the analysis proposed to be carried out.

(3) Subject to subsection (4), where the regulations do not otherwise prescribe in relation to the class or description of food concerned or the analysis proposed to be carried out and an authorised officer obtains a sample of food with the intention that the sample be submitted for analysis, the officer shall—

- (a) divide the sample into 3 separate parts and mark and seal or fasten each part in such manner as its nature will permit;
- (b) leave 1 part with the owner of the food or other person from whom the sample was obtained or a person appearing to be the servant or agent of that owner or other person;
- (c) submit 1 of the remaining parts for analysis;
- (d) retain the other remaining part for future comparison.

(4) Where the regulations do not prescribe a method of dealing with a sample in relation to the class or description of food concerned or the analysis proposed to be carried out and if the division of a sample for analysis into 3 separate parts in accordance with subsection (3) would in the opinion of the authorised officer—

- (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis;
- (b) furnish parts insufficient for accurate analysis;
- (c) render the sample in any other way unsuitable for analysis including a method of analysis prescribed in relation to the food from which the sample was taken;

the authorised officer shall deal with the sample in such manner as is appropriate in the circumstances having regard to this Act.

(5) Where a sample of food is taken by an authorised officer in the form of separate or severable objects, it shall not be necessary for the officer in dividing that sample into parts in accordance with this section to divide any 1 of those objects and it shall be sufficient compliance with this section if the officer—

- (a) takes a number of those objects; and

- (b) divides the number so taken into the requisite number of parts so that each part consists of 1 or more than 1 of such separate or severable objects; and
- (c) deals with those parts in accordance with subsection (2), (3) or, as the case requires, (4).

(6) Notwithstanding this Act, where food is kept for retail sale in a closed package a person shall not be required by an authorised officer to provide a sample that is less than the whole of that package.

(7) An authorised officer shall be deemed to have complied with this section notwithstanding failure by the owner of the food or other person specified in subsection (3)(b) to accept any part or parts required to be delivered to the officer in accordance with this section.

(8) This section does not apply to the procuring for analysis of a sample of food sold through a food vending machine if the authorised officer obtains the sample by properly making payment for it and no person present at the time the officer obtains the sample admits to being in charge of the machine.

Offences with respect to authorised officers and articles

30. A person who—

- (a) except with the authority of an authorised officer or pursuant to an order of a court—
 - (i) removes, alters or interferes in any way with—
 - (A) an article seized and detained under this Act;
 - (B) any article or other thing or a sample of any article or other thing taken or otherwise obtained by an authorised officer under section 28;
 - (ii) erases, alters, opens, breaks or removes a mark, seal or fastening placed by an authorised officer in the exercise of the officer's powers or authorities or the discharge of the officer's functions or duties under this Act—
 - (A) on an article other than part of a sample or any sample unit or package left by the authorised officer with a person from whom a sample was taken or otherwise

obtained;

- (B) on any door, gate or opening affording access to an article; or
- (b) refuses to sell to an authorised officer food or to allow the officer to take a sample of food or any other article in such quantity as the officer reasonably requires; or
 - (c) refuses or neglects, when required by or under this Act to do so, to render assistance or to furnish information to an authorised officer or other person; or
 - (d) fails, upon demand duly made, to produce to an authorised officer for examination any book, account, record or document required or authorised by or under this Act to be produced or fails to allow an authorised officer to examine or to make a copy of or an extract from any book, account, record or document so produced; or
 - (e) fails to comply with any lawful direction or order of an authorised officer; or
 - (f) fails upon demand duly made orally by an authorised officer to deliver up to the officer an article authorised by or under this Act to be seized by the officer or delivered up to the officer; or
 - (g) knowingly makes a false or misleading statement orally or in writing to an authorised officer exercising a power or authority or discharging a function or duty under this Act; or
 - (h) assaults, threatens, abuses, insults, intimidates or attempts to intimidate any authorised officer or other person in the exercise of powers or authorities or the discharge of functions or duties under this Act; or
 - (i) when required by an authorised officer to do so, fails to state his or her name and the address of his or her usual place of residence or states a false name or address; or
 - (j) prevents a person from being questioned by an authorised officer; or
 - (k) in any manner other than a manner referred to in paragraphs (a) to (j) obstructs or attempts to obstruct an authorised officer or other

person in the exercise of powers or authorities or the discharge of functions or duties under this Act;

commits an offence against this Act.

Maximum penalty—100 penalty units.

Duties of officer upon seizure and detention of article

31. An authorised officer, upon the seizure and detention by the officer of an article under this Act, shall forthwith—

- (a) give notice in the prescribed form of the seizure and detention to the person apparently in charge of the article;
- (b) if there is no person apparently in charge of the article and the name and address in Queensland of a person appearing to the authorised officer to be the consignor or owner of the article is set out on or attached to the article or a package containing the article—give notice in the prescribed form of the seizure and detention to that person;
- (c) in any other case, if the name and address in Queensland of the importer or consignee of the article or of his or her agent are known to the authorised officer—give notice to such 1 of those persons as the authorised officer determines.

Keeping and storage of certain articles

32. An article that has been seized and detained or taken or otherwise obtained under this Act by an authorised officer may, at the direction of an authorised officer—

- (a) be kept and stored in, at or on the premises or other place or vehicle where it was seized and detained or taken or otherwise obtained;
- (b) be removed to any other proper place and there kept and stored.

Remedy in respect of articles seized

33.(1) Where an article is seized and detained by an authorised officer under section 28, the person from whom the article was seized may within

the prescribed number of days after the seizure make application in the prescribed form to a Magistrates Court under the *Justices Act 1886* for an order directing the authorised officer to release the article seized by the officer.

(1A) In subsection (1)—

“prescribed number” of days means, in the case of an article that is—

- (a) food—3; or
- (b) an appliance—14; or
- (c) a package—3; or
- (d) material used in packing food—14; or
- (e) the whole or a part of anything, including a food vehicle, used for or in connection with the sale or conveyance for sale of food—14; or
- (f) labelling or advertising material used, or capable of being used, in connection with the sale of food—14.

(2) The applicant shall forthwith give to the authorised officer responsible for the seizure and detention of the article in question a copy of the application made under subsection (1).

(3) The court shall thereupon appoint a place, date and time for the hearing of the application and notify the applicant and the authorised officer thereof.

(4) Upon the hearing of an application under subsection (1) the court—

- (a) if it is satisfied that—
 - (i) the authorised officer responsible for the seizure and detention of the article did not have reasonable grounds for believing that the article was one by means of or in relation to which this Act had been contravened; or
 - (ii) the article was not one by means of or in relation to which this Act had been contravened;

may set aside the seizure and detention of the article and order that the article be released from detention otherwise the court shall refuse the application and confirm the seizure and detention;

(b) may make such order as it thinks fit in respect of the costs and expenses of and incidental to—

(i) the application; and

(ii) the removal and storage of the article seized.

(4A) An order made under subsection (4)(b) shall be final and without appeal.

(5) If an application—

(a) is refused—then on the refusal; or

(b) is not made under subsection (1)—then when the period in which the application could have been made under the subsection ends;

the seized article becomes—

(c) if it was seized by an authorised officer who is an officer of the department—the property of the State; or

(d) if it was seized by an authorised officer who is an officer of a Regional Health Authority—the property of the Regional Health Authority; or

(e) if it was seized by an authorised officer who is an officer of a local government—the property of the local government.

(6) A seized article that becomes the property of the State may be destroyed or otherwise disposed of by the Chief Health Officer.

(7) A seized article that becomes the property of a Regional Health Authority or local government may be destroyed or otherwise disposed of by the Regional Health Authority or local government.

Destruction or other disposal of seized food

34. Notwithstanding sections 32 and 33, where an authorised officer has seized food under this Act and—

(a) the owner of the food consents to the destruction or other disposal thereof; or

(b) the food is in the opinion of the authorised officer decayed, deteriorated or putrefied;

the authorised officer—

- (c) may destroy or otherwise dispose of the food; or
- (d) if the owner of the food or the person in whose possession the food was at the time of seizure so requests—may permit the owner or, as the case may be, that person to destroy or otherwise dispose of the food subject to such reasonable conditions as the authorised officer stipulates.

Liability for costs and expenses of storage or destruction or other disposal of seized article

35(1). Where an article is seized under this Act and—

- (a) an application is not made for its release under section 33(1); or
- (b) the article is destroyed or otherwise disposed of pursuant to section 34 (if food) or to section 33(6) or (7);

the owner of the article at the time of its seizure or, where the article is at the time of its seizure in the possession of a person who is not the owner and the identity of the owner is not known, the person in whose possession the article was when seized shall be liable to pay the costs and expenses incurred in or in connection with the storage, destruction or other disposal of that article.

(2) Costs and expenses referred to in this section remaining unpaid may be recovered by action in a court of competent jurisdiction—

- (a) in the case of costs and expenses incurred by or on behalf of a local government—as a debt due and owing to the local government; or
- (aa) in the case of costs and expenses incurred by or on behalf of a Regional Health Authority—as a debt due and owing to the Regional Health Authority; or
- (b) in the case of costs and expenses incurred by or on behalf of the department—as a debt due and owing to the State.

Authorisation and duties of analysts

36.(1) Every person appointed a State analyst under the *Health Act 1937* shall, during the continuance of that appointment and without further or other authority, be a person authorised to carry out analyses for the purposes of this Act.

(2) The Chief Health Officer, from time to time by signed writing, may authorise a person, who the Chief Health Officer considers is appropriately qualified, to carry out analyses for the purposes of this Act and may at any time revoke an authority so given.

(3) An authority given under subsection (2) may be in respect of a particular type of analysis specified in the authority.

(4) A person authorised under this section who does not desire to carry out analyses in accordance with the person's authority may furnish to the Chief Health Officer a notice in writing to that effect and upon receipt of such notice the Chief Health Officer shall revoke the authority given to that person.

(5) An analyst, as soon as practicable after an article is submitted to the analyst for that purpose—

- (a) shall personally analyse the article; or
- (b) shall supervise the analysis of the article by another person;

and thereupon shall give to the person who submitted the article for analysis a certificate in the prescribed form of the result of the analysis.

(6) The Chief Health Officer shall prepare and at all times maintain a list of persons authorised under this section and shall revise that list on 1 January in each year.

(6A) The revised list shall be published in such manner as the Chief Health Officer thinks fit.

(7) An analyst who carries out an analysis for the purposes of this Act shall, where a method of analysis has been prescribed in a particular case, follow that method and certify accordingly in the certificate of analysis given by the analyst.

Supply of results of analysis

37. The Chief Health Officer, upon demand made in that behalf, shall supply a copy of the result of an analysis of an article carried out under this Act by an officer of the Department of Health to the person from whom that article was taken or otherwise obtained under section 28 or to the manufacturer, packer or importer or agent of the manufacturer of that article or the agent in Queensland of that agent.

Prohibition of use of result of analysis for certain purposes

38. A person who for the purposes of any trade or advertisement uses in whole or in part the result of an analysis made for the purposes of this Act commits an offence against this Act.

Maximum penalty—20 penalty units.

Power of delegation

39.(1) The Minister or the Chief Health Officer, with the approval of the Minister, may, either generally or otherwise as provided by the instrument of delegation, by signed writing, delegate—

- (a) to a person; or
- (b) to the holder of an office specifying its title but not the name of the holder for the time being;

all or any of his or her powers, authorities, functions and duties under this Act except this power of delegation.

(2) A power, authority, function or duty so delegated, if exercised or discharged by the delegate, shall be exercised or discharged in accordance with the instrument of delegation.

(3) A delegation may be made subject to such terms or limitations as the Minister or the Chief Health Officer thinks fit including a requirement that the delegate shall report to him or her upon the exercise or discharge of the delegated power, authority, function or duty.

(4) The Minister or the Chief Health Officer may make such and so many delegations of the same power, authority, function or duty and to such number of persons or holders of offices as the Minister or Chief Health

Officer considers necessary or desirable.

(5) The Minister, or the Chief Health Officer with the approval of the Minister, may at any time revoke a delegation given under this section.

(6) A delegation does not prevent the exercise of a power or authority or the discharge of a function or duty by the Minister or the Chief Health Officer.

Secrecy

40.(1) Save as provided by subsection (2), a person shall not—

- (a) disclose information; or
- (b) publish a document or part of a document;

obtained by the person in connection with the administration of this Act unless the disclosure or publication is made—

- (c) with the consent of the person from whom the information or document was obtained; or
- (d) in connection with the administration of this Act; or
- (e) by or with the prior approval of the Minister or the Chief Health Officer; or
- (f) for the purposes of a proceeding under or arising out of this Act or a report of such proceeding.

Maximum penalty—40 penalty units.

(2) Any authorised officer or other person who is so authorised by the Chief Health Officer generally or in a particular case may communicate information that comes to the officer's knowledge in the exercise of the officer's powers or authorities or the discharge of the officer's functions or duties under this Act to an officer or authority administering a corresponding law or to such Commonwealth department or authority as the Chief Health Officer specifies.

PART 6—MISCELLANEOUS PROVISIONS

Defence in respect of food for export

41. It is a defence to a charge of an offence defined in section 9, 10, 11, 16 or 18 or in regulations containing the requirements specified in section 19 for the defendant to prove that—

- (a) the food in respect of which the charge is brought is to be exported to another country; and
- (b) the sale, preparation, packing and labelling of the food complies with the laws in force in the country to which the food is exported at the time at which it is exported.

Liability of defendant for certain costs and expenses

42.(1) Save as is otherwise expressly provided by this Act, a person who is convicted of an offence against this Act or who is charged with an offence against this Act of which the person is found guilty or to which the person pleads guilty and in respect of which a conviction is not recorded is liable, in addition to a penalty and costs in respect of the taking of proceedings for the offence, for the payment of the costs and expenses incurred in or in connection with the examination, seizure, analysis, destruction or other disposal of any article in respect of which the proceedings are taken and the court, upon the conviction or other determination of the proceedings as aforesaid, shall make an order accordingly.

(2) Costs and expenses ordered to be paid by the court under subsection (1) shall be deemed to form part of the costs of and incidental to the proceedings and shall be recoverable in the same manner as those costs are recoverable.

Power of court to order forfeiture

43.(1) A court—

- (a) that convicts a person of an offence against this Act; or
- (b) before which a person is charged with an offence against this Act of which the person is found guilty or to which the person pleads

guilty and in respect of which a conviction is not recorded;
may order that—

- (c) the article by means of or in relation to which the offence was committed; or
- (d) any similar article belonging to and found in the possession of the defendant at the time of the commission of the offence;

be forfeited to Her Majesty.

(2) Subject to subsection (3), a court, in addition to exercising the powers conferred upon it by subsection (1), may, upon the application of an authorised officer and such notice as the court determines being given to such persons as the court determines, order that any article seized or any article of a nature similar to that of an article seized by that officer under this Act found with the article so seized be forfeited to Her Majesty.

(3) A court is not empowered to order forfeiture of an article under subsection (2) unless it is satisfied that the article is one by means of or in relation to which this Act is or has been contravened.

(4) Every article forfeited to Her Majesty under this Act shall be disposed of in the manner determined by the Minister.

Offences generally and penalty

44.(1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

(2) A person who—

- (a) fails to do that which the person is directed or required to do; or
- (b) does that which the person is forbidden to do;

by a person acting under the authority of this Act commits an offence against this Act.

(3) Save where a specific penalty is otherwise prescribed, a person who commits an offence against this Act is liable to a penalty of 40 penalty units.

(4) Where, on a conviction for an offence against this Act in respect of food, the court is of the opinion that—

- (a) the food has been so adulterated as to be injurious to health; or

- (b) the offence was committed wilfully or by the culpable negligence of the defendant;

the defendant is liable to a penalty of 100 penalty units which, in the court's discretion, may be in addition to or in substitution for any other penalty imposed by this Act for the offence in question.

Proceedings for offences

45.(1) Save where it is otherwise expressly provided, a prosecution for an offence against this Act—

- (a) shall be taken by way of summary proceedings under the *Justices Act 1886* within 12 months after the offence is committed or within 12 months after the commission of the offence first comes to the knowledge of the complainant, whichever period is the later to expire;
- (b) may be instituted by the Chief Health Officer or, in an appropriate case, the local government of the area in which the offence is committed or an authorised officer or by a person authorised in writing in that behalf by the Minister or the Chief Health Officer or that local government.

(2) The summons in a prosecution for an offence against this Act in which an analyst's certificate is used shall be made returnable not less than 14 days after the date on which it is served.

(2A) A copy of the analyst's certificate proposed to be used by the prosecution shall be served with the summons.

(2B) An endorsement on the analyst's certificate that a copy of it was duly served with the summons shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that service.

(3) A prosecution for an offence against this Act in respect of food taken or otherwise obtained for analysis under section 28 shall be instituted not later than 90 days after the day on which the food was so taken or otherwise obtained.

(4) Notwithstanding this Act or any other Act, in a proceeding on a complaint under this Act, the court may make an order on any matter within its jurisdiction though no application or complaint is made in respect of that

matter.

(5) Penalties recovered in respect of offences against this Act shall—

- (a) where the penalty has been recovered upon the complaint of a local government or its authorised officer or other person authorised by it—be paid into the general fund of the local government; and
- (b) in any other case—be paid into the Consolidated Fund.

Analyst's certificate to be evidence

46.(1) Where in respect of a proceeding for an offence against this Act a copy of a certificate of analysis—

- (a) if obtained on behalf of the prosecution—is served with the summons; or
- (b) if obtained on behalf of the defendant—is given to the prosecutor at least 3 days before the return day;

the certificate, a copy of which has been so served or given purporting to be signed by an analyst shall, on its production in the proceeding, be sufficient evidence of the matters set forth therein unless an order is made in accordance with subsection (2).

(2) Where a certificate to which subsection (1) applies is produced or it is proposed to produce such a certificate, the court, where it is satisfied, whether upon an application or by other means, that in the circumstances of the case the analyst who issued the certificate should be called as a witness in the proceeding, may order that the analyst be called as a witness by the party who produces or proposes to produce the certificate and for that purpose may grant any necessary adjournment.

(2A) An order made under subsection (2) may provide that the analyst be called in the stead of production by the party of the certificate in question.

(3) Where an order is made under subsection (2), the court shall adopt such procedure as to it seems just and equitable to enable the analyst to be called and to be examined by the parties irrespective of the stage reached in the proceeding.

Independent analysis

47. Where, in a proceeding under this Act for an offence in respect of food a sample of which has been taken or otherwise obtained under this Act, there is disagreement between the evidence of the analyst for the prosecution and that of the analyst for the defence, the court shall, on the application of a party to the proceeding and may, if it thinks fit, without such application having been made, order that the authorised officer concerned deliver up or send in such manner as the court determines the part or parts of any sample retained under section 29 to an independent analyst for analysis or to the analyst for the prosecution and the analyst for the defence for joint analysis.

Protection of information and reports

48. In a proceeding for an offence against this Act—

- (a) a witness on behalf of the prosecution shall not be compelled to disclose the fact that the witness received information, the nature of the information received or the name of the person who furnished the information;
- (b) an authorised officer shall not be compelled to produce a report made or received by the officer in the officer's official capacity or containing confidential information.

Probative effect of second contravention etc.

49.(1) Where, upon the hearing of a charge of an offence against a provision of this Act, it is shown that any person so charged has previously been prosecuted in respect of a contravention of or failure to comply with this Act or the *Health Act 1937* in any similar (though not necessarily identical) respect occurring within a period of 3 years before the contravention or failure to comply to which the charge relates, it shall be deemed that the contravention or failure to comply to which the charge relates has occurred with the knowledge and approval of that person unless the person proves—

- (a) that the contravention or failure to comply to which the charge relates was due to the act or default of a person over whom the person had no control; and

(b) that the person exercised due diligence to ensure that the contravention or failure to comply to which the charge relates did not occur.

(2) In the application of subsection (1), it is immaterial that upon a prosecution in respect of a contravention or failure to comply occurring within the period of 3 years referred to in that subsection the defendant was not convicted for any reason other than that the contravention or failure to comply had not been proved.

(3) Where, in connection with a charge of an offence against a provision of this Act, it is intended to make reference to a prosecution of any defendant in respect of a contravention of or failure to comply with this Act or the *Health Act 1937* occurring within the period of 3 years referred to in subsection (1), a notice of intention to make such reference shall be served with the summons to answer the charge.

(3A) An endorsement on a copy of a notice under subsection (3) that the notice was duly served with the summons shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that service and, if the defendant to whom the notice relates is not present in person before the court, it may take account of the prosecution to which the notice relates as if the defendant had appeared and admitted it.

(4) Where proof of a contravention of or failure to comply with this Act or the *Health Act 1937* occurring on an occasion within a period of 3 years referred to in subsection (1) depends upon an analysis of any article and there exists a certificate of such analysis, a copy of such certificate may be served with the summons to answer the charge to which that occasion is relevant, whereupon its service may be evidenced as provided by section 45(2), and section 46 shall apply in respect of the certificate.

Liability for offence by employee

50.(1) Where a person commits an offence against this Act as an employee, then, without derogating from section 7 of the Criminal Code, the employer of that person shall be deemed to have committed the offence and, notwithstanding section 23 of the Criminal Code or any other rule of law or practice, to be criminally responsible for the act or omission concerned therein and may be charged with the offence and punished accordingly.

(1A) It is immaterial that the offence was committed without the authority of or contrary to the instructions of the employer.

(2) A person is not liable to be convicted of an offence against this Act committed by the person as an employee if the person satisfies the court that the offence was committed while the business of the person's employer was being conducted under the personal superintendence of that employer or of a manager or any other representative of that employer and that the offence was committed with the knowledge of that employer, manager or representative.

(3) Save as provided by subsection (2), this section applies so as not to prejudice liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

Liability for offence by body corporate

51.(1) Where a body corporate commits an offence against this Act then, without derogating from section 7 of the Criminal Code, each of the following persons shall be deemed to have committed the offence and, notwithstanding section 23 of the Criminal Code or any other rule of law or practice, to be criminally responsible for the act or omission concerned therein and may be charged with the offence and punished accordingly—

- (a) the person who at the time the offence is committed was the chairperson of directors, managing director or other governing officer by whatever name called or other member of the governing body thereof by whatever name called;
- (b) every person who at the time the offence is committed manages or acts or takes part in the management, administration or government of the business in Queensland thereof.

(2) This section applies so as not to limit or affect in any way the liability of a body corporate to be proceeded against and punished for an offence against this Act committed by it.

(3) It is a defence to a charge for an offence against this Act brought against a person specified in subsection (1)(a) or (b) to prove that the offence was committed without that person's consent or connivance and that the person exercised due diligence to prevent the commission of the offence.

Right of defendant to have third person before court

52.(1) A defendant charged with an offence against this Act who alleges that the contravention or failure to comply constituting the offence was due to the act or default of another person may, upon compliance with this section, have that other person brought before the court by which the proceeding is to be heard and determined.

(2) A defendant who desires to invoke this section—

- (a) shall give to the complainant and the court, at least 10 days before the return day of the summons in question, notice in writing of the person's intention to do so; and
- (b) shall make a complaint before a justice of the allegations against the other person; and
- (c) shall forthwith file in the court the complaint so made.

(3) The court shall thereupon issue a summons directed to the other person requiring the other person to appear before the court on the date and at the time and place specified in the summons and where that date is not the return date of the original summons in the proceeding shall enter necessary adjournments and notify the parties accordingly.

(3A) A copy of the complaint made under subsection (2) shall be served with the summons issued by the court on that complaint together with copies of such other documents filed in the proceeding as the court determines.

(4) On the hearing of the complaints—

- (a) the original complainant or the complainant's counsel or solicitor as well as the other person who the defendant has alleged committed the offence—
 - (i) may cross-examine the defendant if the defendant gives evidence and any witness called by the defendant; and
 - (ii) may call evidence in rebuttal;
- (b) the court—
 - (i) may convict the other person if the contravention of or failure to comply with this Act is proved and the original defendant satisfies the court that the contravention or failure

to comply was due to the act or default of that other person;
and

- (ii) shall dismiss the complaint against the original defendant and discharge the original defendant, if in addition the original defendant satisfies the court that the original defendant has exercised due diligence to ensure compliance with the provisions of this Act in question; and
- (iii) may make such orders as to costs of the proceeding or any step therein as it thinks fit.

(5) Where it appears to the Chief Health Officer that an offence against this Act has been committed in respect of which some person may be charged and the Chief Health Officer is reasonably satisfied that—

- (a) the offence was due to the act or default of some other person;
and
- (b) the first mentioned person could successfully defend a proceeding in respect of the offence by invoking this section;

the Chief Health Officer may cause to be instituted proceedings against that other person for that offence without proceedings first being instituted against the first mentioned person.

(6) In a proceeding in accordance with subsection (5) that other person may be charged with the offence with which the first mentioned person might have been charged and, on proof that the offence was due to the act or default of that other person, the other person may be convicted of the offence.

Protection against liability

53.(1) Any act, matter, thing, recommendation or decision done or made by or any agreement, arrangement or contract entered into by—

- (a) the Minister; or
- (b) the Chief Health Officer; or
- (c) a local government; or
- (d) any authorised officer or other officer; or
- (e) an analyst; or

- (f) a person acting with the authority of the Minister, the Chief Health Officer, a local government, any authorised officer or other officer or an analyst;

for the purpose of carrying out or giving effect to this Act or done in good faith and purporting to be for the purposes of this Act shall not subject them or any of them or the Crown to any action, liability, claim or demand.

(2) Any cost or expense reasonably incurred by a person acting or purporting to act in a manner referred to in subsection (1) shall be deemed to be a cost or an expense authorised by or under this Act.

Mode of service of documents

54. Any notice, requisition, order or other writing under this Act required or authorised to be given to or served on a person shall be duly given or served if—

- (a) it is served personally on the person to whom it is directed;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (d) where it is addressed to the owner or occupier of premises, it is left with some adult person on the premises or, if there is no such person on the premises—it or a true copy of it is fixed on some conspicuous part of the premises;
- (e) where it is addressed to the Chief Health Officer or a local government, it is left with some person at the office of the Chief Health Officer or, as the case may be, local government or forwarded by post to the Chief Health Officer or, as the case may be, local government.

Evidentiary provisions

55.(1) In a proceeding for the purposes of this Act—

- (a) it shall not be necessary to prove the appointment of the Chief

Health Officer or other officer or the authority of an authorised officer or analyst or his or her authority to do an act, take a proceeding or give any direction or order;

- (b) a signature purporting to be that of the Chief Health Officer or other officer or an authorised officer or analyst shall be taken to be the signature it purports to be, until the contrary is proved;
- (c) a document purporting to be a copy of any licence, registration, permit, approval, certificate, order, notice or authority under this Act shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of that licence, registration, permit, approval, certificate, order, notice or authority;
- (d) a document purporting to be signed by the Chief Health Officer, or, as the case requires, the chief executive officer of a local government stating that at a specified time or during a specified period there was or was not in force any licence, registration, permit, approval, certificate, order, notice or authority under this Act as described in the document granted or given to a specified person or in respect of a specified thing and that such licence, registration, permit, approval, certificate, order, notice or authority was or was not subject to the terms, conditions or restrictions set out in the document shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that document;
- (e) a certificate purporting to be signed by a person authorised to grant it shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;
- (f) a certificate purporting to be signed by the Chief Health Officer, or, as the case requires, the chief executive officer of a local government certifying as to the receipt or otherwise of any notice, application or payment or that any amount of fees or other moneys specified in the certificate is payable under this Act by a specified person and has not been paid shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;

Food Act 1981

- (g) a certificate or document relating to a motor vehicle purporting to be issued under the *Transport Infrastructure (Roads) Act 1991* shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate or document and that the person named therein as the person in whose name the motor vehicle is registered was the person using the motor vehicle at the material time or during the material period;
- (h) an allegation or averment in a complaint—
- (i) that a place is or that any act, matter or thing was done or omitted within a specified district;
 - (ii) that any person, premises or other place, vehicle or appliance was or was not or were or were not at any material time licensed, registered, authorised or approved under this Act;
 - (iii) that food was prepared or packed by a specified person;
 - (iv) that a specified substance is or is not food within the meaning of this Act;
 - (v) that any licence, registration, permit, approval, certificate or authority required under this Act to be obtained was not duly obtained by the person required to obtain it;
 - (vi) of the date on which the commission of an offence against this Act came to the knowledge of the complainant;
- shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that allegation or averment;
- (i)—
- (i) a sale of food shall be evidence, until the contrary is proved, that the food was sold for human consumption;
 - (ii) the finding of food in any premises or other place or vehicle used for selling or packing, storing, handling, serving, supplying or conveying for sale food shall be evidence, until the contrary is proved, that the food so found was intended for sale for human consumption;
 - (iii) the finding of food in any premises or other place or vehicle used for the preparation for sale of food shall be evidence,

until the contrary is proved, that the food so found was intended to be used in the preparation for sale of food;

- (iv) the obtaining of a sample of food under this Act with the intention that it be submitted for analysis shall be evidence, until the contrary is proved, that the food of which a sample was so obtained was food for human consumption;
- (j) the onus of proof that food was not sold, prepared for sale, conveyed or intended for sale for human consumption is upon the person charged with the offence;
- (k) in respect of food comprising a sample taken or otherwise obtained for submission for analysis, each of the parts into which that food is divided shall be taken to be of uniform composition with the other such parts, until the contrary is proved.

(2) This section does not prejudice or in any way affect other means of proving the elements of an alleged offence.

Orders in council

56. Section 28A of the *Acts Interpretation Act 1954* shall apply with respect to orders in council made for the purposes of this Act and, for the purposes of such application, that section shall be read and construed as if references to regulations were references to orders in council made for the purposes of this Act.

Regulations

57.(1) The Governor in Council may make regulations not inconsistent with this Act for or with respect to all matters and things that are necessary or convenient for the administration of this Act or for carrying this Act into effect.

(2) The power to regulate includes the power to prohibit.

(3) Regulations may be made to apply generally throughout the State or within any locality in the State or with respect to any class of person, matter or thing to apply generally or to be of such limited application as is indicated therein.

(4) The regulations—

- (a) may provide that in cases specified therein, whether on conditions so specified or unconditionally, persons, acts, articles, matters or things or a class of persons, acts, articles, matters or things may be exempted from the provisions of the regulations either wholly or to such extent as is so specified;
- (b) may adopt wholly or partly and specifically or by reference and with any alteration, amendment, modification or variation any of the standards, rules, codes, specifications or methods of any association, body or institution whether as in force or recommended at the time of adoption or as amended from time to time;
- (c) may provide for the approval of the Chief Health Officer to be the standard to be applicable in respect of a particular matter or thing;
- (d) may confer powers or authorities or impose functions or duties in connection with the regulations on a government department, public authority or local government, owners or occupiers of premises or other places or appliances, or owners or operators of vehicles or other persons.

(5) Without limiting the generality of the power conferred upon the Governor in Council by subsection (1), regulations may be made with respect to the matters and things set forth in the Schedule 2.

(6) The Chief Health Officer may cause to be published codes of practice in connection with matters and things that may be made the subject of regulations for the purpose of giving advice and guidance to persons responsible for compliance with those regulations and may alter, amend, modify or vary such codes.

Authorisation of certain officers

58.(1) To remove any doubt, it is declared that section 24(1) (as in force before the commencement of section 29 of the *Health Legislation Amendment Act 1992*) was not limited by section 24(2) or (3) as so in force.

(2) An authorisation in force under section 24(2) immediately before the commencement of section 29 of the *Health Legislation Amendment Act 1992* is, from that commencement, taken to be an authorisation under section 24(2) as in force after that commencement.

SCHEDULE 2

SUBJECT MATTER FOR REGULATIONS

section 57

1. The powers, authorities, functions and duties of persons engaged in the administration of this Act.
2. The qualifications of authorised officers, analysts and other officers and persons and the means by which qualifications of any person are assessed, whether by examination or otherwise.
3. The licensing by the Chief Health Officer or a local government of persons for specified purposes.
4. The registration by the Chief Health Officer or a local government of premises or other places, vehicles or appliances for specified purposes; the inspection of premises or other places, vehicles or appliances in respect of which registration has been granted or is sought.
5. Applications for and the grant, issue, revocation, cancellation, suspension or surrender of licences, registrations, permits, approvals, certificates and authorities under this Act and transfers, renewals and duplicates thereof; the terms and conditions on which licences, registrations, permits, approvals, certificates and authorities may be granted, issued, revoked, cancelled, suspended, surrendered, transferred or renewed; the records to be kept in relation thereto.
6. The prescription of standards for the nature, substance, composition, strength, weight, quantity, purity or quality of food generally or food of a specified class or description or of any ingredient or component part thereof or for the nature or proportion of any substance that may be mixed with or used in the preparation or preservation thereof; the variations (if any) from standards.
7. The prohibition of the addition to, mixture with or use in the preparation of or presence in food generally or food of a specified class or description of a specified substance or a specified substance exceeding a prescribed quantity or proportion.

SCHEDULE 2 (continued)

8. The prescription of the quantity or proportion of a specified substance that is to be the quantity or proportion or the maximum or minimum quantity or proportion that shall or may be added to, mixed with or used in the preparation of or present in food generally or food of a specified class or description.

9. The prohibition in the sale or the preparation, packing, storing, handling, serving, supplying or conveying for sale of food generally or food of a specified class or description of the use of any appliances, articles or materials containing a specified substance or a specified substance exceeding a prescribed quantity or proportion.

10. The prescription or prohibition of specified modes of the preparation of food generally or food of a specified class or description.

11. The prescription of the temperature at which food generally or food of a specified class or description that is prepared, stored, displayed, exposed or conveyed for sale shall be kept.

12. The prohibition of the sale of food generally or food of a specified class or description containing any micro-organism or a micro-organism of a specified kind or a micro-organism of a specified kind in excess of a specified number in a specified quantity.

13. The provision for and prescription of all matters and things for or with respect to securing the wholesomeness and purity of food and the conditions and practices in connection with the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food and without limiting the generality of this provision for or with respect to—

- (a) the cleanliness of premises or other places, vehicles or appliances in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale and fittings, fixtures or appliances in, at or on such premises or other places, vehicles or appliances;
- (b) the provision and proper use of satisfactory facilities for the protection of food in, at or on premises or other places, vehicles or appliances in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
- (c) the design and construction of premises or other places, vehicles,

SCHEDULE 2 (continued)

- appliances, fittings or fixtures used for or in connection with the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food;
- (d) the prohibition or regulation of the use of specified materials or materials of a specified class in the manufacture of appliances, fittings or fixtures;
 - (e) the clothing to be worn by persons attending appliances or in, at or on premises or other places or vehicles in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
 - (f) the standards of cleanliness and hygiene to be maintained;
 - (g) preventing or minimising the spread of disease;
 - (h) the provision and use of appliances, fittings or fixtures;
 - (i) prescribing standards for appliances, fittings or fixtures and requiring appliances, fittings or fixtures of specified kinds to be approved by the Chief Health Officer; specifying the procedure for obtaining such approval;
 - (j) the inspection and testing of appliances, fittings or fixtures and the inspection of premises or other places or vehicles in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
 - (k) the provision and maintenance of an adequate water supply and drainage, sewerage, lighting and ventilation facilities in premises or other places, vehicles or appliances in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale.
- 14.** The provision for and prescription of all matters and things for or with respect to food vending machines and without limiting the generality of this provision for or with respect to—
- (a) the location, surroundings and cleanliness thereof;
 - (b) the mode of construction thereof with particular reference to the provision of means for maintaining cleanliness and operating

SCHEDULE 2 (continued)

- temperatures;
- (c) maintenance and servicing thereof and the keeping of records in relation thereto;
 - (d) marking on or affixing thereto operating instructions, evidence of the currency of registration thereof and the name and address or other particulars of the person who receives or shares in the proceeds of the sale of food therefrom;
 - (e) requiring labels or other writings containing specified words, statements, expressions or specified pictorial representations or designs to be affixed thereto or prohibiting the use in such labels or other writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or representations or designs of a similar or other specified nature;
 - (f) regulation and control of the temperature of food contained therein;
 - (g) the prevention of the adulteration or contamination of food contained therein;
 - (h) the inspection thereof and of their contents;
 - (i) the prohibition of the operation thereof and rendering them inoperable whilst in a faulty condition;
 - (j) the prohibition or regulation of the sale or supply therefrom of goods other than food or food of any class or description with food of another class or description;
 - (k) the prohibition or regulation of the use thereof for dispensing food other than food that they are designed to dispense;
 - (l) generally, the control and use thereof.

15. Regulation and control and where necessary prohibition and restriction of advertisements relating to food generally or food of a specified class or description; requiring advertisements to contain specified words, statements, expressions or specified pictorial representations or designs or prohibiting the use therein of specified words, statements or expressions or

SCHEDULE 2 (continued)

words, statements or expressions having the same or a similar effect or pictorial representations or designs of a similar or other specified nature or of statements, claims, designs, devices or abbreviations of a specified nature.

16. The prescription of the mode of labelling food generally or food of a specified class or description or packages of food generally or of food of a specified class or description; the forms or kinds of labels; the matter to be contained in labels including specified words, statements, expressions, pictorial representations or designs of a specified kind; the size, style or colour of any such matter or the nature or colour of the background on which it appears; requiring labels that are specified to be written on or attached to food or to packages of food; prohibition generally as to the matter to be contained in labels and without limiting the generality of this provision of the use on labels of specified words, statements or expressions or of words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a similar or other specified nature; requiring that where food generally or food of a specified class or description that is not in a package is displayed for sale it shall be displayed in conjunction with a label bearing such matter as is prescribed.

17. The provision for and requirements with respect to the seizure, recall, destruction, denaturation or disposal of food that has become damaged, deteriorated, impoverished, contaminated or perished to such degree as is specified or of food of a specified class or description; specifying the circumstances in which food shall be destroyed or denatured.

18. The prescription of modes of making containers, wrappers or other packages or packing materials for food so as to avoid contact with injurious substances; the substances or materials that shall not be used in making containers, wrappers or other packages or packing materials; the minimum size of and the packing required for an article not being food that will be enclosed in a container, wrapper or other package; provision for the requirement that specified food be packed in a specified manner; prohibition of specified modes of packing food.

19. The provision for and requirements as to writings containing specified words, statements or expressions or words, statements or expressions having the same or a similar effect or specified pictorial

SCHEDULE 2 (continued)

representations or designs to be affixed to premises or other places, vehicles or appliances used in selling or preparing, packing, storing, handling, serving, supplying or conveying for sale food or food of a specified class or description; prohibition of the use in such writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a similar or other specified nature.

20. The prescription of methods of analysis to be observed in analyses under or for the purposes of this Act.

21. The prescription of methods for taking or otherwise obtaining samples for the purposes of this Act and dealing with samples so taken or otherwise obtained; the rates of the payments to be made for samples taken or otherwise obtained for the purposes of this Act; the number of samples to be so taken or otherwise obtained in specified cases.

22. The signing, giving, serving and enforcement of notices for or with respect to the rectification of acts or omissions that constitute a contravention of or failure to comply with this Act.

23. The books and records to be kept by the proprietor, manager or person in charge of any premises or other place, vehicle or appliance in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale.

24. The conveyance, storage, distribution, inspection and sale of food of a specified class or description.

25. Securing the purity of water used in the preparation of food or in any process in connection with such preparation.

26. The provision for premises or other places, vehicles, appliances, methods, processes, packages, seals or closures and sources of water used in connection with the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food to be approved by the Chief Health Officer and requirements to that effect.

27. Fees, charges, allowances, costs and expenses payable or to be paid under or for the purposes of this Act and the fixing thereof; matters and things in respect of which they are payable or to be paid; methods of collection thereof; manner, time and place of payment thereof; persons by

SCHEDULE 2 (continued)

whom and to whom they are payable; all matters with respect to the recovery thereof.

28. The forms to be used for the purposes of this Act and the particular purposes for which those forms shall respectively be used.

29. The provision for and requirements as to laboratory and testing facilities to be provided in, at or on premises or other places or vehicles where food is prepared for sale and prescription of procedures and facilities to be used for the examination of food and notification to persons prescribed of the results thereof.

30. Penalties that may be imposed for contravention of or failure to comply with the regulations, not exceeding in each case 50 penalty units.

31. The manner in which any application, recommendation, report, order, notice, requisition or other document may be proved for any purpose.

32. All matters required or permitted by or under this Act to be prescribed where the manner of prescription is not specified.

ENDNOTES

1 Index to Endnotes

	Page
2 Date to which amendments incorporated	61
3 List of legislation	61
4 List of annotations	62
5 Table of changed names and titles	64
6 Table of changed citations and remade laws	65
7 Table of obsolete and redundant provisions	65
8 Table of corrected minor errors	65
9 Table of renumbered provisions	66

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 5 May 1994. Future amendments of the Food Act 1981 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation

Food Act 1981 No. 44

date of assent 12 June 1981

s 22 not yet proclaimed into force

remaining provisions commenced 1 July 1982 (proc pubd Gaz 26 June 1982
p 1640)

as amended by—

Food Act and Health Act Amendment Act 1984 No. 22 Pt 2

date of assent 22 March 1984

commenced on date of assent

Food Act Amendment Act 1989 No. 72

date of assent 24 August 1989

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 Sch

date of assent 25 October 1989

commenced on date of assent (see s 2(1))

Health Act and Food Act Amendment Act 1990 No. 59 Pt 3

date of assent 18 September 1990

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 s 3 Sch 2

date of assent 17 December 1991

commenced on date of assent (see s 2)

Health Legislation Amendment Act 1992 No. 66 Pts 1, 5, Sch 1

date of assent 7 December 1992

ss1–2 commenced on date of assent

remaining provisions commenced 18 December 1992 (1992 SL No. 450)

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Arrangement

s 3 om 1991 No. 97 s 3 Sch 2

Amendments and savings

s 4 om 1991 No. 97 s 3 Sch 2

Interpretations 5 def “**article**” amd 1992 No. 66 s 28(2)def “**authorised officer**” sub 1992 No. 66 s 28(3)def “**Chief Health Officer**” ins 1992 No. 66 s 28(1)def “**Local Authority**” om 1992 No. 66 s 28(4)

def “**Minister**” om 1991 No. 97 s 3 Sch 2
def “**person**” om 1991 No. 97 s 3 Sch 2
def “**Regional Health Authority**” ins 1992 No. 66 s 28(1)

Prohibition on sale of certain food

s 9 amd 1992 No. 66 s 33 Sch 1

Prohibition on preparation for sale of certain food

s 10 amd 1992 No. 66 s 33 Sch 1

Prohibition on packing for sale of certain food

s 11 amd 1992 No. 66 s 33 Sch 1

Protection for purchasers of food

s 12 amd 1992 No. 66 s 33 Sch 1

Sale of food not complying with prescribed standard

s 13 amd 1992 No. 66 s 33 Sch 1

False packing or labelling of food

s 14 amd 1992 No. 66 s 33 Sch 1

False advertising

s 15 amd 1992 No. 66 s 33 Sch 1

Prohibition on dispatch of certain food

s 16 amd 1992 No. 66 s 33 Sch 1

Prohibition of cultivation and the like of food in certain circumstances

s 20 amd 1992 No. 66 s 33 Sch 1

Powers with respect to unclean food store, food vehicle or appliance

s 21 amd 1992 No. 66 s 33 Sch 1

Authorised officers

s 24 amd 1991 No. 97 s 3 Sch 2
 sub 1992 No. 66 s 29

Duty of local government

s 26 amd 1990 No. 59 s 3.2

Duty of police officers

s 28A ins 1989 No. 72 s 3

Offences with respect to authorised officers and articles

s 30 amd 1984 No. 22 s 4; 1989 No. 103 s 3 Sch; 1992 No. 66 s 33 Sch 1

Remedy in respect of articles seized

s 33 amd 1984 No. 22 s 5; 1992 No. 66 s 30

Liability for costs and expenses of storage or destruction or other disposal of seized article

s 35 amd 1984 No. 22 s 6; 1992 No. 66 s 31

Prohibition of use of result of analysis for certain purposes

s 38 amd 1992 No. 66 s 33 Sch 1

Secrecy

s 40 amd 1992 No. 66 s 33 Sch 1

Liability of defendant for certain costs and expenses

s 42 amd 1984 No. 22 s 7

Offences generally and penalty

s 44 amd 1992 No. 66 s 33 Sch 1

Proceedings for offences

s 45 amd 1984 No. 22 s 8

Liability for offence by employee

s 50 amd 1984 No. 22 s 9

Liability for offence by body corporate

s 51 amd 1984 No. 22 s 10; 1989 No. 103 s 3 Sch

Regulations

s 57 amd 1984 No. 22 s 11

Authorisation of certain officers

s 58 ins 1992 No. 66 s 32

FIRST SCHEDULE—AMENDMENTS OF THE HEALTH ACT 1937–1980

om 1991 No. 97 s 3 Sch 2

SCHEDULE 2—SUBJECT MATTER FOR REGULATIONS

amd 1992 No. 66 s 33 Sch 1

5 Table of changed names and titlesTABLE OF CHANGED NAMES AND TITLES
under the Reprints Act 1992 ss 23 and 23A

Old	New	Reference provision
by-law (of a local authority)	local law (of a local government)	Local Government Act 1993 s 755(1)(1)
clerk (of a local authority)	chief executive officer (of a local government)	Local Government Act 1993 s 755(1)(j)
Consolidated Revenue Fund	Consolidated Fund	Financial Administration and Audit Act 1977 s 112
Director-General (of Health and Medical Services)	Chief Health Officer (Department of Health)	Health Services Act 1991 s 7.4
local authority	local government	Local Government Act 1993 s 755(1)(a)

member (of the police force)	police officer	Police Service Administration Act 1990 s 11.1(1)(c) (see also s 1.4)
ordinance (of a local authority)	local law (of a local government)	Local Government Act 1993 s 755(1)(1)

6 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Main Roads Act 1920	Transport Infrastructure (Roads) Act 1991	—

7 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
references to Queensland implied	Acts Interpretation Act 1954 s 35
definitions to be read in context	Acts Interpretation Act 1954 s 32A

8 Table of corrected minor errors

TABLE OF CORRECTED MINOR ERRORS under the Reprints Act 1992 s 44

Provision	Description
Schedule 2 12	om 'or a micro-organism or a micro-organism of a' ins 'or a micro-organism of a'

9 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

Previous	Renumbered as
2(1) (2nd sentence)	2(1A)
17(2) (2nd sentence)	17(3)
19(1) (2nd sentence)	19(1A)
21(5)(a)	21(5)
21(5)(b)	21(5A)
21(5)(b)(i)	21(5A)(a)
21(5)(b)(ii)	21(5A)(b)
21(5)(b)(iii)	21(5A)(c)
21(5)(c)	21(5B)
21(5)(c) (2nd sentence)	21(5C)
22(1) (2nd sentence)	22(1A)
22(4) (2nd sentence)	22(4A)
26(1) (2nd sentence)	26(1A)
28(2)(a)	28(2)
28(2)(b)	28(2A)
28(2)(b)(i)	28(2A)(a)
28(2)(b)(ii)	28(2A)(b)
28(2)(c)	28(2B)
28(2)(c)(i)	28(2B)(a)
28(2)(c)(ii)	28(2B)(b)
28(2)(d)	28(2C)
33(4) (2nd sentence)	33(4A)
35 (1st sentence)	35(1)
35 (2nd sentence)	35(2)
36(6) (2nd sentence)	36(6A)
45(2) (2nd sentence)	45(2A)
45(2) (3rd sentence)	45(2B)
46(2) (2nd sentence)	46(2A)
49(3) (2nd sentence)	49(3A)
50(1) (2nd sentence)	50(1A)
52(3) (2nd sentence)	52(3A)