Food Amendment (Regulation Reform) Act 2009
No. 42 of 2009

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Food Amendment (Regulation Reform) Act 2009†

No. 42 of 2009

[Assented to 5 August 2009]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purpose of this Act is to amend the Food Act 1984 to—

(a) achieve greater consistency and accountability in the governance of the food regulatory system by—
(i) articulating the respective roles and responsibilities of the different regulators; and

(ii) enshrining a statutory role for the Department of Human Services of providing guidance and leadership to councils in relation to the regulation of food businesses; and

(iii) mandating the collection and publication of data relating to the regulation of food businesses; and

(b) better target regulatory requirements to food safety risk; and

(c) facilitate enforcement of the Act by providing more flexible regulatory mechanisms.

2 Commencement

(1) This Act (except Parts 2, 3 and 4) comes into operation on the day after the day on which this Act receives the Royal Assent.

(2) Subject to subsection (5), Part 2 comes into operation on a day or days to be proclaimed.

(3) Subject to subsection (6), Part 3 comes into operation on a day or days to be proclaimed.

(4) Subject to subsection (7), Part 4 comes into operation on a day to be proclaimed.

(5) If a provision referred to in subsection (2) does not come into operation before 1 July 2010, it comes into operation on that date.

(6) If a provision referred to in subsection (3) does not come into operation before 1 March 2011, it comes into operation on that date.
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Part 1—Preliminary

(7) If Part 4 does not come into operation before 1 July 2011, it comes into operation on that date.
PART 2—GENERAL AMENDMENTS

3 Definitions

In section 4(1) of the Food Act 1984—

(a) in the definition of authorized officer, for paragraph (e) substitute—

"(e) in relation to a food premises on land that is not part of a municipal district, the Secretary; or";

(b) omit the definition of declared premises;

(c) omit the definition of food safety program audit;

(d) for the definition of food safety program template substitute—

"food safety program template means a written document that contains a set of instructions to enable the proprietor of a food business to create a food safety program that complies with section 19D;";

(e) in the definition of registration authority for "sections 35 and 36" substitute "section 35";

(f) in the definition of standard food safety program for "19DC" substitute "19DC(1)";

(g) insert the following definitions—

"chief executive officer, of a council, means the person appointed by the council to be its chief executive officer or any person acting in that position;"
Part 2—General Amendments

Director of Consumer Affairs means the person who, for the time being, is employed as Director of Consumer Affairs Victoria under the Public Administration Act 2004;

food safety assessment has the meaning given by section 19HA(1);

food safety audit has the meaning given by section 19HA(2);

mobile food premises means a food premises that is a vehicle;

non-standard food safety program means a food safety program that is not a standard food safety program;

QA food safety program has the meaning given by section 19DD(2);

temporary food premises means a food premises that is—

(a) a tent, stall or other structure that is not permanently fixed to a site; or

(b) a permanent structure not owned or leased by the food business that operates the premises and in which food is handled for sale or from which food is sold by that business on an occasional basis only;".

4 Reference to proprietors of premises

In section 4F of the Food Act 1984 omit "declared premises,".
5  New section 4H inserted

After section 4G of the Food Act 1984 insert—

"4H  Reference in Food Standards Code to appropriate enforcement agency

For the purposes of any provision of this Act which applies the Food Standards Code, a reference in Standard 3.1.1 of that code to an appropriate enforcement agency is taken to be a reference to the registration authority."

6  Application of Act to primary food production

In section 6A(2) of the Food Act 1984 for "sections 19 and 19B" substitute "Part III".

7  New Part IA inserted

After Part I of the Food Act 1984 insert—

"PART IA—ADMINISTRATION AND REPORTING

7A  Role of councils

The role of a council under this Act is to—

(a) carry out the powers and functions vested in it under this Act in accordance with the requirements of this Act;

(b) promote the objectives of this Act;

(c) cooperate with other councils and the Department in relation to the administration of this Act;

(d) ensure, to the extent appropriate, that the administration of this Act by the council is consistent with the administration of this Act throughout Victoria by other councils."
7B Role of Department

The role of the Department under this Act is to—

(a) facilitate the exercise of the powers and functions of the Secretary under this Act;

(b) promote the objects of this Act and the consistent administration of this Act by providing information and guidance to councils, authorized officers and food safety auditors;

(c) publish an annual report on food regulation.

7C Annual report on food regulation

(1) For each calendar year the Department must publish an annual report on food regulation.

(2) The annual report must contain the following information—

(a) statistics relating to the registration of food premises under this Act by the Secretary and each council including—

(i) the number of newly registered food premises;

(ii) the number of food premises for which registration was renewed;

(iii) the number of registrations under each class of registration;

(iv) the number of food premises for which registration under this Act was revoked or suspended;

(b) statistics relating to the analysis of food samples submitted by each council under section 32;
(c) statistics relating to the enforcement action taken by the Secretary and each council under this Act including—

(i) the number and nature of infringement notices issued;

(ii) the number of prosecutions and the nature of the alleged offences;

(iii) the number of cases that resulted in either a conviction or a finding of guilt;

(iv) the nature of any sentences or other orders imposed by the court;

(d) a copy of any direction given by the Minister under section 7E and the action taken by councils in response to the direction.

7D Information required to be provided by councils

(1) The Secretary may, by notice published in the Government Gazette, declare—

(a) the information that a council is required to provide to the Department relating to the administration of this Act; and

(b) the intervals at which the information is required to be provided; and

(c) the format or manner in which the information is required to be provided.

(2) Before making a declaration under subsection (1), or making a substantial amendment to the declaration, the Secretary must consult with a body that represents local government.
(3) A council must comply with a declaration made under subsection (1).

7E Direction by the Minister

(1) The Minister may give a written direction to a council, or the chief executive officer of the council, in relation to any matter concerning the administration of this Act by the council.

(2) The Minister may give a written direction to a class of councils, or each chief executive officer of a class of councils, in relation to any matter concerning the administration of this Act by the councils.

(3) The Minister may only give a direction under this section if the Minister considers that the direction—

(a) is in the public interest; and

(b) will promote the objectives of this Act or the consistent administration of this Act.

(4) A direction under subsection (1) must not be given in relation to the decision under this Act by a council or an authorized officer with respect to a particular food premises or a particular proprietor.

(5) Unless the Minister considers that a direction is required as a matter of urgency, before giving a direction under this section, the Minister must ensure that—

(a) if the direction is to be given under subsection (1), the council or the chief executive officer has been provided with a draft of the direction and been given an opportunity to comment; or
(b) if the direction is to be given under subsection (2), either—

(i) each council or chief executive officer has been provided with a draft of the direction and been given an opportunity to comment; or

(ii) a body that represents local government has been provided with a draft of the direction and been given an opportunity to comment.

(6) If a council, or the chief executive officer of a council, is given a direction under subsection (1), a copy of the direction must be published in the annual report required to be published by the council under section 131 of the Local Government Act 1989.

8 Compliance with Food Standards Code

After the penalty at the foot of section 16(1) of the Food Act 1984 insert—

"Note

Under section 37, a person complies with the requirements of the Food Standards Code relating to notification if an application for the registration of a food premises is made, or notification of its operation is given, in accordance with Part VI.".
9 Part III substituted

For Part III of the Food Act 1984 substitute—

"PART III—ORDERS

19 Orders relating to food premises

(1) This section applies if the relevant authority is satisfied from the report of an authorized officer that—

(a) a food premises is in an unclean or unsanitary condition or in a state of disrepair; or

(b) food being prepared, sold or otherwise handled at a food premises is unsafe or unsuitable; or

(c) food is prepared, sold or otherwise handled at a food premises in a manner that makes it likely the food is unsafe or unsuitable.

(2) The relevant authority may by written order direct that, within a specified time, either or both of the following things must be done—

(a) the food premises must be put into a clean and sanitary condition or be altered or improved to the satisfaction of an authorized officer;

(b) specified steps must be taken to ensure that food prepared, sold or otherwise handled at the food premises is safe and suitable.

(3) The relevant authority may in an order made under subsection (2) or in a subsequent written order direct that until the matters referred to in subsection (2) are complied with—
(a) the food premises must not be kept or used for the sale, or the handling for sale, of any food; or

(b) the food premises must not be kept or used for the preparation of food; or

(c) the food premises must not be used for a specified purpose or for the use of any specified equipment or a specified process.

(4) If an order under this section includes a direction under subsection (3)(a) or (3)(b)—

(a) in any case—

(i) the relevant authority may direct that a copy of the order be affixed to a conspicuous part of the premises in such a manner that the order can be read by a member of the public from outside the premises; and

(ii) the relevant authority may, by notice published in a newspaper or by any other means, inform the general public that the order has been made and the terms of the order;

(b) if the relevant authority is a council or a chief executive officer, the relevant authority must notify the Department of the making of the order;

(c) if the relevant authority is not the registration authority for the premises, the relevant authority must notify the registration authority of—

(i) the making of the order; and
(ii) any appeal made under section 19BA against the order and the outcome of the appeal.

Note
Under section 43(2) the record of registration maintained by the registration authority in respect of a food premises must include the details of any order in force under this section that includes a direction under subsection (3)(a) or (b) in relation to the premises.

(5) An order under this section takes effect—
(a) when it is given to or served on the proprietor of the food premises; or
(b) if the name and address of the proprietor is unknown, when it is affixed to the premises.

(6) If satisfied that an order made under this section has been complied with, the relevant authority must—
(a) revoke the order; and
(b) give written notice of the revocation of the order in the same manner in which the order was given or served.

(7) A person must not contravene an order made under this section.
Penalty: 120 penalty units.

(8) A person must not remove the copy of an order affixed to a food premises under subsection (4)(a)(i) while that order remains in force.
Penalty: 60 penalty units.
(9) For the purposes of this section, relevant authority means any one of the following—
   (a) the Secretary;
   (b) the council that is the registration authority for the premises;
   (c) if the premises is a temporary food premises or a mobile food premises, the council of the municipal district in which the premises is being operated;
   (d) the chief executive officer of a council referred to in paragraph (b) or (c).

19A Orders relating to food vending machines and other equipment

(1) This section applies if an authorized officer is satisfied that a food vending machine or other equipment is in an unclean or unsanitary condition, or in a state of disrepair.

(2) The authorized officer may by written order direct that, by a specified time, the food vending machine or other equipment be put into a clean and sanitary condition or be altered or improved to the satisfaction of the authorized officer.

(3) An authorized officer may in an order made under subsection (2) or in a subsequent written order, direct that until the matters referred to in subsection (2) are complied with—
   (a) the food vending machine must not be kept or used for the sale or the storing, serving or supplying for sale of—
      (i) any food; or
      (ii) food specified in the order; or
(b) the equipment must not be used in or in connection with the sale, or the handling for sale, of any food or the cleaning of any other equipment.

(4) If an authorized officer makes an order that includes a direction under subsection (3)(a)(i), the authorized officer—

(a) may affix a copy of the order to a conspicuous part of the machine in such a manner that the order can be read by a member of the public; and

(b) must notify the registration authority of—

(i) the making of the order; and

(ii) any appeal made under section 19BA against the order and the outcome of the appeal.

Note
Under section 43(2), the record of registration maintained by the registration authority in respect of a food vending machine must include the details of any order in force under this section that includes a direction under subsection (3)(a)(i) in relation to the machine.

(5) An order under this section takes effect—

(a) when it is given to or served on the proprietor of the food vending machine or equipment; or

(b) if the name and address of the proprietor is unknown, when it is affixed to a conspicuous part of the machine or equipment.

(6) If satisfied that an order made under this section has been complied with, the authorized officer must—
(a) revoke the order; and
(b) give written notice of the revocation of the order in the same manner in which the order was given or served.

(7) A person must not contravene an order made under this section.
Penalty: 120 penalty units.

(8) A person must not remove the copy of an order affixed to a food vending machine under subsection (4)(a) while that order remains in force.
Penalty: 60 penalty units.

10 Heading to Part IIIA repealed
The heading to Part IIIA of the Food Act 1984 is repealed.

11 Powers with respect to unclean food handlers etc.
(1) For the heading to section 19B of the Food Act 1984 insert—
"Orders relating to food handlers".

(2) Sections 19B(4), 19B(5) and 19B(6) of the Food Act 1984 are repealed.

12 New section 19BA inserted
After section 19B of the Food Act 1984 insert—
"19BA Appeals against orders
(1) Any person who is aggrieved by an order made under this Part may, within 21 days after the order is made, appeal to the Magistrates' Court."
(2) On an appeal under subsection (1), the court must—

(a) reconsider the decision of the person who made the order; and

(b) hear any relevant evidence tendered by—

(i) the person aggrieved; or

(ii) the person who made the order.

(3) If notice of an order has been published under section 19(4)(a)(ii) and the order is varied or revoked by the court, the person who made the order must give notice of the variation or revocation of the order to the general public in the same manner as the original notice.

(4) The costs of, and incidental to, an appeal under subsection (1) are in the discretion of the Magistrates' Court."

13 Part IIIB substituted

For Part IIIB of the Food Act 1984 substitute—

PART IIIB—FOOD SAFETY

Division 1—Classification of food premises

19C Declaration of classes of food premises

(1) The Secretary may, by notice published in the Government Gazette, declare classes of food premises having regard to—

(a) the food handling activities undertaken at the premises and in particular the degree of risk associated with those activities;
(b) the nature of the food business operating from the premises;

(c) any other relevant considerations.

(2) For each declared class of food premises, the Secretary may specify—

(a) whether food premises of that class are required—

(i) to keep the minimum records required under Division 2; or

(ii) to have a food safety program;

(b) whether food premises of that class are required to have a food safety supervisor;

(c) whether food premises of that class are exempt from the requirement under section 39 to be inspected annually.

(3) In addition, for any declared class of food premises required to have a food safety program, the Secretary must specify —

(a) the type of food safety program or types of food safety program that may be used for the premises; and

(b) the requirements for the audit or assessment of the premises as provided in section 19H.

(4) A declaration, or a variation to a declaration, under this section may only be made after the Secretary has complied with section 19CA.
19CA Notice of intention to make or vary declaration of classes of food premises

(1) If the Secretary intends to make or vary a declaration under section 19C, notice of the Secretary's intention must be published in—

(a) the Government Gazette; and

(b) a newspaper circulating generally in Victoria.

(2) The notice must state—

(a) the proposed declaration or variation to the declaration; and

(b) that submissions may be made to the Secretary regarding the proposed declaration or variation within a period of at least 60 days specified in the notice; and

(c) if subsection (4) applies, that the proposed declaration or variation takes effect immediately pending the consideration of submissions by the Secretary.

(3) After considering any submissions made in response to the notice, the Secretary must—

(a) make the declaration or the variation to the declaration as originally notified or with any modifications the Secretary considers necessary; or

(b) state in a notice published in the Government Gazette that the Secretary will not be proceeding with the declaration or variation notified under subsection (2).
(4) If the Secretary is satisfied that there are urgent reasons for making a declaration or variation to a declaration, a notice given under this section may specify that the proposed declaration or variation takes effect immediately.

(5) If subsection (4) applies, the proposed declaration or variation remains in effect for 6 months unless, in the meantime, the Secretary—

(a) makes a declaration under section 19C giving effect to the proposed declaration or variation as originally notified or with modifications; or

(b) gives notice under subsection (3)(b) that the declaration or variation is not proceeding.

Division 2—Minimum record keeping

19CB Minimum record keeping

(1) The Secretary may declare, by notice published in the Government Gazette, the record keeping requirements for food premises that are required by a declaration under section 19C to keep minimum records.

(2) The notice must specify—

(a) the records that must be kept; and

(b) the period for which the records must be kept.

(3) The Secretary may specify in the notice different minimum record keeping requirements for different food premises depending on—
(a) the declared class of food premises to which the premises belong;

(b) the food handling activities undertaken at the premises.

(4) The proprietor of a food premises required to keep minimum records must—

(a) maintain the records as required by the notice, including keeping the records for the duration required in the notice; and

(b) if requested to do so by the registration authority, provide to the registration authority a copy of the records within the time specified in the request.

(5) A failure to comply with subsection (4) is a ground for—

(a) the refusal of the registration, renewal of registration or transfer of registration of the premises;

(b) the revocation or suspension of registration of the premises.

(6) The proprietor of a food premises required to keep minimum records must ensure that the required records are kept at the premises to which they relate.

Penalty: 20 penalty units for a natural person;

100 penalty units for a body corporate.
Division 3—Food safety programs

19D Food safety programs

A food safety program for a food premises is a written document that—

(a) systematically identifies the potential hazards that may be reasonably expected to occur in each food handling operation that is to be, or that is being, conducted at the premises;

(b) specifies where, in a food handling operation, each hazard identified under paragraph (a) can be controlled and the means of control;

(c) provides for the systematic monitoring of those controls;

(d) provides for appropriate corrective action when each hazard identified under paragraph (a) is found not to be under control;

(e) provides for the regular review of the program by the proprietor of the food premises;

(f) provides for appropriate records to be made and kept by the proprietor of the food premises demonstrating action taken in relation to, or in compliance with, the food safety program.

19DB Registration of food safety program templates

(1) The Secretary may register a food safety program template by publishing a notice in the Government Gazette—

(a) stating that the template is registered for use; and
(b) specifying the classes or categories of food businesses in respect of which the template is suitable for use.

(2) The notice must contain sufficient detail to enable the food safety program template to which it refers to be readily identified.

(3) If the Secretary revokes the registration of a food safety program template, any standard food safety program that was created using the template before the template was revoked ceases to be a standard food safety program on the date of expiry of the registration of the premises to which the standard food safety program relates.

19DC Standard food safety programs

(1) A standard food safety program is a food safety program for a food premises that has been created using a registered food safety program template.

(2) The standard food safety program must comply with the following conditions—

(a) the program must be created in accordance with the instructions set out in the food safety program template; and

(b) the food safety program template must be registered under section 19DB as suitable for use in respect of the class or category of food business that is being carried out at, on or from the food premises.

19DD QA food safety program

(1) The Secretary may, by notice published in the Government Gazette, declare that a specified quality assurance system or code

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Part 2—General Amendments

may be used to develop a food safety program.

(2) A QA food safety program is a food safety program for a food premises that has been issued with a certificate by an approved food safety auditor stating that the program—

(a) has been developed—

(i) under a quality assurance system or code specified in a declaration under subsection (1); and

(ii) in accordance with the purpose and terms of that system or code; and

(b) meets all the requirements under section 19D.

(3) A certificate under subsection (2) remains in force for the audit interval applying to the food premises under section 19H.

19E Requirement for food safety program

(1) The proprietor of a food premises required by a declaration under section 19C to have a food safety program must—

(a) ensure that there is a food safety program for the premises that meets the requirements of section 19D;

(b) ensure that the food safety program is of the type permitted by a declaration under section 19C to be used by the premises;

(c) comply with the food safety program;

(d) if requested to do so by the registration authority, provide to the registration authority a copy of the food safety program.
(2) The proprietor of a food premises complies with subsection (1)(a) if the proprietor uses—

(a) a standard food safety program for the premises that complies with section 19DC(2); or

(b) a QA food safety program for the premises.

(3) If a certificate issued by a food safety auditor states that at the date of the audit—

(a) a food safety program for a premises meets the requirements of section 19D; or

(b) a standard food safety program for a premises complies with section 19DC(2)—

the proprietor of the premises is taken to be complying with subsection (1)(a) on that date.

(4) A failure to comply with subsection (1) is a ground for—

(a) the refusal of the registration, renewal of registration or transfer of registration of the premises;

(b) the revocation or suspension of registration of the premises.

19EA Revision of food safety program

(1) This section applies if there is a change in the activities carried out at a food premises required by a declaration under section 19C to have a food safety program.
(2) The proprietor must ensure that the food safety program for the premises is reviewed and, if necessary, revised to enable it to continue to meet the requirements of section 19D.

(3) If the proprietor of a food premises is required under section 38A(6) or 38A(7) to provide a food safety program to the registration authority with an application for registration or transfer of registration, the proprietor must give the registration authority a copy of any significant revision that is made to the food safety program within 14 days after the revision is made.

(4) A failure to comply with subsection (2) or (3) is a ground for—

(a) the refusal of the renewal of the registration of the premises;

(b) the revocation or suspension of registration of the premises.

19F Food safety program must be kept at premises

The proprietor of a food premises required by a declaration under section 19C to have a food safety program must ensure that the food safety program is kept at the premises to which it relates.

Penalty: 20 penalty units for a natural person;

100 penalty units for a body corporate.
Division 4—Food safety supervisors

19G Food safety supervisors

(1) A food safety supervisor is a person who, in relation to a food premises—

(a) knows how to recognise, prevent and alleviate the hazards associated with the handling of food at, or from, that premises; and

(b) has met an appropriate food safety competency standard for premises of the same nature as the premises; and

(c) has the ability and the authority to supervise other people handling food at, or from, the premises and to ensure that that handling is done safely.

(2) In this section, food safety competency standard means a food safety competency standard approved in writing by the Secretary or by a relevant State, national or international statutory or regulatory body.

(3) The regulations may specify who the relevant body is in a particular case or set of circumstances.

19GA Requirement for food safety supervisor

(1) Subject to subsection (2), the proprietor of a food premises required by a declaration under section 19C to have a food safety supervisor must ensure that there is a food safety supervisor for the premises.

(2) A food safety supervisor is not required for a food premises for which a QA food safety program is used that includes competency based or accredited training for staff of the premises.
(3) The food safety supervisor for a premises may be the proprietor of the premises.

(4) A failure to comply with this section is a ground for—

(a) the refusal of the registration, renewal of registration or transfer of registration of the food premises;

(b) the revocation or suspension of registration of the food premises.

19GB Name of supervisor to be provided on request

The proprietor of a food premises that is required under section 19GA(1) to have a food safety supervisor must give the registration authority written details of the name and qualifications of the current food safety supervisor for the premises within 7 days of being asked in writing to do so by the registration authority.

Penalty: 20 penalty units for a natural person;

100 penalty units for a body corporate.

Division 5—Assessment and audit of food premises

19H Assessment and audit requirements for food premises

(1) This section applies if a class of food premises is declared under section 19C and, under the declaration, food premises of that class are required to have a food safety program.
(2) The declaration may specify for each type of food safety program permitted to be used by the food premises—

(a) whether food safety assessments of the food premises are required to be conducted and, if so, the frequency and timing of the assessments;

(b) whether food safety audits of the food premises are required to be conducted and, if so, the frequency and timing of the audits.

(3) The declaration may specify the circumstances in which a food safety assessment may be conducted by a food safety auditor.

(4) For the purposes of subsection (2), the declaration may specify—

(a) default requirements relating to the frequency and timing of the assessments or audits; and

(b) the range of frequencies and intervals that otherwise may be applied by the registration authority for any particular food premises.

(5) In determining the frequency and intervals of the assessments and audits that are to apply to a food premises for the purposes of subsection (4)(b), the registration authority must take into account—

(a) the food safety performance of the food business operating from the premises;

Example

The registration authority may take into account past failures by the proprietor of the food business to comply with food safety programs
or any other relevant requirements of this Act (including the Food Standards Code) or the regulations.

(b) any guidelines issued by the Secretary in a notice published in the Government Gazette for this purpose.

19HA Food safety assessments and food safety audits

(1) A food safety assessment is an assessment of a food premises conducted for the purposes of this Act to determine—

(a) whether the food safety requirements applying to the premises have been complied with; and

(b) in the case of a premises using a standard food safety program, whether the food safety program complies with section 19DC(2).

Note

Under section 19DC(2), a standard food safety program must be created using a food safety program template registered under section 19DB as suitable for the food business being carried out at, on or from the food premises and the food safety program must be created in accordance with the instructions set out in the template.

(2) A food safety audit is an audit of a food premises conducted for the purposes of this Act to determine—

(a) whether the food safety requirements applying to the premises have been complied with; and

(b) whether the food safety program for the premises is adequate.
(3) For the purposes of a food safety assessment or food safety audit conducted under this Division—

(a) the food safety requirements applying to a food premises have been complied with if—

(i) the food safety program for the premises has been complied with during the period covered by the applicable food safety assessment or food safety audit; and

(ii) if relevant, appropriate action has been taken to remedy any deficiencies identified in any previous food safety assessment or food safety audit; and

(iii) the applicable provisions of the Food Safety Standards are being complied with; and

(b) a food safety program is adequate if it meets the requirements specified in section 19D.

19I Requirement for food safety assessment

(1) This section applies to a food premises that is required by a declaration under section 19C to have a food safety assessment conducted.

(2) Subject to section 19J, a food safety assessment of the premises must be conducted by the registration authority as required under section 19H.
(3) A food safety assessment conducted under this section by the registration authority is an inspection for the purposes of this Act.

191A Deficiencies identified in food safety assessment by registration authority

(1) This section applies if the registration authority is of the opinion, after conducting a food safety assessment of a food premises, that—

(a) the food safety requirements applying to the premises have not been complied with; or

(b) in the case of a food premises using a standard food safety program, the food safety program does not comply with section 19DC(2).

(2) Subject to subsection (3), the registration authority must give written notice to the proprietor of the food premises—

(a) stating that opinion and the reasons for the opinion; and

(b) identifying the deficiencies that need to be remedied; and

(c) advising that the deficiencies must be remedied—

(i) in the case where the registration authority is of the opinion that a serious threat to public health exists on the food premises, as soon as practicable; or

(ii) in any other case, within the period specified in the notice.
(3) A notice under subsection (2) is not required if the registration authority has taken other appropriate action in relation to the deficiencies.

Example
The registration authority has made an order under Part III in relation to the deficiencies.

(4) A failure to comply with a notice given by the registration authority under subsection (2) is a ground for—

(a) the refusal of the registration, renewal or registration or transfer of registration of the food premises;

(b) the revocation or suspension of registration of the food premises.

19J Food safety assessment conducted by food safety auditor

(1) This section applies if—

(a) a food premises is required by a declaration made under section 19C to have a food safety assessment conducted; and

(b) under the declaration, the assessment may be conducted by a food safety auditor; and

(c) at the time of the registration of the food premises, the proprietor has elected to have the assessment conducted by a food safety auditor.

(2) The proprietor of the food premises must ensure that a food safety assessment of the premises is conducted as required under section 19H by a food safety auditor.
(3) A failure to comply with subsection (2) is a ground for—

(a) the refusal of the registration, renewal of registration or transfer of registration of the premises;

(b) the revocation or suspension of registration of the premises.

(4) If a food safety auditor is of the opinion, after conducting a food safety assessment of a food premises, that—

(a) the food safety requirements applying to the premises have been complied with; or

(b) in the case of a food premises using a standard food safety program, the food safety program complies with section 19DC(2)—

the auditor must give the proprietor of the premises a certificate confirming that opinion.

19JA Deficiencies identified in food safety assessment by food safety auditor

(1) This section applies if a food safety auditor is of the opinion, after conducting a food safety assessment of a food premises, that—

(a) the food safety requirements applying to the premises have not been complied with; or

(b) in the case of a food premises using a standard food safety program, the food safety program does not comply with section 19DC(2).
(2) The auditor must give written notice to the proprietor of the premises—
   (a) stating that opinion and the reasons for the opinion; and
   (b) identifying the deficiencies that need to be remedied; and
   (c) advising that the deficiencies must be remedied—
      (i) in the case where the auditor is of the opinion that a serious threat to
          public health exists on the food premises, as soon as practicable; or
      (ii) in any other case, within the period specified in the notice.

(3) Within 14 days of the expiry of the period specified in the notice, the food safety auditor must check to see whether the deficiencies have been remedied.

(4) Sections 19M(6), 19M(7) and 19M(8) apply to the assessment as if it were an audit and the reference in section 19M(7)(a) to subsections (2)(b) and (2)(c) of that section were a reference to subsections (2)(b) and (2)(c) of this section.

(5) Despite subsection (4), a certificate given to the proprietor of a food premises in relation to a food safety assessment conducted under this section does not need to address the adequacy of the food safety program for the premises.
19K  Requirement for food safety audit

(1) The proprietor of a food premises that is required by a declaration under section 19C to have a food safety audit conducted must ensure that a food safety audit of the premises is conducted—

(a) as required under section 19H; and

(b) by an approved food safety auditor whose certificate under section 19P states that he or she is competent to conduct an audit of food premises of the class or of a category to which the premises belongs.

(2) A failure to comply with subsection (2) is a ground for—

(a) the refusal of the registration, renewal of registration or transfer of registration of the premises;

(b) the revocation or suspension of registration of the premises.

19L  Certificate of compliance following audit

If a food safety auditor is of the opinion, after conducting a food safety audit of a food premises, that—

(a) the food safety requirements applying to the premises have been complied with; and

(b) the food safety program for the premises is adequate—

the food safety auditor must give the proprietor of the premises a certificate confirming that opinion.
19M Deficiencies identified in food safety audit

(1) This section applies if a food safety auditor is of the opinion, after conducting a food safety audit of a food premises, that—

(a) the food safety requirements applying to the premises have not been complied with; or

(b) the food safety program is not adequate.

(2) Subject to subsections (4) and (7), the auditor must give written notice to the proprietor of the food premises—

(a) stating that opinion and the reasons for the opinion; and

(b) identifying the deficiencies that need to be remedied; and

(c) advising that the deficiencies must be remedied within the time specified in the notice.

(3) Within 14 days of the expiry of the period specified in the notice, the auditor must check to see whether the deficiencies have been remedied.

(4) If—

(a) the food safety audit has been conducted by the registration authority; and

(b) an order has been made under Part III in relation to the deficiencies—

a notice under section (2) is not required to be given but the auditor must within 14 days after the time allowed for compliance with the order check to see whether the deficiencies have been remedied.
(5) If a notice under subsection (2) is given by the registration authority, failure to comply with the notice is a ground for—

(a) the refusal of the registration, renewal or registration or transfer of registration of the food premises;

(b) the revocation or suspension of registration of the food premises.

(6) If a deficiency identified in the audit has been remedied, the auditor must describe the deficiency in any certificate given to the proprietor under subsection (8).

(7) If, in the opinion of the auditor, a particular food safety requirement applying to the premises has not been complied with and it is no longer possible to remedy the deficiency, the auditor—

(a) need not comply with subsections (2)(b) and (c) in relation to the deficiency, but must still comply with section 19N(3) if it is relevant to the deficiency; and

(b) must describe the deficiency in any certificate given to the proprietor under subsection (8) and any notice given to the registration authority under section 19N(4).

(8) If all the deficiencies that could be remedied have been remedied, the auditor must give the proprietor a certificate stating that, despite deficiencies occurring during the audit period—

(a) in the opinion of the auditor, the food safety program for the premises is now adequate; and
(b) any deficiencies relating to the food safety requirements applying to the premises that could be remedied have now been remedied.

19N Food safety auditor to provide certain information to registration authority

(1) This section applies if a food safety assessment or a food safety audit of a food premises has been conducted by a food safety auditor who is not an officer or a member of the staff of the registration authority.

(2) Within 14 days after a certificate is given to the proprietor of the food premises under section 19J, 19L or 19M, the food safety auditor must give a copy of the certificate to the registration authority.

(3) If the auditor is of the opinion—

(a) that the food safety requirements applying to the premises have not been complied with or the food safety program is inadequate or, in the case of a food premises using a standard food safety program, the program does not comply with section 19DC(2); and

(b) the deficiency may lead to a serious risk of food being sold or prepared that is unsafe or unsuitable—

the auditor must notify the registration authority of the risk as soon as practicable, together with details of the notice given to the proprietor under section 19JA(2) or 19M(2) in relation to the deficiency.

(4) If any deficiency has not been remedied within the period allowed under section 19JA(2)(c) or 19M(2)(c), the auditor must
notify the registration authority of the failure to remedy the deficiency—

(a) if the failure to remedy the deficiency may lead to a serious risk of food being sold or prepared that is unsafe or unsuitable, as soon as practicable; or

(b) in any other case, within 14 days after becoming aware of the failure.

19NA Request by registration authority for copy of report prepared by food safety auditor

(1) For the purposes of this Act, the registration authority may request the proprietor of a food premises to provide within 14 days copies of any report prepared by a food safety auditor in relation to the food premises prepared within the previous 4 years.

(2) A failure by the proprietor to comply with the request is a ground for—

(a) the refusal of the registration, renewal or registration or transfer of registration of the food premises;

(b) the revocation or suspension of registration of the food premises.

Division 6—Food safety auditors

19O Only approved auditor may conduct audit

A person must not conduct a food safety audit of a food premises unless he or she is an approved food safety auditor for the class or category of food premises to which the food premises belongs.

Penalty: 40 penalty units.
19P Certification of food safety auditors

(1) A certifying body may certify in writing that a natural person is competent to conduct a food safety audit.

(2) In certifying a person, the certifying body—
   (a) may specify on the certificate that the certification applies to all, or specified, classes or categories of food premises; and
   (b) may impose any conditions on the certification; and
   (c) may specify for how long the certificate remains current.

(3) The Secretary may impose conditions on the certification of a person as an approved food safety auditor whether or not the Secretary is, in relation to the person, the certifying body.

(4) A person who is certified to conduct food safety audits of a class or category of food premises is also competent to conduct a food safety assessment of that class or that category of premises which has a non-standard food safety program.

(5) The certifying body must not certify a person until the person has paid the fee (if any) prescribed in the regulations for a certification.

(6) For the purposes of this section and section 19T, certifying body means—
   (a) the Secretary; or
   (b) any person prescribed by the regulations for the purposes of this section.
19Q **Auditor must comply with conditions of certification**

An approved food safety auditor must comply with any conditions imposed under section 19P(2)(b) or 19P(3) on the certification of the person as a food safety auditor.

Penalty: 40 penalty units.

19R **Offence to impersonate approved auditor**

(1) A person must not directly or indirectly represent that he or she is an approved food safety auditor unless the person is an approved food safety auditor.

Penalty: 40 penalty units.

(2) Without limiting subsection (1), a person represents that he or she is an approved food safety auditor if the person uses or takes the title "approved food safety auditor".

(3) A person must not directly or indirectly represent that he or she is authorised to conduct a food safety audit unless the person is an approved food safety auditor.

Penalty: 40 penalty units.

19S **Conflict of interest**

(1) A person must not conduct a food safety audit of a food premises if the person has written, or assisted in preparing, the food safety program for the premises.

Penalty: 40 penalty units.
(2) A person must not conduct a food safety audit of a food premises if the person is the proprietor, or an employee or officer of the proprietor, of the premises.

Penalty: 40 penalty units.

(3) For the purposes of this section, assisted in preparing does not include advice given by, or on behalf of, the registration authority to assist a proprietor of a food premises comply with this Act.

19T Revocation of approval to act as an auditor

(1) A certifying body may, after giving a person an opportunity to be heard, revoke that person's certification as an approved food safety auditor if satisfied that—

(a) the certification was granted on the basis of fraud, misrepresentation or the concealment of facts; or

(b) the person has failed to comply with any requirement imposed by this Act on approved food safety auditors; or

(c) the person is not sufficiently competent to conduct food safety audits; or

(d) the person has been found guilty of fraudulent conduct in conducting an audit; or

(e) the person has not satisfactorily conducted 2 or more food safety audits.

(2) Despite subsection (1), only the Secretary may revoke the certification of a person who was certified by the Secretary.
19U Audit by council staff

(1) An officer or member of the staff of a council must not conduct, or assist in conducting, a food safety audit of—

(a) any fixed food premises located within that council's municipal district unless the audit is conducted on behalf of the council; or

(b) any temporary food premises or mobile food premises unless the audit is conducted on behalf of a council.

Penalty: 40 penalty units.

(2) If a food safety audit of a food premises is conducted by or on behalf of a council, the proprietor of the food premises must pay to the council the reasonable costs of the audit.

(3) The council may waive or vary the costs of an audit payable under subsection (2) if the council considers that there are special circumstances having regard to criteria fixed by the council.

(4) The council must ensure that the method of determining the reasonable costs of an audit payable under subsection (2) and the criteria fixed under subsection (3) are available for inspection by the public.

Division 7—Miscellaneous

19UA Council fees for assessments

(1) A council may charge a fee for conducting—

(a) a food safety assessment of a food premises other than an assessment required by a declaration under section 19C;
(b) an inspection of a food premises other than an inspection under section 38B(1)(c) or an annual inspection required under section 39.

(2) For the purposes of subsection (1)(a), an assessment is not required by a declaration under section 19C if that assessment is in excess of the default requirements relating to the frequency and timing of assessments referred to in section 19H(4)(a).

Example
A declaration under section 19C specifies that the default requirement for the assessment of a food premises is that an assessment is to be conducted every 12 months. However, after taking into account failures by the business to comply with the Act, the registration authority determines that two assessments are required to be conducted in a 12 month period. In those circumstances, the registration authority may charge a fee for the second assessment conducted in that period but not for the first assessment.

(3) The fee charged—

(a) must be determined with reference to—

(i) the class declared under section 19C applicable to the premises; and

(ii) any guidelines issued by the Secretary; and

(b) must not include any costs of the assessment or inspection that form part of the registration fee payable to the registration authority under Part VI.

(4) In deciding whether to charge the fee, the council must take into consideration the history of compliance by the proprietor in relation to the food premises.
(5) The council must ensure that the method of determining a fee under subsection (3)(a) and the considerations that apply under subsection (4) are available for inspection by the public.

(6) A fee charged under subsection (1) must be paid to the council that has conducted the assessment or inspection.

(7) A failure to pay a fee charged under subsection (1) is a ground for the refusal of the registration, renewal of registration or transfer of registration of the food premises.

19V Exemptions concerning food safety

(1) The Secretary may exempt a proprietor of a food premises, or the proprietors of a class of food premises, from—

(a) the need to have a food safety program, or a food safety program that fully complies with this Act; or

(b) the need to comply with any requirement in a food safety program;

(c) the need to have a food safety supervisor;

(d) the need to be assessed or audited in accordance with this Act;

(e) the need to comply with any other requirements imposed on proprietors by this Part or with any applicable provisions of the Food Safety Standards.

(2) In granting the exemption, the Secretary—

(a) must issue the exemption in writing and, in the case of an exemption applying in relation to a class of food
premises, by notice published in the
Government Gazette; and

(b) must specify the period for which it is
to apply; and

(c) may impose any condition that the
Secretary considers to be appropriate.

(3) The Secretary may vary or revoke an
exemption at any time in the same manner in
which the exemption was granted.

(4) A failure to comply with a condition
imposed under subsection (2)(c) is a ground for—

(a) the refusal of the registration, renewal
of registration or transfer of registration
of the premises;

(b) the revocation or suspension of
registration of the premises.

19W Directions concerning food safety

(1) The Secretary or the registration authority
may direct the proprietor of a food premises
to comply with any requirement under this
Part relating to the premises.

(2) Without limiting subsection (1), a direction
may be given—

(a) to comply with any record keeping
requirements applying to the premises
under section 19CB;

(b) to comply with any specified
requirement in the food safety program
for the premises;

(c) to comply with the staff training
requirements of a QA food safety
program;
(d) to have the premises audited in accordance with this Act.

(3) The Secretary or the registration authority may direct the proprietor of a food premises—

(a) to have staff at the premises undertake training or instruction within a specified time to ensure that the requirements of this Act applying to the premises are met;

(b) to have details of any staff training incorporated into the minimum records required to be kept or food safety program of the premises.

(4) A direction given under this section must be in writing and must allow the proprietor at least 28 days to comply with the direction.

(5) A failure to comply with the direction within the time allowed is a ground for—

(a) the refusal of the registration, renewal of registration or transfer of registration of the premises;

(b) the revocation or suspension of registration of the premises.

14 Analysts

(1) For section 30(2)(a) of the Food Act 1984 substitute—

"(a) may be subject to any conditions specified in the authority including—

(i) a condition limiting the authority to a particular type of analysis;
(ii) a condition limiting the authority to analyses carried out in a particular type of laboratory; and”.

(2) After section 30(7) of the Food Act 1984 insert—

"(8) A person who has been approved for the purposes of the Safe Drinking Water Act 2003 to conduct analyses of samples of drinking water is taken to be authorised under this section to carry out analyses of water for the purposes of this Act subject to any conditions of that approval.

(9) However, a person referred to in subsection (8) is not required to be included in the list of persons required to be maintained by the Secretary under section 30(6).”.

15 New heading of Division 1 of Part VI inserted

After the heading to Part VI of the Food Act 1984 insert—

"Division 1—General".

16 Sections 35, 36 and 37 substituted

For sections 35, 36 and 37 of the Food Act 1984 substitute—

"35 Registration authority

The registration authority for a food premises is—

(a) the council of the municipal district in which the premises is located; or

(b) if the premises is on land that is not part of a municipal district, the Secretary."
35A  Requirement to be registered or to notify registration authority

(1)  The proprietor of a food business must not allow the business to operate from any food premises—

(a)  that is not registered with the registration authority in accordance with Division 3; or

(b)  while the registration of the premises is suspended.

Penalty:  120 penalty units.

(2)  The proprietor of a food premises that is exempt under section 38(1) or (2) from the requirement to be registered must not allow the business to operate from the premises unless the proprietor has given notification to the registration authority of its operation in accordance with Division 2.

Penalty:  120 penalty units.

(3)  If—

(a)  a temporary food premises or mobile food premises is registered with a registration authority in accordance with Division 3; and

(b)  that registration is recognised under section 35B by another registration authority—

the premises is taken to be registered with the other registration authority subject to any conditions that have been imposed on the original registration.
35B Recognition of registration

(1) A council may in writing recognise the registration by another registration authority of a specified temporary food premises or mobile food premises.

(2) A council may recognise the registration by another registration authority or all other registration authorities of—

   (a) a specified class of temporary or mobile food premises; or

   (b) all temporary or mobile food premises.

(3) A recognition under subsection (2) may only be made by a resolution of the council.

(4) The Secretary may in writing recognise—

   (a) the registration by a council of a specified temporary food premises or mobile food premises;

   (b) the registration by a council or all councils of—

      (i) a specified class of temporary or mobile food premises; or

      (ii) all temporary or mobile food premises.

36 Information required to be given to registration authority

(1) Subject to subsection (2), the Secretary may, by notice in the Government Gazette, declare the information and documents that are required to be given to the registration authority by the proprietor of a food business—
(a) when giving notification of the operation of a food premises under this Part; and
(b) when applying for registration or transfer or renewal of registration of a food premises under this Part.

(2) The Secretary may only declare information or documents that are relevant to the registration authority in—

(a) determining to which class declared under section 19C the premises belongs; or
(b) deciding whether the premises must be registered or notified; or
(c) deciding whether or not to accept the notification or to register or transfer or renew the registration of the food premises, as the case may be.

37 Notification requirement of Food Standards Code

The proprietor of a food business is taken to have complied with the requirements of the Food Standards Code relating to notification for a food premises if the proprietor has—

(a) applied for the registration of the food premises or notified the registration authority of an intention to operate the food premises; and
(b) given the registration authority the information and documents required under section 36."
17 Exemption from registration

(1) Before section 38(3) of the Food Act 1984 insert—

"(1) The Secretary may by notice published in the Government Gazette exempt a food premises or a class of food premises from the requirement to be registered under this Part.

(2) A council may by resolution exempt a food premises or a class of food premises, other than a class declared under section 19C, from the requirement to be registered under this Part."

(2) For sections 38(3) and 38(4) of the Food Act 1984 substitute—

"(3) Before a council exempts a class of food premises under subsection (2), the council must consult with the Secretary about the proposed exemption.

(4) An exemption granted under subsection (1) or (2) may be—

(a) subject to any conditions; and

(b) amended, varied or revoked in the same manner in which it was granted.".

18 New Division 2 of Part VI inserted

After section 38 of the Food Act 1984 insert—

"Division 2—Notification of premises exempt from registration

38AA Procedure for notification

(1) This section applies if the proprietor of a food business—

(a) is operating, or intends to operate, from a food premises; and
(b) is of the opinion that the premises is exempt under section 38(1) or (2) from the requirement to be registered.

(2) The proprietor must notify the relevant registration authority of the operation or intended operation of the food premises.

(3) The notification must include any information and be accompanied by any documents required under section 36.

(4) On receipt of the notification, the registration authority must determine whether the premises are exempt from the requirement to be registered.

(5) If the registration authority is not satisfied that the premises are exempt, the registration authority may—
   (a) request further information from the proprietor; or
   (b) advise the proprietor that the premises must be registered.

**38AB Notification fee**

(1) The Secretary may, by notice published in the Government Gazette, declare the maximum fee that may be charged by a registration authority for the receipt of a notification under section 38AA.

(2) The Secretary may under subsection (1) declare a maximum fee that applies in relation to—
   (a) all notifications; or
   (b) notifications made in a specified manner.
(3) The Secretary must not make a declaration under subsection (1) unless—

(a) the Secretary has consulted with a body representing local government; and

(b) a draft of the declaration has been published in the Government Gazette and a newspaper circulating in Victoria for general comment.

(4) A registration authority may fix a fee for the receipt of a notification under section 38AA in accordance with a declaration under subsection (1) but not otherwise.

(5) A person who is required to register a food premises is not required to pay a notification fee in relation to the premises.

19 New heading to Division 3 of Part VI inserted

After section 38AB of the Food Act 1984 insert—

"Division 3—Registration of food premises".

20 Sections 38A, 38B and 39 substituted

For sections 38A, 38B and 39 of the Food Act 1984 substitute—

"38A Information required to accompany application for registration or transfer of registration

(1) This section applies to an application for the registration or transfer of registration of a food premises under this Act.

(2) In addition to the information required under this section, the application must contain the information and be accompanied by the documents required under section 36."
(3) If the application is for a food premises that is required to have a food safety program, the proprietor must state in the application—

(a) whether the food safety program intended to be used for the premises is—

(i) a standard food safety program; or

(ii) a non-standard food safety program; and

(b) if a non-standard food safety program is intended to be used, whether it is a QA food safety program.

(4) If a standard food safety program is intended to be used for the premises, the proprietor must—

(a) state in the application which registered food safety program template has been used to create the food safety program; and

(b) if requested by the registration authority, provide to the registration authority the completed template.

(5) If a QA food safety program is intended to be used for the premises, the proprietor must provide to the registration authority a certificate from a food safety auditor issued under section 19DD.

Note

If the certificate is not available at the time the application is made the registration authority may register the business on a conditional basis under section 38E.
(6) If a non-standard food safety program other than a QA food safety program is intended to be used for the premises, the proprietor must either—

(a) include with the application a copy of the food safety program for the premises for assessment by the registration authority prior to registration; or

(b) unless subsection (7) applies, provide to the registration authority a certificate from a food safety auditor stating that the food safety program for the premises meets the requirements of section 19D.

Note
If the certificate is not available at the time the application is made the registration authority may register the business on a conditional basis under section 38E.

(7) A copy of the food safety program must be included with the application for a food premises to which subsection (6) applies, if the premises is of a class of food premises required by a declaration under section 19C to have a food safety assessment conducted by the registration authority under Part IIIB.

38B Requirements for registration or transferral of registration

(1) Before registering or transferring the registration of a food premises under this Act, the registration authority must—

(a) assess the application and determine to which class of food premises under section 19C the food premises belongs; and
(b) ensure the proprietor has complied with any provisions of section 38A applicable to that class of food premises; and
(c) inspect the premises.

(2) In addition, the registration authority must be satisfied—

(a) if the food safety program intended to be used for the premises is—

(i) a standard food safety program, that the correct template has been used to create the program; or

(ii) a QA food safety program, that a certificate has been issued under section 19DD; or

(iii) any other food safety program, that the food safety program—

(A) has been assessed as adequate by the registration authority; or

(B) has been certified by a food safety auditor as meeting the requirements of section 19D for the premises; and

(b) that all the relevant requirements of this Act with respect to the premises have been complied with.

38C Information required to accompany application for renewal of registration

(1) This section applies to an application for the renewal of registration of a food premises under this Act.
(2) In addition to the information required under this section, the application must contain the information and be accompanied by the documents required under section 36.

(3) If a standard food safety program is used for the premises, the proprietor must state in the application which registered template has been used to create the food safety program.

38D Requirements for renewal of registration

(1) Before renewing the registration of a food premises under this Act, the registration authority must—

   (a) ensure the proprietor has complied with any provisions of section 38C applicable to that class of food premises; and

   (b) if required under section 39, inspect the premises in accordance with that section.

(2) In addition, the registration authority must be satisfied—

   (a) if the food safety program used for the premises is—

      (i) a standard food safety program, that the correct template has been used to create the program; or

      (ii) a QA food safety program, that a certificate issued under section 19DD is in force; or

      (iii) any other food safety program, that, as a result of the most recent audit, the food safety program has been certified by a food safety auditor as meeting the
requirements of section 19D for the premises; and
(b) that any fee for the inspection or assessment of the premises that is due to the registration authority has been paid; and
(c) that all the relevant requirements of this Act with respect to the premises have been complied with; and
(d) that no other ground under Part IIIB for the refusal of the renewal of the registration applies to the food premises.

(3) For the purposes of subsection (2), the registration authority may request copies of any audit reports for the premises.

38E Conditional registration

(1) This section applies if—

(a) in the case of an application for the registration or transfer of registration of a food premises—

(i) the proprietor is required to provide to the registration authority a certificate stating that the food safety program for the premises meets the requirements of section 19D; and

(ii) it is not possible to produce the certificate until after the business has commenced operating from the premises; or

(b) in the case of an application for the renewal of registration of a food premises, the registration authority is satisfied that for reasons beyond the
control of the proprietor of the premises, any certificate required to be given before the expiry of the current registration cannot be obtained before then; or

(c) in the case of an application for the renewal of the registration a food premises which under its current registration is not required to have a food safety program, the registration authority has assessed that, because of a change in the food handling activities at the premises, it is now required to have a food safety program.

(2) If the application otherwise meets the requirements of section 38B or 38D, the registration authority may register the food premises on a conditional basis for a specified period not exceeding the prescribed time limit.

(3) It is a condition of registration under subsection (2) that, within the specified period—

(a) in the case of food premises to which subsection (1)(a) or (1)(b) applies, the required certificate is provided to the registration authority; or

(b) in the case of a food premises to which subsection (1)(c) applies—

(i) a food safety program for the premises has been adopted; and

(ii) the requirements under section 38B that would apply to the food safety program if the application were an application for the registration or the transfer of
registration of food premises have been met.

(4) If the conditions of registration under subsection (3) are met, the registration authority must register the food premises for the balance of the 12 month period commencing when the registration of the premises would otherwise have taken effect.

(5) For the purposes of this section, the prescribed time limit is—

(a) a period of 3 months; or

(b) a longer period declared by the Secretary by notice in the Government Gazette.

38F Change in operation of registered food premises

(1) This section applies if—

(a) a food premises has been registered or the registration of the food premises has been renewed; and

(b) a change to the operation of the food premises occurs after the premises is registered or its registration is renewed.

(2) If the proprietor of the food premises knows that, as result of the change, the premises falls within a higher risk classification, the proprietor must notify the registration authority of the change within 14 days of it occurring.

Penalty: 60 penalty units.

Note

Whether a food premises falls within a higher risk classification is determined in the context of any system used by the Secretary in declaring the classes of food premises under section 19C.
(3) If the classification of the food premises has changed as a result, the registration authority—

(a) must note the change to the classification on the certificate of registration of the food premises; and

(b) may require the proprietor of the food premises to comply with any requirements of this Act that would apply if the proprietor were applying for registration of the food premises under the new classification.

39 Annual inspection of premises by registration authority

(1) This section applies to a food premises that—

(a) is registered under this Act; and

(b) is not of a class which, under the classification under section 19C, is exempt from the requirement to be inspected annually.

(2) The registration authority must carry out an inspection of the premises within 12 months before the registration of the food premises is renewed.

(3) However, the inspection must be carried out within 3 months before the registration of the food premises is renewed if any of the following apply—

(a) the registration authority has reason to believe that the food business or the proprietor has failed to comply with any requirements of this Act, whether or not the failure has occurred in the
municipal district of the registration authority or otherwise;

(b) the registration authority has received complaints about the operation of the premises within the previous 12 months;

(c) as a result of a change to the operation of the food premises since the last registration, the food premises falls within a higher risk classification;

(d) other circumstances exist as specified in guidelines issued by the Secretary by notice published in the Government Gazette in relation to inspections."

21 Registration etc. may be made despite minor defects

In section 39A of the Food Act 1984, for "sections 19C and 39" substitute "sections 38B and 38D".

22 Certificates of registration

After section 40(1) of the Food Act 1984 insert—

"(1A) A certificate of registration for a food premises issued under subsection (1) must specify the class of food premises declared under section 19C to which the premises belongs.".

23 Period for which registration lasts

(1) After section 40C(a) of the Food Act 1984 insert—

"(ab) if subsection (2) applies, for the period for which the registration is renewed or granted; or".
(2) At the end of section 40C of the **Food Act 1984** insert—

"(2) The registration authority may, at the request of the proprietor, grant or renew the registration of a food premises for a period of less than 1 year if satisfied that the food premises is intended to operate on a short-term basis.".

### 24 Revocation or suspension of registration

For section 40D(1)(d) of the **Food Act 1984** substitute—

"(d) the registration authority receives a notice under section 19N; or

(e) a food safety auditor who is an officer or member of the staff of the registration authority has conducted a food safety assessment or a food safety audit and is of the opinion that—

(i) the food safety requirements applying to the premises have not been complied with or the food safety program is inadequate or, in the case of a food premises using a standard food safety program, the program does not comply with section 19DC(2); and

(ii) the deficiency may lead to a serious risk of food being sold or prepared that is unsafe or unsuitable.".

### 25 Registration fees

After section 41A(2)(a) of the **Food Act 1984** insert—

"(ab) may vary according to the class of food premises declared under section 19C to which the premises belongs; and
(ac) may incorporate in whole or part, the costs associated with the assessment and inspection of the premises; and”.

26 Section 43 substituted

For section 43 of the Food Act 1984 substitute—

"43 Records of registration

(1) Each registration authority must maintain records of the prescribed particulars for all registrations and renewals and transfers of registrations made by the registration authority under this Act.

(2) The records must also—

(a) in the case of the registration of a food premises, include the details of any order in force under Part III that includes a direction referred to in section 19(3)(a) or (b) in relation to the food premises;

(b) in the case of the registration of a food vending machine, include the details of any order in force under Part III that includes a direction referred to in section 19A(3)(a)(i) in relation to the food vending machine;

(c) if either paragraph (a) or (b) applies, note any appeal made under section 19BA against the order.

(3) If a person requests information held in the records in relation to a particular food premises, the registration authority must make that information available to the person free of charge.

(4) For the purposes of subsection (3), the records includes any book, database or other record kept by the registration authority.
before the commencement of section 26 of the Food Amendment (Regulation Reform) Act 2009 for the purposes of recording the particulars of registrations made by the registration authority.”.

27 New Part VIIIA inserted

After Part VIII of the Food Act 1984 insert—

"PART VIIIA—PUBLICATION OF CONVICTIONS

53C References to appeal against conviction

In this Part, a reference to an appeal against a conviction includes—

(a) an appeal against the conviction and sentence imposed by a court;

(b) an appeal against the sentence imposed by a court.

53D Register of convictions

(1) The Secretary must keep a register of convictions for offences under this Act or the regulations.

(2) The register may be kept in such form as the Secretary considers appropriate.

(3) Subject to section 53F, the register must include the following information in relation to each conviction recorded in the register—

(a) the name of the person (whether a natural person or otherwise) convicted of the offence;

(b) the trade name and any company name of the food business operating the food premises at which, or in relation to which, the offence was committed;
(c) if known, the relationship between the person convicted of the offence and the food business operating the food premises at which, or in relation to which, the offence was committed;

(d) a description of the offence;

(e) details of the conviction including—

(i) the date of the conviction;

(ii) the decision of the court;

(iii) the name of the court;

(iv) the sentence or any other order imposed (including any forfeiture incurred);

(f) for an offence committed at or in relation to a fixed premises—

(i) the name and address of the premises;

(ii) the municipal district in which the premises is located;

(g) for an offence committed at or in relation to a temporary food premises, mobile food premises or food vending machine—

(i) if the premises are registered in conjunction with a fixed premises, the address of the fixed premises;

(ii) the municipal district in which the offence was committed;

(iii) a description of the premises or machine and any other information that identifies the premises or machine;
(h) the name of the council or public body that prosecuted the offence or on whose behalf the offence was prosecuted.

(4) A conviction of a person must not be recorded in the register unless—

(a) the time allowed for an appeal against the conviction has expired and the person has not lodged an appeal or applied for leave to appeal within that time; or

(b) if an appeal, or an application for leave to appeal, against the conviction has been lodged by the person within the time allowed—

(i) the appeal has been abandoned or dismissed; or

(ii) leave to appeal has been refused; or

(iii) on the hearing of an appeal the court confirms or imposes a conviction.

(5) If subsection (4)(b)(iii) applies, the details of the conviction referred to in subsection (3)(e) are those relating to the conviction confirmed or imposed by the court hearing the appeal.

53E Publication of information on register

(1) The register kept by the Secretary under this Part must be published on an internet website of the Department.

(2) A copy of any information published in the register may be provided on request to a member of the public by the Department.
53F Information that must not be included in register

(1) Information must not be included in the register if—

(a) to do so would contravene a court order suppressing the publication of the information, protecting a natural person's whereabouts or prohibiting the publication of a person's name or address;

(b) the Secretary is satisfied that to do so would be contrary to the purpose of an order under the Family Violence Protection Act 2008 or other similar order under any other law;

(c) to do so would be contrary to any other law prohibiting the publication of certain information without the need for a court order.

Example
Section 534 of the Children, Youth and Families Act 2005.

(2) An address of a food premises that is a private residence must not be included in the register unless the premises is open to the general public for the purpose of selling food.

(3) If the Secretary considers that the inclusion of an address in the register may raise privacy issues in circumstances that are not identified in subsections (1) and (2), the Secretary must consult the Privacy Commissioner and take into account the advice given by the Privacy Commissioner in deciding whether or not to include the address in the register.
(4) In this section, *Privacy Commissioner* has the same meaning as in section 3 of the *Information Privacy Act 2000*.

53G Obtaining information for inclusion in the register

(1) As soon as practicable after a person is convicted by a court for an offence under this Act or the regulations, the relevant council must provide to the Secretary—

(a) a certified extract or other authenticated record of the decision of the court;

(b) advice regarding the time allowed for an appeal against the conviction;

(c) if applicable, the certificate of registration of the food premises at which, or in relation to which, the offence occurred;

(d) any information about that food premises that is kept in the records of registration of the council under section 43;

(e) any other information held by the council that is required to be included in the register of convictions or that is required by the Secretary in deciding what information should be included in the register.

(2) If the person convicted of the offence has not lodged an appeal or applied for leave to appeal against the conviction within the time allowed, the relevant council must inform the Secretary of that fact as soon as practicable after the expiry of the time allowed.
(3) As soon as practicable after an appeal or application for leave to appeal is lodged against the conviction, whether within the time allowed or otherwise, the relevant council must inform the Secretary of that fact and the date, or dates, and at which court the appeal or the application for leave to appeal is to be determined.

(4) As soon as practicable after an appeal or application for leave is determined, the relevant council must inform the Secretary of the outcome of the appeal or application.

(5) The Secretary may obtain information from any council or any person with knowledge of a particular proceeding for the purpose of—

(a) obtaining reliable information to include in the register of convictions; or

(b) verifying information in the register or intended to be included in the register; or

(c) deciding whether information should be included in the register.

(6) For the purposes of this section, the relevant council in relation to the conviction of a person for an offence occurring at, or in relation to, a food premises is—

(a) the council that, at the time of the offence, is the council with which the food premises is registered; or

(b) if the food premises was not registered at the time of the offence, the council that brought the proceeding against the person; or
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(c) if none of the above apply, the council of the municipal district in which the offence occurred.

53H Correction of register

(1) The Secretary must correct any error in information in the register as soon as practicable after becoming aware of the error.

(2) The Secretary may at any time correct any omission from information in the register.

(3) An error or omission may be corrected on the initiative of the Secretary or at the request of any person who is directly affected by the publication of the information.

53I Removal of record of conviction from register

(1) The information relating to a conviction for an offence must be removed from the register of convictions if—

(a) the information has been on the register for 12 consecutive months; or

(b) the Secretary becomes aware that—

(i) leave has been granted to lodge an appeal against the conviction out of time; or

(ii) the conviction or sentencing order has been stayed by a court; or

(c) the removal is otherwise required by this Act or another law.
(2) Information relating to a conviction for an offence that has been removed from the register because of subsection (1)(b) must be re-entered on the register if—

(a) the appeal against the conviction is abandoned or dismissed; or

(b) leave to appeal against the conviction is refused.

(3) If information relating to a conviction for an offence is removed from the register because of subsection (1)(b) and on the hearing of the appeal the court confirms or imposes a conviction for the offence, the information must be re-entered on the register and updated to include any information relating to the outcome of the hearing of the appeal.

(4) If information relating to a conviction for an offence is re-entered on the register under subsection (2) or (3), for the purposes of subsection (1)(a) the 12 months runs from the date the information is re-entered on the register.

(5) Information may be removed from the register under this section on the initiative of the Secretary or at the request of any person who is directly affected by the publication of the information.

53J Additional information

(1) If a food premises is identified in the register as a premises at which, or in relation to which, an offence has been committed and the registration of the food premises is transferred after the offence occurred the Secretary may add information to the register of convictions to indicate that the registration of the premises has been transferred.
(2) Information relating to a food premises may be added to the register under this section on the initiative of the Secretary or at the request of the proprietor of the premises.

__________________

28 Secrecy

(1) For section 54(1)(b) of the Food Act 1984 substitute—

"(b) in accordance with any Act or regulation; or

(ba) in connection with the administration of—

(i) this Act or the regulations; or

(ii) any other Act or regulation that applies to, or regulates, the food premises or the activities at the food premises to which the disclosure relates; or

(bb) to a person or body administering or enforcing—

(i) a corresponding law; or

(ii) a law that relates to the safety or suitability of food; or

(iii) the Aged Care Act 1997 of the Commonwealth; or

(iv) any other law of a State or the Commonwealth prescribed by the regulations; or

(bc) to prevent or lessen a serious threat to public health; or"

(2) In the penalty at the foot of section 54(1) of the Food Act 1984 for "50" substitute "60".
(3) For section 54(2) of the **Food Act 1984 substitute**—

"(2) A person does not commit an offence under subsection (1) if the information or the information contained in the document was publicly available before, or at the time, the information was disclosed or the document was published.".

(4) Section 54(3) of the **Food Act 1984** is repealed.

**29 New section 58A substituted**

For section 58A of the **Food Act 1984 substitute**—

"58A Delegation by council

(1) A council may delegate to one or more of its officers or members of its staff its powers and discretions under Part III (other than its power under section 19(3)), Part IIIB, Part VI and section 46(5).

(2) The refusal by an officer or member of a council's staff to grant, renew or transfer the registration of a food premises is of no effect until it is ratified by the council or the chief executive officer of the council.".

**30 New section 58B inserted**

After section 58A of the **Food Act 1984 insert**—

"58B Matters occurring outside registration area

(1) A registration authority for a temporary food premises or mobile food premises may take action in relation to a thing done or omitted to be done at the food premises regardless of where the thing was done or omitted to be done."
(2) In making a decision under this Act in relation to a temporary food premises or mobile food premises, the registration authority for the food premises may take into account the results of any inspection, assessment or audit conducted, or other action taken, by another registration authority in relation to the premises."

31 Cost recovery in respect of failure to comply with direction or notice

In section 59C(1)(a) of the Food Act 1984 for "section 19 or 19B" substitute "Part III".

32 Heading to Part XII substituted

For the heading to Part XII of the Food Act 1984 substitute—

"PART XII—TRANSITIONAL PROVISIONS FOR FOOD (AMENDMENT) ACT 2001".

33 New Part XIII inserted

After section 63D of the Food Act 1984 insert—

"PART XIII—TRANSITIONAL AND SAVINGS PROVISIONS FOR PART 2 OF THE FOOD AMENDMENT (REGULATION REFORM) ACT 2009"

64 Definitions

In this Part—

*commencement date*, unless stated otherwise, means the date section 13 of the Food Amendment (Regulation Reform) Act 2009 comes into operation;

*unamended Act* means this Act as in force immediately before the commencement date.
65 Minimum record keeping

(1) This section applies if immediately before the commencement date, a food premises meets the requirements under section 19E of the unamended Act relating to a food safety program.

(2) While the food premises continues to meet the requirements under section 19E of the unamended Act and until the registration of the premises is renewed, the proprietor of the food premises is taken to meet any requirement under section 19CB to keep minimum records.

66 Food safety program templates

A food safety program template registered by the Secretary under section 19DB of the unamended Act is taken to be registered under section 19DB.

67 Inspections

(1) If the registration of a food premises under Part VI is renewed after the commencement date, any inspection of the premises under section 19HA or 39(1)(a) of the unamended Act conducted within 12 months before the renewal is taken to be an assessment conducted under Part IIIB.

(2) A notice given to the proprietor of a food premises under section 19HB(1) of the unamended Act is taken to have been given under section 19IA(2).

68 Audits

(1) A food safety program audit conducted for the purposes of Part IIIB of the unamended Act is taken to be a food safety audit conducted for the purposes of Part IIIB.
(2) A certificate issued under section 19L of the unamended Act is taken to have been issued under section 19L.

(3) A certificate issued under section 19M of the unamended Act is taken to have been issued under section 19M.

(4) An advice given to the proprietor of a food premises under section 19M(1) of the unamended Act is taken to have been given under section 19M(2).

(5) A notice given to the registration authority by an auditor under section 19M of the unamended Act is taken to have given under section 19N.

69 Food safety auditors

(1) A certificate issued under section 19P of the unamended Act is taken to have been issued under section 19P.

(2) A reference in section 19T(1)(b) to a requirement imposed by this Act includes any requirement imposed on a food safety auditor by the unamended Act before the commencement date.

70 Registration and notification of food premises

A food premises that, immediately before the commencement date, is registered under Part VI of the unamended Act is taken to be registered under Part VI.

71 Grounds for revocation or suspension of registration or direction by the Secretary

If, immediately before the commencement date, a ground for the revocation or suspension of the premises exists under Part IIIB or section 40D of the unamended
Act and the matter giving rise to that ground has not been dealt with under the unamended Act—

(a) the registration authority may revoke or suspend of the registration of the food premises under Part IIIB or section 40D; or

(b) the Secretary may give a direction under section 40E in relation to the matter.

72 Food (Forms and Registration) Regulations 2005

Regulation 10 of the Food (Forms and Registration) Regulations 2005 applies to section 43(1) as if a reference in that regulation to a register book were a reference to the records required to be kept under section 43.

73 Register of convictions

The Secretary must include in the register of convictions under section 53D a conviction for an offence committed before the date section 27 of the Food Amendment (Regulation Reform) Act 2009 comes into operation if the conviction for the offence is recorded after that date.

74 First declaration under section 19C

Despite section 19C(4), the first declaration made by the Secretary under section 19C—

(a) does not require a notice of intention under section 19CA; and

(b) takes effect on the date specified in the notice under section 19C.
75 Declarations made and exemptions granted before commencement

(1) On the commencement date, the following cease to have effect—

(a) any declaration made under section 19C as in force immediately before that date;

(b) any exemption granted under section 19V as in force immediately before that date.

(2) An exemption granted under section 38(3) as in force immediately before the commencement date remains in force for 4 months after that date unless sooner revoked under section 38(4).

76 Transitional regulations

The Governor in Council may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the Food Amendment (Regulation Reform) Act 2009.
PART 3—AMENDMENTS RELATING TO ENFORCEABLE UNDERTAKINGS, SAMPLING REQUIREMENTS AND INFRINGEMENT OFFENCES

34 New Part IIIA inserted

After section 19BA of the Food Act 1984 insert—

"PART IIIA—UNDERTAKINGS

19BB Secretary may accept undertaking

(1) The Secretary may accept a written undertaking given by a person in connection with a matter relating to a contravention, or alleged contravention, of section 13, 16(3) or 16(4) or any prescribed provision.

(2) The undertaking must specify—

(a) the food premises or food business to which the undertaking relates; and

(b) the action proposed to be taken; and

(c) the timeframe in which the proposed action is to be taken; and

(d) any other relevant matter.

(3) The person may, with the Secretary's consent, withdraw or vary the undertaking at any time.

(4) While the undertaking is in force, a proceeding may not be brought for an offence relating to the matter referred to in subsection (1).

(5) The Secretary may in writing authorise the Director of Consumer Affairs, either generally or for a specific case, to accept an undertaking under this section.
(6) The Secretary may in writing authorise a council, either generally or for a specific case, to accept an undertaking under this section in circumstances where the council is the registration authority for the food premises.

(7) An authorisation given by the Secretary under subsection (6) may be subject to any conditions and limitations imposed by the Secretary.

19BC Consent orders and enforcement of undertaking

(1) The Secretary, with the consent of the person who gave an undertaking, may apply at any time to the Magistrates' Court for an order directing the person to comply with the undertaking.

(2) On an application under subsection (1), the Magistrates' Court may by order direct the person who gave the undertaking to comply with the order.

(3) If the Secretary considers that the person who gave the undertaking has breached any of its terms, the Secretary may apply to the Magistrates' Court for an order under subsection (4).

(4) If the Magistrates' Court is satisfied that the person has breached a term of the undertaking, the Magistrates' Court may make—

   (a) an order that the person comply with the undertaking or take specified action to comply with the undertaking; or

   (b) any other order that the Magistrates' Court considers appropriate.
(5) A person who has accepted an undertaking under the authorisation of the Secretary may exercise the powers and discretions of the Secretary under this section in relation to that undertaking.

35 Duties of analysts

After section 31(a) of the Food Act 1984 insert—

"(b) if the article is a food sample submitted for analysis under section 32(1), include the result of the analysis in a report submitted in accordance with section 32(2); and".

36 New section 31A inserted

After section 31 of the Food Act 1984 insert—

"31A Interstate analysts

(1) A natural person who has been authorised or approved under a corresponding law to carry out analyses for the purposes of that corresponding law (an interstate analyst) is taken to be authorised under section 30 to carry out analyses for the purposes of this Act subject to any conditions of the authorisation under the corresponding law.

(2) However, an interstate analyst is not required to be included in the list of persons required to be maintained by the Secretary under section 30(6).

(3) An analysis of an article by an interstate analyst is not an analysis for the purpose of this Act unless the interstate analyst—

(a) supplies to the person submitting the article a certificate in the prescribed form setting out the result of the analysis; and
(b) if any apparatus to be used or method to be observed has been prescribed, uses that apparatus and observes that method accordingly and declares that this has been done in the certificate; and

(c) if the article is a food sample submitted for analysis under section 32(1), includes the result of the analysis in a report submitted in accordance with section 32(2).

37 Section 32 substituted

For section 32 of the Food Act 1984 substitute—

"32 Councils to submit samples for analysis

(1) Subject to subsection (5), each council must submit food samples for analysis in accordance with any sampling requirement declaration made by the Secretary under section 32A.

(2) An analyst who makes one or more analyses for a council under this section during a reporting period must prepare a report of the number of analyses made for the council during that period and the results of each analysis.

(3) The report must be given to the council and the Secretary as soon as practicable after the end of the reporting period.

(4) For the purposes of subsections (2) and (3), the reporting period is—

(a) the period specified in the sampling requirement declaration, pursuant to which the food samples are submitted for analysis; or

(b) if no period has been specified, each quarter of a year."
(5) The Secretary may in writing exempt a council from compliance with subsection (1) on any terms and conditions including, but not limited to, a requirement that the council must arrange one or more specific surveys to be conducted of food premises within its municipal district.

(6) A food sample submitted for analysis by a council under this section must be a food sample procured under section 22 from food premises registered by the council or from premises which have given notification to the council under this Act, when those premises are in operation.

(7) Sections 23(2), 23(3), 23(4), 23(5) and 55(2) do not apply to a food sample taken for analysis under this section and the results of the analysis is not admissible against a food business in any criminal or civil proceeding other than a proceeding arising in relation to an order made under Part VIII."

**38 New section 32A inserted**

After section 32 of the Food Act 1984 insert—

"32A Sampling requirement declaration

(1) The Secretary may, by notice published in the Government Gazette, make a declaration specifying the sampling and reporting requirements for—

(a) each period, specified in the declaration; or

(b) a specific survey."
Part 3—Amendments Relating to Enforceable Undertakings, Sampling Requirements and Infringement Offences

(2) The declaration may specify—
   
   (a) the number and type of food samples that must be obtained and submitted for analysis by each council for each period or for the survey, as the case may be;
   
   (b) whether the samples may be obtained from any food premises or must be obtained from specified types or classes of food premises;
   
   (c) the manner in which the samples must be analysed;
   
   (d) information that must be provided with the sample to the analyst;
   
   (e) any other matter relevant to the samples;
   
   (f) information that must be included in the report of the results of the analysis given under section 32(2).

(3) A declaration made under subsection (1)(a) may operate concurrently with a declaration made under subsection (1)(b).".

39 New section 56A inserted

After section 56 of the Food Act 1984 insert—

"56A Infringements

(1) An authorized officer may serve an infringement notice on a person that the authorized officer has reason to believe has committed—

   (a) an offence specified in Column 2 of Schedule 1; or
   
   (b) a prescribed offence."
(2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the Infringements Act 2006.

(3) For the purposes of subsection (1), an infringement notice—

(a) must be in the form required by section 13 of the Infringements Act 2006; and

(b) may contain any additional prescribed details.

(4) The infringement penalty for—

(a) an offence specified in Schedule 1, is the amount specified in Column 3 of Schedule 1 opposite that offence; and

(b) a prescribed offence, is the prescribed amount.

40 Payment of penalties

At the end of section 57 of the Food Act 1984 insert—

"(2) If an infringement notice has been issued by a council under this Act, the infringement penalty recovered in relation to the notice is payable to the municipal fund of the council.

(3) For the purposes of this section—

(a) an offence prosecuted by an authorized officer of a council is taken to have been prosecuted by the council; and

(b) an infringement notice issued by an authorized officer of a council is taken to have been issued by the council."."
41 Limitation on power to make local laws

For section 63B(1) of the Food Act 1984 substitute—

"(1) A council must not make a local law under the Local Government Act 1989 for or with respect to—

(a) food safety; or

(b) any matter or thing for or with respect to which—

(i) regulations made under this Act are in force; or

(ii) regulations could be made under this Act; or

(iii) the Food Standards Code has effect.".

42 New Schedule 1 inserted

After the heading "SCHEDULES" in the Food Act 1984 insert—

"SCHEDULE 1

Section 56A

INFRINGEMENTS

<table>
<thead>
<tr>
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<tr>
<td>Item</td>
<td>Offence</td>
<td>Penalty</td>
<td>Summary of offence</td>
</tr>
<tr>
<td>1</td>
<td>An offence against section 16(1) constituted by a failure to comply with the requirements of any of the following</td>
<td>5 penalty units for a natural person; 10 penalty units for a body corporate</td>
<td>Failure to comply with requirement of Food Standards Code relating to food safety practices or general requirements</td>
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Part 3—Amendments Relating to Enforceable Undertakings, Sampling Requirements and Infringement Offences

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<th>Penalty</th>
<th>Summary of offence</th>
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<tbody>
<tr>
<td>2</td>
<td>An offence against section 16(1) constituted by a failure to comply with the requirements of any of the following clauses of Standard 3.2.3 of the Food Standards Code— 4(2), 5(a), 6(a), 6(b), 10(2)(a), 10(2)(b), 5 penalty units for a natural person; 10 penalty units for a body corporate</td>
<td>Failure to comply with requirement of Food Standards Code relating to food premises or equipment</td>
<td></td>
</tr>
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Part 3—Amendments Relating to Enforceable Undertakings, Sampling Requirements and Infringement Offences

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<th>Penalty</th>
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<tr>
<td>10(2)(c), 11(4)(a), 12(2)(b), 12(2)(c), 12(3), 12(4), 13, 14, 15(2)</td>
<td>2 penalty units for a natural person; 3 penalty units for a body corporate</td>
<td>Failure by proprietor to display name on food premises</td>
<td></td>
</tr>
<tr>
<td>3 An offence against section 17</td>
<td>2 penalty units for a natural person; 3 penalty units for a body corporate</td>
<td>Failure to keep minimum records at premises</td>
<td></td>
</tr>
<tr>
<td>4 An offence against section 19CB(6)</td>
<td>2 penalty units for a natural person; 3 penalty units for a body corporate</td>
<td>Failure to keep food safety program at premises</td>
<td></td>
</tr>
<tr>
<td>5 An offence against section 19F</td>
<td>2 penalty units for a natural person; 3 penalty units for a body corporate</td>
<td>Failure to give name and qualifications of food safety supervisor when requested</td>
<td></td>
</tr>
<tr>
<td>6 An offence against section 19GB</td>
<td>2 penalty units for a natural person; 3 penalty units for a body corporate</td>
<td></td>
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### Part 3—Amendments Relating to Enforceable Undertakings, Sampling Requirements and Infringement Offences

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<table>
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<tbody>
<tr>
<td>Item</td>
<td>Offence</td>
<td>Penalty</td>
<td>Operate from a food premises which is not registered</td>
</tr>
<tr>
<td>7</td>
<td>An offence against section 35A(1)</td>
<td>5 penalty units for a natural person; 10 penalty units for a body corporate</td>
<td></td>
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<tr>
<td>8</td>
<td>An offence against section 35A(2)</td>
<td>5 penalty units for a natural person; 10 penalty units for a body corporate</td>
<td>Operate from a food premises exempt from requirement to be registered for which notification has not been given</td>
</tr>
</tbody>
</table>

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s. 42
PART 4—AMENDMENTS RELATING TO SINGLE NOTIFICATION OR REGISTRATION SCHEME

43 Definitions

In section 4(1) of the Food Act 1984—

(a) in the definition of food transport vehicle after "sale" insert "other than a water transport vehicle";

(b) insert the following definitions—

"component, of a food business, means any of the following operated by the business—

(a) a fixed food premises;
(b) a temporary food premises;
(c) a mobile food premises;
(d) a food vending machine;

principal premises, of a food business, has the meaning given by section 43D;

water transport vehicle means a vehicle used by a private water carter to transport water that is intended for human consumption or for purposes connected with human consumption (such as the preparation of food or the making of ice for consumption or for the preservation of unpackaged food) whether or not the water is used for other purposes.".
44 New section 4G substituted

For section 4G of the Food Act 1984 substitute—

"4G Food vending machines deemed to be food premises

For the purposes of this Act a food vending machine is deemed to be a food premises.".

45 Role of councils

After section 7A(d) of the Food Act 1984 insert—

"(e) participate in the state-wide system for the single notification or registration of temporary food premises, mobile food premises or food vending machines.".

46 Annual report on food regulation

After section 7C(2)(a) of the Food Act 1984 insert—

"(ab) statistics relating to the registration of food businesses operating from temporary food premises, mobile food premises or food vending machines;".

47 Audit by council staff

In section 19U(1)(b) of the Food Act 1984 for "or mobile food premises" substitute ", mobile food premises or food vending machine".

48 Registration authority

At the end of section 35 of the Food Act 1984 insert—

"(2) However, for the purposes of Division 4, the registration authority for a temporary food premises, mobile food premises or food vending machine is—
(a) the council of the municipal district
   where—
      (i) the principal premises of the food
      business operating the premises or
      machine is located; or
      (ii) if the principal premises of the
      food business is located interstate,
      the food business first operates in
      Victoria; or
   (b) if paragraph (a) does not apply to any
      council, the Secretary.

Note
The principal premises of a food business is

determined under section 43D.".

49 Section 35A substituted
For section 35A of the Food Act 1984

substitute—

"35A Requirement to be registered or to notify registration authority

(1) The proprietor of a food business must not
allow the business to operate from any food
premises—

(a) that is not registered with the
registration authority—

(i) in the case of a temporary food
premises, mobile food premises or
food vending machine and subject
to subsection (3), in accordance
with Division 4; or

(ii) in the case of a fixed premises that
is the principal premises in
relation to a temporary food
premises, mobile food premises or
food vending machine, in
accordance with Division 3 or 4;

or

(iii) in any other case, in accordance with Division 3; or

(b) while the registration of the premises is suspended.

Penalty: 120 penalty units.

(2) The proprietor of a food premises that is exempt under section 38(1) or (2) from the requirement to be registered must not allow the business to operate from the premises unless the proprietor has given notification to the registration authority of its operation—

(a) in the case of a temporary food premises, mobile food premises or food vending machine and subject to subsection (3), in accordance with Division 4; or

(b) in the case of a fixed premises that is the principal premises in relation to a temporary food premises, mobile food premises or food vending machine, in accordance with Division 2 or 4; or

(c) in any other case, in accordance with Division 2.

Penalty: 120 penalty units.

(3) The Secretary may, in writing, permit the proprietor of a temporary food premises, mobile food premises or food vending machine to register the premises or machine under Division 3 or, if the premises or machine is exempt under section 38(1) or (2) from the requirement to be registered, to give notification of its operation under Division 2.
(4) The Secretary may, by notice published in the Government Gazette, permit each proprietor of a temporary food premises, mobile food premises or food vending machine belonging to a specified class to register the premises or machine under Division 3 or, if the class of premises or machine is exempt under section 38(1) or (2) from the requirement to be registered, to give notification of its operation under Division 2.".

50 Repeal of section 35B

Section 35B of the Food Act 1984 is repealed.

51 Registration etc. may be made despite minor defects

In section 39A of the Food Act 1984, for "and 38D" substitute ", 38D and 43F".

52 Registration fees

After section 41A(2)(ac) of the Food Act 1984 insert—

"(ad) in the case of a registration under Division 4, may vary according to the number and nature of temporary food premises, mobile food premises or food vending machines; and".

53 New Division 4 of Part VI inserted

After section 43A of the Food Act 1984 insert—

"Division 4—Single notification or registration scheme

43B Application of Division to areas of land not within municipal district

In respect of an area of land which is not located within a municipal district, the provisions of this Division apply—
(a) as if a reference to a council were a reference to the Secretary; and

(b) as if a reference to a municipal district were a reference to that area of land.

43C Single notification or registration scheme

(1) The purpose of this Division is to provide for the notification or registration of temporary food premises, mobile food premises or food vending machines.

(2) The receipt of notification or the registration of the components of a food business specified in the notification or application for registration by one council under this Division allows each of those components to operate anywhere in Victoria, subject to any conditions imposed by that council, without the requirement for the operation of the component to be notified to, or the component to be registered with, another council.

(3) Subject to this Division and any exemptions and modifications provided in a declaration issued under section 43E—

(a) Division 2 applies to a component of a food business notified under this Division as if it were notified individually under Division 2; and

(b) Division 3 applies to a component of a food business registered under this Division as if it were registered individually under Division 3.

(4) For the purposes of this Division and section 35(2), a reference to a food business includes a reference to an autonomous division of a food business for which a separate application for registration has been
made, or a separate notification given, in accordance with section 43F(3)(b).

43D Principal premises of food business

(1) For the purposes of sections 35 and 35A, the principal premises of a food business that operates from a temporary or mobile food premises or a food vending machine is the premises—

(a) where, prior to its sale, the food is—

(i) routinely prepared; or

(ii) if not prepared, is routinely stored or otherwise handled; or

(b) if subsection (a) does not apply—

(i) in the case of a food business operating from temporary food premises, where the equipment used at the temporary premises is usually stored; or

(ii) in the case of a food business operating from mobile premises, where the mobile premises are garaged.

(2) If subsection (1) applies to more than one premises, the principal premises is that nominated by the proprietor of the food business as the main place where—

(a) the food is prepared or handled; or

(b) the equipment is stored; or

(c) the mobile premises are garaged—
as the case may be.
(3) If subsection (1) does not apply to any premises, the principal premises is the nominated business address of the food business.

43E Declaration of requirements for notification or registration

(1) The Secretary may, by notice published in the Government Gazette, declare the requirements applying to the notification or registration of the components of a food business under this Division.

(2) The declaration may include requirements applying to the inspection, assessment or audit of the components of a food business registered under this Division.

(3) The declaration may provide for the exemption from, or modification to—

(a) any requirements that apply under section 38B or 38D to an application for registration, transfer of registration or the renewal of registration of a food premises;

(b) any requirements that apply under sections 19C and 39 to the inspection, assessment and audit of a food premises.

(4) A declaration under this section may apply different requirements depending on the activities undertaken by the food businesses at the temporary or mobile food premises or food vending machines.
43F Notification or registration under the single notification or registration scheme

(1) Subject to subsection (2), the proprietor of a food business that operates one or more temporary food premises, mobile food premises or food vending machines, other than a proprietor to whom section 35A(3) or 35A(4) applies, must register the components of the business under this Division.

(2) If all the components of a food business referred to in subsection (1) would, if registered individually, be exempt from the requirement to be registered, the proprietor of the food business other than a proprietor to whom section 35A(3) or 35A(4) applies must give notification of the operation of the components of the business under this Division.

(3) If the food business is divided into autonomous divisions, the proprietor of the food business may register or give notification of the operation of—

(a) the components of the food business under the one application or notification; or

(b) the components of each division of the food business under a separate application or notification for each autonomous division.

Example

A charitable organisation may be subdivided into district branches with each branch preparing and selling food separately. Each branch may register its operation separately under this Division.
(4) For the purposes of subsection (3), a division of a food business is autonomous if the food sold by the business is not ordinarily prepared, stored or handled by any other division of the food business.

(5) In addition to any information or documents required under section 36, the notification or application for the registration or transfer or renewal of registration must include the following information—

(a) the number of temporary food premises, mobile food premises or vending machines being operated or intended to be operated by the food business; and

(b) the location of the principal premises.

(6) Before registering, or transferring or renewing the registration of a component of the food business, the registration authority must be satisfied that the requirements under Division 3 applying to registration of the component, as subject to any exemptions and modifications declared by the Secretary under section 43E, have been met.

(7) The registration authority may register the components of the food business that meet those requirements and refuse to register the components that do not meet them.

43G Certificate of registration

A certificate of registration issued to the proprietor of a food business for the purposes of this Division must be endorsed with—

(a) the address of the principal premises of the business; and
(b) the following details for each component of the business to which the registration applies—

(i) the class of food premises declared under section 19C to which the component belongs;

(ii) any identifying number assigned by the registering council to the component;

(iii) if the component is a mobile food premises, its motor vehicle registration number.

43H Declaration of requirements for statement of trade

(1) The Secretary may, by notice published in the Government Gazette, declare the requirements applying to the lodgement of a statement of trade under section 43I.

(2) The declaration may—

(a) specify the requirements applying to the timeframe in which a statement of trade must be lodged and the information that must be included in the statement; and

(b) exempt the proprietors of specified categories of food businesses from—

(i) the requirement to lodge a statement of trade; or

(ii) any other requirement under section 43I.
(3) The declaration may apply different requirements depending on the activities undertaken by the food business operating from the temporary or mobile food premises or food vending machines.

### 43I Statement of trade

(1) The proprietor of a food business must not allow the business to operate from a temporary food premises, mobile food premises or food vending machine unless a statement of trade has been lodged in accordance with this section with the council of the municipal district in which the premises or machine is being operated.

Penalty: 60 penalty units.

(2) Subsection (1) does not apply to a proprietor who—

(a) is exempt by a declaration under section 43H from the requirement to lodge a statement of trade in respect of the temporary food premises, mobile food premises or food vending machine; or

(b) has been permitted under section 35A(3) or 35A(4) to register the temporary food premises, mobile food premises or food vending machine under Division 3 or notify its operation under Division 2.

(3) A statement of trade must be lodged with the principal council and the council of each municipal district in which the proprietor intends to operate—
(a) within the time specified in the declaration the Secretary under section 43H; or

(b) if a time has not been specified in the declaration, no later than 5 days before the intended commencement of operation in that municipal district.

(4) The statement of trade must contain the following information—

(a) the name of the principal council;

(b) the registration number assigned by the principal council;

(c) the name of the proprietor;

(d) the municipal districts in which the proprietor of the food business intends to operate;

(e) subject to the declaration by the Secretary under section 43H, the following details for each municipal district—

(i) the number of temporary food premises, mobile food premises or vending machines that are to operate in the municipal district;

(ii) the places within the municipal district that the premises or machines are to operate;

(iii) when the premises or machines are to operate;

(iv) any indentifying numbers or other means of identification assigned by the principal council to the premises or machines;
(v) in the case of a mobile food premises, the vehicle registration number of the premises;

(f) any other information specified in the declaration by the Secretary under section 43H.

(5) For the purposes of subsection (1), the proprietor of a food business who operates in a mobile food premises that is a water transport vehicle in a municipal district, is taken to have lodged a statement of trade with the council of that municipal district in respect of that vehicle if the proprietor has notified the council in the previous 12 months that the vehicle would be operating in the municipal district.

(6) In this section, principal council, in relation to a food premises, means the council which has received notification of the operation of the premises or registered the premises."

54 Delegation by council officers

After section 58A(1) of the Food Act 1984 insert—

"(1A) A council may delegate to one or more of its officers or members of staff any of its powers or discretions under Part III in relation to temporary food premises or mobile food premises.".

55 Matters occurring outside registration area

In sections 58B(1) and 58B(2) of the Food Act 1984 for "or mobile food premises" substitute ", mobile food premises or food vending machine".
56 New section Part XIV inserted

After section 76 of the Food Act 1984 insert—

"PART XIV—TRANSITIONAL AND SAVINGS
PROVISIONS FOR PART 4 OF FOOD
AMENDMENT (REGULATION REFORM)
ACT 2009"

77 Definitions

In this Part—

commencement date means the date Part 4 of the Food Amendment (Regulation Reform) Act 2009 comes into operation;

unamended Act means this Act as in force immediately before the commencement date.

78 Temporary food premises, mobile food premises or food vending machine currently registered

(1) This section applies if immediately before the commencement date, a temporary food premises, mobile food premises or food vending machine is registered under Part VI of the unamended Act.

(2) Until that registration expires, the temporary food premises, mobile food premises or food vending machine is taken to be registered under Division 4 of Part VI.

79 Temporary food premises, mobile food premises or food vending machine for which notification has been given

(1) This section applies if immediately before the commencement date, the operation of a temporary food premises, mobile food
Part 4—Amendments Relating to Single Notification or Registration Scheme

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premises or food vending machine has been notified under Part VI of the unamended Act.

(2) Notification of the operation of the temporary food premises, mobile food premises or food vending machine is taken to have been given under Division 4 of Part VI.

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57 Schedule 1

After item 8 of Schedule 1 to the Food Act 1984 insert—

"9 An offence against section 43I(1) 2 penalty units for a natural person; 4 penalty units for a body corporate Failure to lodge a statement of trade".

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s. 57

108
PART 5—REPEAL OF AMENDING ACT

58 Repeal of amending Act

This Act is repealed on 1 July 2012.

Note

The repeal of this Act does not affect the continuing operation of
the amendments made by it (see section 15(1) of the
Interpretation of Legislation Act 1984).
ENDNOTES

† Minister's second reading speech—
Legislative Assembly: 10 June 2009
Legislative Council: 25 June 2009

The long title for the Bill for this Act was "A Bill for an Act to amend the Food Act 1984 to reform the regulatory framework under the Act and for other purposes."