

# TASMANIA

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## FOOD AMENDMENT BILL 2008

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## **FOOD AMENDMENT BILL 2008**

*(Brought in by the Minister for Health and Human Services,  
the Honourable Larissa Tahireh Giddings)*

### **A BILL FOR**

#### **An Act to amend the *Food Act 2003***

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Food Amendment Act 2008*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

#### **3. Principal Act**

In this Act, the *Food Act 2003*\* is referred to as the Principal Act.

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\*No. 8 of 2003

**4. Section 4 amended (Interpretation)**

Section 4(1) of the Principal Act is amended by inserting after the definition of “food business” the following definition:

**“food safety auditor”** means a person approved under Division 1 of Part 6A;

**5. Part 6A inserted**

After section 83 of the Principal Act, the following Part is inserted:

**PART 6A – AUDITING**

***Division 1 – Approval of food safety auditors***

**83A. Approval of food safety auditors**

- (1) The Director of Public Health may approve a natural person to be a food safety auditor for the purposes of this Act if the Director is satisfied that the person is competent to carry out the functions of a food safety auditor having regard to –
  - (a) the person’s technical skills and experience; and
  - (b) any approved guidelines relating to competency criteria.
- (2) A natural person may make an application, in the approved form, to the

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Director of Public Health for approval under this Part.

- (3) The application is to be accompanied by –
  - (a) such information as the Director of Public Health requires to determine the application; and
  - (b) the fee, if any, prescribed by the regulations.
- (4) The Director of Public Health may, after considering an application for approval –
  - (a) grant the application with or without conditions; or
  - (b) refuse the application.
- (5) If the Director of Public Health grants an application for approval, he or she must issue the applicant with a written approval that sets out any conditions to which the approval is subject.
- (6) If the Director of Public Health refuses an application for approval, he or she must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

**83B. Term of approval**

Except during any period of suspension, an approval granted under this Part remains in force for the period specified in the approval unless sooner cancelled.

**83C. Food safety auditor to give notice of certain interests**

- (1) A food safety auditor must notify the Director of Public Health of any direct or indirect interest in any food business that the food safety auditor has as soon as possible after becoming aware of that interest.

Penalty: Fine not exceeding 50 penalty units.

- (2) Payment to a food safety auditor for carrying out the functions of a food safety auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (1).

**83D. Variation of conditions, or suspension or cancellation, of approval of food safety auditor**

- (1) The Director of Public Health may vary the conditions of, or suspend or cancel, an approval under this Part.

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- (2) An approval of a person may be suspended or cancelled on one or more of the following grounds:
- (a) if the Director of Public Health is satisfied that the person has wilfully or negligently contravened any provision of this Act;
  - (b) if the Director of Public Health is satisfied that the person has contravened a condition to which the approval is subject;
  - (c) if the Director of Public Health is satisfied that the person has not competently carried out any duty of a food safety auditor under this Act;
  - (d) if the Director of Public Health is satisfied that the person has a direct or indirect interest in any food business that, in the opinion of the Director, could affect the performance of the person's duties as a food safety auditor under this Act;
  - (e) at the request of the person;
  - (f) for any other reason that the Director of Public Health considers appropriate.

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- (3) Payment to a food safety auditor for performing the duties of a food safety auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (2)(d).
- (4) The Director of Public Health may only vary the conditions of, or suspend or cancel, the approval of a person –
  - (a) after having given the person –
    - (i) written reasons for the Director's intention to vary, suspend or cancel; and
    - (ii) an opportunity to make submissions; and
  - (b) after having considered any submissions made by the person.
- (5) Subsection (4) does not apply to the cancellation of an approval at the request of the person to whom the approval relates.
- (6) A variation of the conditions of, or the suspension or cancellation of, the approval of a person under this Part –
  - (a) must be by notice in writing; and
  - (b) must be served on the person to whom the approval relates; and



- (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

**83E. Review of decisions relating to approvals**

- (1) A person aggrieved by a decision of the Director of Public Health relating to any of the following may apply to the appropriate review body for a review of the decision:
  - (a) the grant or refusal of an application for an approval under this Part;
  - (b) the imposition of conditions on an approval;
  - (c) the variation of conditions of an approval;
  - (d) the suspension or cancellation of an approval.
- (2) A person aggrieved by a decision relating to any of the following may apply to the Director of Public Health for a review of the decision if the decision was made by a body acting under a delegation given by the Director:
  - (a) the grant or refusal of an application for an approval under this Part;

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- (b) the imposition of conditions on an approval;
  - (c) the variation of conditions of an approval;
  - (d) the suspension or cancellation of an approval.
- (3) An application under this section may only be made within 28 days after service of –
- (a) the written approval or notice of refusal under section 83A; or
  - (b) the notice of the variation, suspension or cancellation under section 83D.

***Division 2 – Auditing and reporting requirements***

**83F. Interpretation**

In this Division –

**“appropriate authority”**, in relation to a food business, means the Director of Public Health or the council of the municipal area in which the food business is located.

**83G. Food safety programs and auditing requirements**

- (1) The proprietor of a food business must ensure that any requirement imposed by the regulations in relation to the preparation, implementation, maintenance or monitoring of a food safety program for the food business is complied with.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
  - (b) an individual, a fine not exceeding 500 penalty units.
- (2) The proprietor of a food business must ensure that any food safety program required by the regulations to be prepared in relation to the food business is audited at least as frequently as is determined under section 83H(1), or as redetermined under section 83K, in relation to the food business.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or

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- (b) an individual, a fine not exceeding 500 penalty units.

**83H. Priority classification system and frequency of auditing**

- (1) The appropriate authority must determine –
  - (a) the priority classification of individual food businesses for the purposes of the application of any requirements of the regulations relating to food safety programs; and
  - (b) the frequency of auditing of any food safety programs required by the regulations to be prepared in relation to the food businesses.
- (2) The determination must be made having regard to an approved priority classification system for types of food businesses.
- (3) The appropriate authority must provide written notification to the proprietor of a food business of –
  - (a) the priority classification it has determined for the food business; and

- (b) the frequency of auditing of any food safety programs required by the regulations to be prepared in relation to the food business; and
  - (c) the date by which the food business must have implemented any food safety program required by the regulations to be prepared in relation to the food business.
- (4) The appropriate authority may change the priority classification of an individual food business if the appropriate authority believes that the classification is inappropriate for any reason, including as a result of changes made to the conduct of the food business.
- (5) The appropriate authority must provide written notification to the proprietor of a food business of any change in priority classification of the food business under subsection (4).

### **83I. Duties of food safety auditors**

A food safety auditor has the following duties:

- (a) to carry out audits of any food safety programs required by the regulations to be prepared in relation to food businesses having

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regard to the requirements of the regulations;

- (b) to carry out any necessary follow-up action, including further audits, if necessary, to check if action has been taken to remedy any deficiencies of any such food safety program identified in an audit;
- (c) to carry out assessments of food businesses to ascertain their compliance with requirements of the Food Safety Standards;
- (d) to report in accordance with section 83J.

**83J. Reporting requirements**

- (1) A food safety auditor must report in writing to the appropriate authority the results of any audit or assessment carried out by the food safety auditor for the purposes of this Act.
- (2) A report under subsection (1) must –
  - (a) be in the approved form; and
  - (b) be submitted to the appropriate authority within 21 days after the completion of the audit or assessment; and

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- (c) take account of any action taken before the submission of the report to remedy any deficiency identified by the food safety auditor.
- (3) A food safety auditor must indicate in a report of an audit under subsection (1) –
- (a) whether or not the food safety auditor is of the opinion that the food business is being carried on in compliance with the requirements of the regulations relating to food safety programs; and
  - (b) any such requirements that the food safety auditor is of the opinion are being contravened in relation to the food business and the manner in which they are being contravened.
- (4) A food safety auditor must indicate in a report of an assessment under subsection (1) –
- (a) whether or not the food safety auditor is of the opinion that the food business is being carried on in compliance with the provisions of the Food Safety Standards; and
  - (b) any such provisions that the food safety auditor is of the opinion are being contravened in relation

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to the food business and the manner in which they are being contravened.

(5) A food safety auditor must report any contravention of this Act, the regulations relating to food safety programs, or the Food Safety Standards that comes to the food safety auditor's attention in the course of carrying out an audit or assessment for the purposes of this Act –

(a) that is an imminent and serious risk to the safety of food intended for sale; or

(b) that will cause significant unsuitability of food intended for sale –

as soon as possible but in any event within 24 hours after the contravention comes to the food safety auditor's attention.

(6) A food safety auditor must report in writing to the appropriate authority, giving reasons, if the food safety auditor considers that the priority classification of a food business that has been audited by the food safety auditor should be changed.

(7) A food safety auditor must give a copy of a report provided to the appropriate authority in relation to an audit or



assessment to the proprietor of the food business concerned.

**83K. Redetermination of frequency of auditing**

- (1) A food safety auditor may determine that the audit frequency of a food safety program required by the regulations to be prepared for a food business that has been audited by a food safety auditor be changed from the initial audit frequency applicable to a food business within the relevant priority classification to another audit frequency within the range of audit frequencies appropriate for food businesses within that priority classification, as set out in the priority classification system referred to in section 83H.
- (2) A food safety auditor must have regard to the following matters in making such a determination:
  - (a) the compliance history of the food business concerned in relation to the requirements of the regulations regarding food safety programs and the requirements of the Food Safety Standards;
  - (b) the audit compliance history (if any) established before the commencement of the Food Safety Standards.

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- (3) A food safety auditor must advise the proprietor of the food business concerned of a redetermination made under subsection (1).

**83L. Certificates of authority of food safety auditors**

- (1) The Director of Public Health is to provide each food safety auditor with a certificate of authority as a food safety auditor.
- (2) The certificate of authority must –
- (a) state that it is issued under this Act; and
  - (b) give the name of the person to whom it is issued and bear a photograph of that person and the person's signature; and
  - (c) state the date, if any, on which it expires; and
  - (d) specify any conditions to which the person's approval is subject; and
  - (e) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

**83M. List of food safety auditors to be maintained**

- (1) The Director of Public Health is to prepare and maintain a list of food safety auditors.
- (2) The list is to be made publicly available and is to be revised at least annually.

**83N. Obstructing or impersonating food safety auditors**

- (1) A person must not, without reasonable excuse, resist, obstruct or attempt to obstruct a food safety auditor in the exercise of the food safety auditor's functions under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
  - (b) an individual, a fine not exceeding 500 penalty units.
- (2) A person must not impersonate a food safety auditor.

Penalty: Fine not exceeding 500 penalty units.

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- (3) A person must not assault a food safety auditor in the exercise of the food safety auditor's functions under this Act.

Penalty: Fine not exceeding 500 penalty units.