

TASMANIA

PRIMARY PRODUCE SAFETY BILL 2011

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PRIMARY PRODUCE SAFETY BILL 2011

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Bryan Alexander Green)*

A BILL FOR

**An Act to provide for food safety matters relating to the
production of primary produce and for other purposes**

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Primary Produce
Safety Act 2011*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Object of Act

The objects of this Act include –

- (a) to provide for the application in
Tasmania of the Food Standards Code as

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it relates to primary production activities;
and

- (b) to develop food safety schemes for primary industries that reduce risks to consumers associated with unsafe or unsuitable primary produce; and
- (c) to promote consumer confidence in the safety and integrity of Tasmanian primary produce; and
- (d) to facilitate the trade of Tasmanian primary produce by ensuring it meets national and international food safety standards.

4. Interpretation

- (1) In this Act, unless the contrary intention appears –

“abattoir animal” means an animal that is not living in the wild that is –

- (a) a bovine animal; or
- (b) an equine animal; or
- (c) a sheep, pig, goat or deer; or
- (d) an animal, other than poultry or seafood, that is prescribed by the regulations;

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“accreditation” means an accreditation in force under Part 4 and includes a temporary accreditation;

“accredited producer” means a person holding a valid accreditation under Part 4;

“animal” means any member of the animal kingdom (other than a human), whether alive or dead, including –

- (a) any amphibian, bird, crustacean, fish, insect, mammal, mollusc, and reptile; and
- (b) any egg, embryo, ova or sperm of such a member of the animal kingdom; and
- (c) any carcass or part of any carcass of such a member of the animal kingdom;

“approved food safety auditor” means a food safety auditor approved under Part 11;

“approved food safety program” means a food safety program approved for an accreditation under Part 4;

“audit” includes inspection;

“authorised officer” means a person appointed to be an authorised officer

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under section 35, and includes the Chief Inspector;

“body corporate” includes –

- (a) a body corporate established under a food safety scheme pursuant to section 9; and
- (b) a body corporate established under another enactment or in the exercise of prerogative rights of the Crown to administer or control any department, business, undertaking or public institution on behalf of the State;

“check audit” means an audit referred to in section 56;

“Chief Inspector” means the person appointed to be, or acting in the office of, the Chief Inspector of Primary Produce Safety and includes a body corporate that has been designated any functions and powers of the Chief Inspector under a food safety scheme;

“compliance notice” means a compliance notice referred to in section 48;

“corresponding law” means a law of the Commonwealth or another State or a Territory relating to food safety that corresponds with –

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-
- (a) this Act or an Act repealed by this Act; or
 - (b) the *Food Act 2003*;

“court” means the Magistrates Court;

“dairy primary production” means the production of milk or colostrum for further processing for human consumption and includes the keeping, grazing, feeding and milking of animals and the storage of milk on the premises at which the animals were milked;

“dairy processing” includes the manufacture of dairy products;

“dairy products” includes –

- (a) milk; and
- (b) colostrum; and
- (c) liquid milk products; and
- (d) cream and thickened cream; and
- (e) butter, butter concentrate, buttermilk, concentrated buttermilk, dairy blend, ghee and anhydrous milk fat (butter oil); and
- (f) casein, caseinate and cheese; and
- (g) whey, whey cream and concentrated whey cream; and

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- (h) cultured milk and yoghurt; and
- (i) ice-cream and ice-cream mix; and
- (j) buttermilk powder, lactose powder, milk sugar, powdered milk, skim milk powder, whey powder, milk protein powder and other milk concentrates; and
- (k) any other product prescribed by the regulations;

“dairy transport business” means a business, enterprise or activity involving the collection and transport of milk or colostrum from premises where dairy primary production is carried out to premises where dairy processing is carried out, or the transport of bulk milk or dairy products between premises where dairy processing is carried out;

“diseased” means infected with, or affected by, a condition, or in a state, that is prescribed by the regulations;

“egg” means an egg from any avian (bird) species;

“food” has the same meaning as in the *Food Act 2003*;

“food safety auditor” means a person approved as such under Part 11;

“food safety program” – see Part 10;

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“food safety scheme” – see Part 3;

“Food Standards Code” means the Australia New Zealand Food Standards Code as defined in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth;

“game” means any animal living in the wild but does not include seafood;

“meat” means the whole or any part of the carcass or offal of any slaughtered abattoir animal, poultry or game that is intended for human consumption and is raw, but does not include seafood or a product produced from seafood;

“meat processing” means –

- (a) the slaughter of abattoir animals to produce meat or meat products; and
- (b) the slaughter of poultry to produce meat or meat products; and
- (c) the production of meat or meat products from slaughtered abattoir animals or poultry, or from game slaughtered in the wild; and
- (d) the storage, transportation and packaging of any meat or meat products produced by an activity

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referred to in paragraph (a), (b) or (c); and

- (e) any other activity that is prescribed by the regulations;

“meat product” means a product –

- (a) that wholly or partially is derived from meat; and
- (b) that is intended for human consumption –

and includes any product which complies with paragraphs (a) and (b) and which is partially processed, prepared for further processing or fully processed;

“offal” means the brain, thymus gland, pancreas gland, liver, spleen, kidney, heart, lung, intestine, tongue, blood, head or tail of any slaughtered animal or any part of the body of any slaughtered animal which is removed in the course of dressing the body;

“pet” means any carnivorous animal kept by a person;

“pet food” means any part of, or product that results from the processing of any part of, the body of any animal, being part or product produced for consumption by pets;

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“pet food production” includes the production, storage, transportation and packaging of pet food;

“poultry” means a domesticated bird;

“premises” includes –

- (a) land (whether or not vacant); and
- (b) the whole or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature); and
- (c) a pontoon; and
- (d) a vehicle (other than a food transport vehicle while it is engaged in the transport of food); and
- (e) an area of water used in the production, storage or growing of seafood;

“primary produce” includes any of the following:

- (a) an animal, plant or other organism, or part of an animal, plant or other organism, intended for consumption by humans;
- (b) any food produced by any primary production activity;

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(c) any pet food produced by any primary production activity;

(d) any other thing that is prescribed by the regulations;

“primary produce business” means a business, enterprise or activity comprising one or more primary production activities, regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature;

“primary production activity” – see section 5;

“producer” means a person who engages in one or more primary production activities and includes a proprietor of a primary produce business;

“prohibition order” means a prohibition order referred to in section 49;

“proprietor” of a primary produce business means –

(a) the person carrying on the primary produce business; or

(b) if that person cannot be identified, the person in charge of the primary produce business;

“regulations” means regulations made under this Act;

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“seafood” means all aquatic animals intended for human consumption, but excludes amphibians, mammals and reptiles;

“Secretary” means the Secretary of the Department;

“slaughter” means to kill any animal for the production of meat, meat products or pet food;

“supplier” means any person who engages in the supply of primary produce and may include a producer;

“supply” includes the following:

- (a) deliver, sell, trade, give or distribute, whether for valuable consideration or not;
- (b) offer or agree to supply;
- (c) cause or permit to supply;
- (d) hold in possession for the purpose of supply;
- (e) produce or pack for the purpose of supply;

“unsafe for human consumption”, in relation to primary produce – see section 23;

“unsuitable for human consumption”, in relation to primary produce – see section 24;

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“vehicle” means any means of transport, whether self-propelled or not, and whether used on land or sea or in the air.

- (2) For the purposes of this Act, premises are associated with each other if they are occupied or used by the same primary produce business.

5. Meaning of primary production activity

- (1) In this Act –

“primary production activity” means the production and processing of primary produce and includes the following:

- (a) the growing, raising, cultivation, picking, harvesting, collection or catching of primary produce;
- (b) the sorting or grading of primary produce on the premises on which it was grown, raised, cultivated, picked, harvested, collected or caught, or on premises that are associated with those premises;
- (c) the treating, freezing, packing, refrigeration, storage or washing of primary produce on the premises on which it was grown, raised, cultivated, picked, harvested, collected or caught, or

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on premises that are associated
with those premises;

- (d) the shucking of molluscs;
 - (e) the transportation or delivery of primary produce on, from or between premises on which it was grown, raised, cultivated, picked, harvested, collected or caught;
 - (f) the management, breeding, transportation and supply of live animals for the production of primary produce;
 - (g) meat processing;
 - (h) dairy primary production, dairy processing or carrying on a dairy transport business;
 - (i) pet food production;
 - (j) any other activity that is prescribed by the regulations.
- (2) However, “**primary production activity**” does not include –
- (a) the sale or service of food by way of retail; or
 - (b) cooking or handling food in the course of preparing a meal for a person; or

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(c) any other activity that is prescribed by the regulations.

(3) In this section –

“**treating**” of primary produce means –

- (a) enhancing the appearance of the primary produce including, for example, waxing, oiling or colouring the produce, without substantially transforming its nature; or
- (b) dealing with the primary produce solely in order to eliminate or control pathogenic organisms, toxins and contaminants in the produce, or to ripen it.

6. Interaction with other Acts

This Act is in addition to and does not limit or derogate from any other Act.

7. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

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PART 2 – ADMINISTRATION

8. Chief Inspector of Primary Produce Safety

- (1) The Secretary may appoint a State Service officer or State Service employee employed in the Department who is suitably qualified to be Chief Inspector of Primary Produce Safety.
- (2) The Secretary may appoint a State Service officer or State Service employee employed in the Department who is suitably qualified to act in the office of Chief Inspector of Primary Produce Safety.
- (3) A person appointed under subsection (1) or (2) may hold, or act in, the office of Chief Inspector in conjunction with State Service employment.
- (4) The Chief Inspector may by an authority in writing authorise a State Service officer or State Service employee to exercise such of the powers conferred on the Chief Inspector as may be specified in the authority, and anything done in pursuance of such an authority has the like effect as if it were done by the Chief Inspector.
- (5) A food safety scheme may designate, for the purposes of the scheme, any or all the powers and functions of the Chief Inspector under this Act to a body corporate.
- (6) The Chief Inspector is an authorised officer for the purposes of this Act and may exercise the powers and functions of an authorised officer in

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addition to the powers and functions of Chief
Inspector.

PART 3 – FOOD SAFETY SCHEMES

9. Food safety schemes

- (1) The regulations may establish a food safety scheme.
- (2) Subject to section 10, a food safety scheme may do any or all of the following:
 - (a) specify the primary produce or class of primary produce and the primary production activities or class of primary production activities to which the scheme applies;
 - (b) make provision for any matter relating to how and where any primary production activity under the scheme is to be carried out including, for example, matters relating to the location, design, condition and operation of any premises, vehicle or equipment used in the primary production activity;
 - (c) prohibit any primary production activity or class of primary production activities;
 - (d) specify circumstances in which a person who engages or proposes to engage in any primary production activity under the scheme must be accredited;
 - (e) make provision for any matter relating to the accreditation of persons who engage

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or propose to engage in any primary production activity under the scheme;

- (f) designate for the purposes of the scheme the powers and functions of the Chief Inspector under this Act (including any powers of delegation) to a body corporate;
- (g) establish a body corporate to perform the role of Chief Inspector under the scheme and make provision relating to the body corporate, including provision for the membership of the body corporate, conditions of membership, procedural matters, functions and powers, delegation, financial accounting and auditing and reporting to the Minister;
- (h) specify the circumstances in which a person who engages or proposes to engage in any primary production activity under the scheme must prepare and implement a food safety program;
- (i) make provision for any matter relating to the content, preparation, implementation and auditing of food safety programs required under the scheme and the approval of such programs by the Chief Inspector;
- (j) make provision for any matter relating to the classification, marking or identification of primary produce under the scheme;

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- (k) make provision for any matter relating to the wholesomeness, sanitation, hygiene and prevention of disease or pathogens in primary produce under the scheme, and the blending or mixing of primary produce under the scheme with any other thing;
 - (l) make provision for any matter relating to the qualifications, skills or expertise required of a person to engage in any primary production activity, or to handle primary produce, under the scheme;
 - (m) make provision for any matter relating to auditing requirements under the scheme including, for example, the qualifications, skills or expertise required of a person to conduct audits under the scheme;
 - (n) make provision for any matter relating to the recall of primary produce under the scheme;
 - (o) make provision for any matter relating to the monitoring and record keeping by persons who engage in any primary production activity under the scheme, and the giving of information and returns relating to food safety matters by such persons;
 - (p) make provision for any matter relating to the issuing of any direction, warning or notice required to deal with any risk to

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- public safety in relation to any primary produce or primary production activity under the scheme;
- (q) make provision for any matter relating to the levy or payment of fees and charges under the scheme;
 - (r) make provision for any matter relating to the establishment of a public register of persons holding an accreditation under the scheme;
 - (s) make provision for the adoption of any program, code, standards or guidelines relevant to any primary produce or primary production activity under the scheme;
 - (t) make provision for any matters relating to compliance and enforcement in respect of the scheme including the creation of offence provisions;
 - (u) make provision for exemptions to specific persons or classes of persons from some or all of the requirements of the scheme relating to any primary produce or primary production activity under the scheme;
 - (v) make provision for any matter relating to the review or revision of the scheme;
 - (w) make provision for any other matter relating to the safety or suitability of any

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primary produce or primary production activity under the scheme.

- (3) A food safety scheme may provide that contravention of, or failure to comply with, the scheme or a provision of the scheme is an offence punishable by a fine –
- (a) in the case of a body corporate, not exceeding 250 penalty units; or
 - (b) in the case of an individual, not exceeding 50 penalty units.

10. Contents of food safety schemes

Without limiting section 9, a food safety scheme must, as a minimum –

- (a) state the primary produce or class of primary produce and the primary production activities or class of primary production activities to which the scheme applies; and
- (b) if a body corporate is to perform the role of Chief Inspector under the scheme, designate, for the purposes of the scheme, all the requisite functions and powers of the Chief Inspector to be performed and exercised by the body corporate; and
- (c) state who must be accredited under the scheme and who must comply with the scheme; and

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- (d) state who must prepare and implement a food safety program under the scheme; and
- (e) state the auditing requirements under the scheme; and
- (f) establish a public register of persons holding an accreditation under the scheme.

PART 4 – ACCREDITATION

11. Authority given by accreditation

- (1) An accreditation granted to a person authorises the person to engage in the primary production activities –
 - (a) stated in the accreditation; and
 - (b) on the conditions stated in the accreditation and in accordance with this Act.
- (2) The accreditation does not authorise the accredited producer to do anything prohibited under another Act.

12. Application for accreditation

- (1) An application for an accreditation –
 - (a) must be made to the Chief Inspector; and
 - (b) must conform to the requirements of the Chief Inspector about its form, contents and the manner in which it is made; and
 - (c) must be accompanied by the fee prescribed in the regulations.
- (2) If the applicant is required to prepare and implement a food safety program under a food safety scheme, the application must set out the details of the food safety program.

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- (3) The Chief Inspector may, by written notice, require the applicant –
 - (a) to give the Chief Inspector further information, documents or records relevant to the application; or
 - (b) to allow persons authorised by the Chief Inspector to inspect premises, vehicles, plant or equipment proposed to be used by the applicant in connection with the activities proposed to be authorised by the accreditation.
- (4) The Chief Inspector may refuse the application if the applicant does not comply with a requirement under subsection (3).
- (5) The applicant may, with the approval of the Chief Inspector or at the request of the Chief Inspector, amend the application before the Chief Inspector has finished considering it.

13. Temporary accreditation

- (1) The Chief Inspector may, pending determination of an application for accreditation, grant a temporary accreditation under this section.
- (2) The temporary accreditation remains in force until whichever of the following occurs first:
 - (a) the end of the period stated in the temporary accreditation;

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- (b) the accreditation applied for under section 12 is granted or the application is refused.
- (3) The period referred to in subsection (2) must not exceed 3 months after the grant of the temporary accreditation.
- (4) Except where the contrary intention appears, a reference in this Act to an accreditation includes a reference to a temporary accreditation.

14. Deciding an application for accreditation

- (1) The Chief Inspector must consider an application for accreditation made in accordance with section 12 and either grant the accreditation with conditions or refuse the application.
- (2) The Chief Inspector may grant the accreditation sought by the applicant only if satisfied –
 - (a) that the applicant is a suitable person to hold such accreditation; and
 - (b) if the applicant is a body corporate, that each director of the body corporate is a suitable person to be the director of a body corporate that holds such an accreditation; and
 - (c) that the applicant satisfies any requirements for accreditation set out in the food safety scheme applicable to the primary production activity the applicant proposes to engage in.

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- (3) For the purposes of determining the suitability of a person under subsection (2), the Chief Inspector may, without limitation, take into account –
 - (a) any offence committed by the person against –
 - (i) this Act or an Act repealed by this Act; or
 - (ii) the *Food Act 2003*; or
 - (iii) a prescribed Act; or
 - (iv) a corresponding law; and
 - (b) any offence of dishonesty committed by the person.
- (4) If the applicant is required to prepare and implement a food safety program under a food safety scheme, the Chief Inspector may grant the accreditation only if satisfied that the food safety program complies with the relevant food safety scheme.
- (5) If the Chief Inspector grants an accreditation in circumstances where subsection (4) applies, the applicant's food safety program becomes the approved food safety program for the accreditation.

15. Conditions of accreditation

- (1) The Chief Inspector may impose any conditions on an accreditation that are reasonable and relevant, having regard to the food safety scheme applicable to the primary production activity the accredited producer is to engage in.
- (2) Without limiting subsection (1), an accreditation is subject to the following conditions:
 - (a) the accredited producer must –
 - (i) comply with the relevant food safety scheme in all respects; and
 - (ii) if there is an approved food safety program for the accreditation, comply with the food safety program in all respects; and
 - (iii) engage in the primary production activities authorised by the accreditation only at the premises or place stated in the accreditation; and
 - (iv) allow a food safety auditor to enter any premises or place stated in the accreditation to conduct audits under this Act;
 - (b) the accredited producer must pay, in accordance with the requirements of the Chief Inspector, the reasonable costs and

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expenses associated with audits
conducted under this Act.

- (3) An accredited producer who contravenes a condition of the accreditation is guilty of an offence.

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.

16. Periodic fees and returns

- (1) For each period prescribed in the regulations, an accredited producer must, not later than the date prescribed in the regulations –
- (a) pay to the Chief Inspector the fee prescribed in the regulations; and
 - (b) lodge with the Chief Inspector a return that conforms to the requirements of the Chief Inspector about its form, contents and the manner in which it is made.
- (2) If an accredited producer fails to pay a fee or lodge a return in accordance with this section, the Chief Inspector may, by written notice, require the producer to make good the default and, in addition, to pay to the Chief Inspector the

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amount prescribed in the regulations as a penalty for default.

- (3) If an accredited producer fails to comply with the notice within 14 days after the giving of the notice, the accreditation is suspended until the notice is complied with.
- (4) If an accredited producer fails to comply with the notice within 6 months after the giving of the notice, the accreditation is cancelled.
- (5) The Chief Inspector must cause written notice of the suspension or cancellation to be given to the producer.

17. Variation of accreditation

- (1) The Chief Inspector may, by written notice to the accredited producer –
 - (a) impose further conditions on the accreditation; and
 - (b) vary or revoke conditions of the accreditation; and
 - (c) approve a food safety program for the accreditation; and
 - (d) vary an approved food safety program for the accreditation.
- (2) The Chief Inspector's power under this section may be exercised on the Chief Inspector's own

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initiative or on application by the accredited producer.

- (3) The imposition or variation of a condition, or the approval or variation of a food safety program, will not, except with the agreement of the accredited producer, take effect until 6 months after the giving of the notice under subsection (1).
- (4) An accredited producer must, at the request of the Chief Inspector and within the period stated by the Chief Inspector, return an accreditation to the Chief Inspector for the purposes of recording any action under this section.

Penalty: Fine not exceeding 10 penalty units.

18. Application for variation of accreditation

- (1) An application by an accredited producer referred to in section 17(2) –
 - (a) must be made to the Chief Inspector; and
 - (b) must conform to the requirements of the Chief Inspector about its form, contents and the manner in which it is made; and
 - (c) must be accompanied by the fee prescribed in the regulations.
- (2) The Chief Inspector may, by written notice, require the applicant –

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-
- (a) to give the Chief Inspector further information, documents or records relevant to the application; or
 - (b) to allow persons authorised by the Chief Inspector to inspect premises, vehicles, plant or equipment proposed to be used by the applicant in connection with activities authorised by the accreditation.
- (3) The Chief Inspector may refuse the application if the applicant does not comply with a requirement under subsection (2).
 - (4) The applicant may, with the Chief Inspector's approval or at the Chief Inspector's request, amend the application before the Chief Inspector has finished considering it.

19. Transfer of accreditation

- (1) Subject to this section and any condition of the accreditation excluding or limiting the right of transfer under this section, the Chief Inspector may approve or refuse an application for the transfer of an accreditation under this section.
- (2) An application for the transfer of an accreditation –
 - (a) must be made to the Chief Inspector by both parties to the transfer; and
 - (b) must conform to the requirements of the Chief Inspector about its form, contents and the manner in which it is made; and

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- (c) must be accompanied by the fee prescribed in the regulations.
- (3) The Chief Inspector may approve the transfer of an accreditation only if satisfied –
 - (a) that the proposed transferee is a suitable person to hold such an accreditation; or
 - (b) if the proposed transferee is a body corporate, that each director of the body corporate is a suitable person to be the director of a body corporate that holds such an accreditation; or
 - (c) that the proposed transferee has the capacity, or has made or proposes to make appropriate arrangements, to satisfy any requirements for accreditation set out in the food safety scheme applicable to the primary production activity the proposed transferee is to engage in.
- (4) For the purposes of determining the suitability of a person under subsection (3), the Chief Inspector may, without limitation, take into account –
 - (a) any offence committed by the person against –
 - (i) this Act or an Act repealed by this Act; or
 - (ii) the *Food Act 2003*; or

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- (iii) a prescribed Act; or
- (iv) a corresponding law; and
- (b) any offence of dishonesty committed by the person.

20. Suspension or revocation of accreditation

- (1) The Chief Inspector may by written notice suspend or revoke an accreditation if satisfied that –
 - (a) the accreditation was obtained improperly; or
 - (b) the accredited producer –
 - (i) has ceased to engage in the primary production activity authorised by the accreditation; or
 - (ii) has not paid fees or charges payable to the Chief Inspector or an approved food safety auditor within the required time; or
 - (iii) has committed an offence against this Act or the *Food Act 2003*; or
 - (iv) has been convicted of an indictable offence.
- (2) A suspension under this section may be for a specified period, or until the fulfilment of

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specified conditions, or until further order of the Chief Inspector.

- (3) A suspension under this section may be expressed to take effect at a specified future time, or to take effect at a specified future time unless a specified condition is fulfilled.
- (4) Before the Chief Inspector suspends or revokes an accreditation under this section, the Chief Inspector must –
 - (a) give written notice to the accredited producer specifying the reasons for the proposed suspension or revocation; and
 - (b) allow the accredited producer at least 14 days within which to make submissions to the Chief Inspector in relation to the proposed suspension or revocation.
- (5) If the Chief Inspector suspends or revokes an accreditation under this section, the producer must return the accreditation to the Chief Inspector within 14 days of the date on which the suspension or revocation takes effect.

Penalty: Fine not exceeding 10 penalty units.

- (6) If the Chief Inspector revokes an accreditation under this section, the person who held the accreditation is excluded from applying for a new accreditation under this Act for a period of 12 months from the date of revocation.

21. Surrender of accreditation

An accreditation may be surrendered to the Chief Inspector.

22. Review of decisions relating to accreditation

- (1) A person aggrieved by a decision of the Chief Inspector under this Part relating to any of the following may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision:
 - (a) an application for an accreditation;
 - (b) an application to transfer an accreditation;
 - (c) the conditions of an accreditation other than a temporary accreditation under section 13;
 - (d) the suspension or revocation of an accreditation other than a temporary accreditation under section 13;
 - (e) the approval of a food safety program;
 - (f) the variation of an approved food safety program.
- (2) An application under this section must be made within 28 days after service of the written notice of the relevant decision by the Chief Inspector.

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Division 1 – Interpretation

23. Meaning of unsafe for human consumption in relation to primary produce

- (1) For the purposes of this Act, primary produce is “unsafe for human consumption” if the primary produce might cause physical harm to a person who consumes it, assuming –
 - (a) it was, after it was produced but before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use; and
 - (b) it was consumed by the person according to its reasonable intended use.
- (2) However, for the purposes of this Act, primary produce is not unsafe for human consumption merely because its inherent nutritional chemical properties cause, or its inherent nature causes, adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons.
- (3) In this section –

“processes” includes processes involving storage and preparation.

24. Meaning of unsuitable for human consumption in relation to primary produce

- (1) For the purposes of this Act, primary produce is “unsuitable for human consumption” if the primary produce –
- (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use; or
 - (b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use; or
 - (c) is the product of a diseased animal, or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption; or
 - (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the primary produce; or
 - (e) contains or has been mixed with pet food.
- (2) However, primary produce is not unsuitable for human consumption merely because –
- (a) at any particular time before it is supplied for human consumption it contains an agricultural or veterinary chemical; or

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- (b) when it is supplied for human consumption it contains an agricultural or veterinary chemical, so long as it does not contain the chemical in an amount that contravenes the Food Standards Code; or
- (c) it contains a metal or non-metal contaminant (within the meaning of the Food Standards Code) in an amount that does not contravene the permitted level for the contaminant as specified in the Food Standards Code; or
- (d) it contains any matter or substance that is permitted by the Food Standards Code.

(3) In this section –

“slaughter” of an animal includes the killing of an animal in the process of capturing, taking or harvesting it for the purposes of preparing it for use as food.

Division 2 – Serious offences

25. Intentional or reckless supply of unsafe primary produce

A person must not supply primary produce for human consumption that the person knows or reasonably suspects is unsafe for human consumption.

Penalty: In the case of –

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-
- (a) a body corporate, a fine not exceeding 5 000 penalty units;
or
 - (b) an individual, a fine not exceeding 1 000 penalty units
or imprisonment for a term not exceeding 2 years, or both.

26. Negligent supply of unsafe primary produce

A person must not supply primary produce for human consumption that the person reasonably ought to know is unsafe for human consumption.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 3 750 penalty units;
or
- (b) an individual, a fine not exceeding 750 penalty units.

Division 3 – Other offences

27. Supply of unsafe primary produce

- (1) A person must not supply primary produce for human consumption that is unsafe for human consumption.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 2 500 penalty units;
or
 - (b) an individual, a fine not exceeding 500 penalty units.
- (2) An offence against this section is an offence of strict liability.

28. Supply of unsuitable primary produce

- (1) A person must not supply primary produce for human consumption that is unsuitable for human consumption.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units;
or
 - (b) an individual, a fine not exceeding 400 penalty units.
- (2) An offence against this section is an offence of strict liability.

29. Unauthorised production of primary produce

- (1) A person must not engage in any primary production activity to which a food safety scheme applies other than under a valid accreditation where such accreditation is required by the scheme.

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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) An offence against this section is an offence of strict liability.

30. Official marks

- (1) For the purpose of this section, an official mark is a unique identifying brand, mark, label or stamp that is placed on primary produce –
- (a) as a unique identifier required by the Chief Inspector as a condition of accreditation; or
 - (b) to comply with a food safety scheme; or
 - (c) otherwise to comply with this Act.
- (2) A person must not, without the approval of the Chief Inspector –
- (a) manufacture, have in his or her possession, apply, alter or interfere with an official mark; or
 - (b) manufacture, have in his or her possession or apply a mark resembling,

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or apparently intended to resemble, an official mark; or

- (c) manufacture or have in his or her possession an official marking device.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
 - (b) an individual, a fine not exceeding 100 penalty units.
- (3) An offence against this section is an offence of strict liability.

31. Compliance with Food Standards Code

A person must comply with any requirement imposed on the person by a provision of the Food Standards Code in relation to the conduct of any primary production activity.

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.

Division 4 – General defences

32. Defence of due diligence

- (1) In any proceedings for an offence under this Act it is a defence if it is proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.
- (2) Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved –
 - (a) that the commission of the offence was due to –
 - (i) an act or default of another person; or
 - (ii) reliance on information supplied by another person; and
 - (b) that –
 - (i) the person carried out all such checks of the primary produce concerned as were reasonable in all the circumstances; or
 - (ii) it was reasonable in the circumstances to rely on checks carried out by another person.

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(3) Without limiting the ways in which a person may satisfy the requirements of this section, a person may satisfy those requirements by proving that in the case of an offence relating to a primary production activity for which a food safety program has been prepared in accordance with a food safety scheme, the person complied with the food safety program.

(4) In this section –

“another person” does not include a person who was –

- (a) an employee or agent of the defendant; or
- (b) in the case of a defendant that is a body corporate, a director, employee or agent of the defendant.

33. Defence of mistaken but reasonable belief not available

In any proceedings for an offence under Division 3, it is no defence that the person had a mistaken but reasonable belief as to the facts that constituted the offence.

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34. Alternative verdicts for serious primary produce offences

If, on the trial of a person charged with an offence under Division 2, the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence under Division 3, the trier of fact may find the person not guilty of the offence charged but guilty of an offence under Division 3, and the person is liable to punishment accordingly.

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Part 6 – Authorised Officers

PART 6 – AUTHORISED OFFICERS

35. Appointment of authorised officers

- (1) The Secretary may appoint any of the following persons to be an authorised officer:
 - (a) a State Service officer or State Service employee;
 - (b) an employee of a council;
 - (c) an employee of the Commonwealth or another State or a Territory;
 - (d) an employee of a body corporate that has been designated any of the powers and functions of the Chief Inspector under a food safety scheme;
 - (e) an employee of an entity –
 - (i) established under a law of the Commonwealth or another State or a Territory with functions relating to food safety; and
 - (ii) prescribed by the regulations.
- (2) A State Service officer or State Service employee, a person employed by the Commonwealth, a council or any other entity referred to in subsection (1) may hold the office of authorised officer in conjunction with his or her employment in the State Service, the

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Commonwealth, a council or other entity referred to in subsection (1).

- (3) The Minister may make an agreement with the relevant Commonwealth Minister with respect to the performance and exercise by an employee of the Commonwealth of the functions and powers of an authorised officer.
- (4) An appointment under this section may be made subject to conditions specified in the instrument of appointment.
- (5) The Secretary may, at any time, revoke an appointment of an authorised officer or vary or revoke a condition of the appointment or impose a further condition of appointment.
- (6) The Commonwealth must be notified in writing of any action proposed to be taken under subsection (5) in relation to an employee of the Commonwealth.

36. Powers of authorised officers

- (1) For the purposes of this Act, an authorised officer may, at any reasonable time, do any one or more of the following:
 - (a) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any premises or vehicle that the authorised officer reasonably believes are

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- used in connection with any primary production activity;
- (b) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any premises or vehicle in which the authorised officer reasonably believes there are any records or documents that relate to any primary production activity;
 - (c) examine any primary produce intended for supply;
 - (d) open and examine any package that the authorised officer reasonably believes contains any primary produce intended for supply;
 - (e) open and examine any equipment;
 - (f) for the purpose of analysing any primary produce supplied or intended for supply or for carrying out any other examination in order to determine whether the provisions of this Act are being complied with, demand, select and obtain samples of any primary produce;
 - (g) for the purpose of analysis, take samples of water, soil, biological material, chemicals, waste products or any other thing that is part of the environment in which any primary produce is produced or handled, or is connected to the production, storage or transport of primary produce, to determine whether

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that environment poses a risk to the safety of the primary produce for human or pet consumption;

- (h) take samples of anything, other than for the purpose of analysis, that the authorised officer reasonably believes may be used as evidence that an offence has been, or is being, committed under this Act;
- (i) seize and retain any primary produce, or issue a seizure order in respect of any primary produce –
 - (i) if the authorised officer reasonably suspects that the produce may be unsafe for human consumption or unsuitable for human consumption; or
 - (ii) in order to prevent the produce being processed before it can be determined to be safe for human consumption and suitable for human consumption;
- (j) seize and retain, or issue a seizure order in respect of, any thing that the authorised officer reasonably believes has been used in, or may be used as evidence of, a contravention of this Act;
- (k) examine any records or documents referred to in paragraph (b), make copies of those records or documents or any part of them and, for that purpose, take away

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and retain (for such time as may be reasonably necessary) any such records or documents or any part of them;

- (l) stop and detain any vehicle that the authorised officer is authorised by this subsection to enter;
- (m) open, or require to be opened, any container used for the conveyance of goods, or any package, that the authorised officer reasonably believes may contain any primary produce supplied or intended for supply;
- (n) take such photographs, films or audio or visual recordings as the authorised officer considers necessary;
- (o) take any measurements and make sketches or drawings or any other type of record;
- (p) require a person to provide any information or answer any question that the authorised officer considers relevant to the administration and enforcement of this Act, or to produce any record, document or thing that an authorised officer is authorised to examine under this Act;
- (q) require a person to state the person's name and residential address;
- (r) generally make such investigations and inquiries as may be necessary to

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ascertain whether an offence under this Act is being or has been committed;

- (s) mark or brand, or direct the marking or branding of, primary produce as fit for human consumption or as unfit for human consumption, or as fit for consumption by pets or as unfit for consumption by pets, as the case may be;
 - (t) exercise any other power prescribed by the regulations.
- (2) This section does not authorise entry into any part of premises that is being used solely for residential purposes, except –
- (a) with the consent of the occupier of the premises; or
 - (b) under the authority of a search warrant.
- (3) A person is not excused from a requirement under this section to provide information or answer questions, or to produce any record, document or thing, on the ground that the information, answer, record, document or thing might incriminate the person or make the person liable to a penalty.
- (4) However any information or answer given, or any record, document or thing produced by an individual in compliance with a requirement or direction under this section is not admissible in evidence against that individual in criminal proceedings other than proceedings for an offence under section 39, 40, 42 or 43.

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- (5) A person who is a food safety auditor and an authorised officer and who is performing the duties of a food safety auditor in relation to any premises or vehicle may also exercise the powers and functions of an authorised officer but only if the person has first produced his or her identity card issued under section 38 –
- (a) to the proprietor of the primary produce business that uses those premises or vehicle or to a person who is apparently in charge of those premises or that vehicle; and
 - (b) to any person whom the authorised officer requires to produce anything or to answer any question.

37. Search warrants

- (1) An authorised officer may apply to a justice for a search warrant if the authorised officer has reasonable grounds to believe that a provision of this Act has been, is being or is about to be contravened on a residential premises.
- (2) A justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant.
- (3) An authorised officer may execute a search warrant using such assistance as the authorised officer considers appropriate.

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- (4) A warrant issued under this section may be made subject to any conditions that the justice considers appropriate.
 - (5) A warrant issued under this section authorises the authorised officer named in the warrant to enter and search the premises specified in the warrant and exercise such of the powers specified in section 36 as are not expressly excluded by the justice who issued the warrant.
 - (6) Schedule 1 has effect with respect to a warrant issued under this section.
 - (7) This section does not limit the operation of section 36.

38. Identification of authorised officers

- (1) The Secretary must issue a person appointed as an authorised officer under this Act with an identity card –
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised person under this Act.
- (2) If the powers of an authorised officer have been limited by conditions, the identity card issued to the authorised officer must contain a statement of those conditions.
- (3) An authorised officer must, at the request of a person in relation to whom the authorised officer

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intends to exercise powers under this Act, produce for the inspection of the person his or her identity card (or in the case of an employee of the Commonwealth exercising the powers of an authorised officer, some other form of identification and authority).

39. Failure to comply with requirements of authorised officers

A person must not, without reasonable excuse, fail to comply with a requirement or direction of an authorised officer made 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.

40. False information

A person must not, in connection with a requirement or direction of an authorised officer under this Act, provide any information or answer or produce any record, document or thing that the person knows is false or misleading in a material particular.

Penalty: In the case of –

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

41. Interfering with seized items

A person must not, without the permission of an authorised officer, detain, remove or tamper with any primary produce, vehicle, equipment, package, labelling or advertising material or other thing that has been seized under this Act, unless it has been released or returned in accordance with the 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.

42. Obstructing or impersonating authorised officers

- (1) A person must not, without reasonable excuse, resist, obstruct or attempt to obstruct an authorised officer in the performance or exercise of the authorised officer's functions or powers under this Act.

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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 an authorised officer.

Penalty: Fine not exceeding 100 penalty units.

43. Threatening or abusing authorised officer

A person must not threaten, intimidate, abuse or assault an authorised officer in the performance or exercise of the authorised officer's functions or powers under this Act.

Penalty: Fine not exceeding 500 penalty units.

PART 7 – SEIZURE BY AUTHORISED OFFICERS

44. Seizure order

- (1) A seizure order issued by an authorised officer under section 36 –
 - (a) must be in the form of a written notice given to the owner or person in control of the thing to which the order relates; and
 - (b) may be varied or revoked by further written notice given to the owner or person in control of the thing to which the order relates.
- (2) If a seizure order is issued by an authorised officer under section 36, a person who, without reasonable excuse, removes or interferes with any item or thing that is the subject of the seizure order is guilty of an offence.

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.

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Part 7 – Seizure by Authorised Officers

45. Seizure of primary produce suspected of being unsafe or unsuitable

- (1) If any primary produce has been seized or made the subject of a seizure order under section 36(1)(i) and an authorised officer is satisfied that the produce is not unsafe for human consumption or not unsuitable for human consumption, the authorised officer must cause the primary produce to be released immediately, or if it is the subject of a seizure order, the authorised officer must revoke the seizure order.
- (2) However, if primary produce has been seized or made the subject of a seizure order under section 36(1)(i) and an authorised officer is satisfied that the produce is unsafe for human consumption or unsuitable for human consumption, the authorised officer may –
 - (a) direct that the produce be processed or otherwise dealt with in a specified manner to ensure that it is not unsafe for human consumption or unsuitable for human consumption; or
 - (b) direct that the produce only be used for specified limited purposes; or
 - (c) condemn the produce and dispose of it as the authorised officer thinks fit, or direct its disposal in a specified manner.
- (3) Before exercising a power under subsection (2)(c), the authorised officer must –

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- (a) give written notice of the proposed action and the reasons for the proposed action to the owner of the produce; and
 - (b) allow the owner of the produce a reasonable opportunity to comment on the proposed action.

46. Seizure of thing that may be used as evidence

- (1) If any thing has been seized or made the subject of a seizure order under section 36(1)(j), the authorised officer must cause the thing to be held pending proceedings for an offence in respect to which it may be used as evidence unless the Chief Inspector authorises the release of the thing to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Chief Inspector thinks fit.
- (2) If proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure, or the issuing of the seizure order, and the defendant is convicted or found guilty of the offence, the court may order that the thing be forfeited to the Crown.
- (3) However, if –
 - (a) proceedings are not instituted for an offence against this Act relating to the thing within the prescribed period after

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its seizure, or the issuing of the seizure order; or

(b) proceedings have been so instituted and the defendant is found not guilty of the offence; or

(c) proceedings have been so instituted and the defendant is convicted or found guilty of the offence but no order for forfeiture is made under subsection (2) –

the person from whom the thing was seized, or any person having legal title to it, is entitled to recover from the Crown (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure.

(4) Where the circumstances referred to in subsection (3) apply to a thing that is the subject of a seizure order, the order is revoked, and the revocation takes effect from the time of expiry of the prescribed period or from the time of determination of the proceedings, whichever is relevant in the circumstances.

(5) For the purposes of this section, the “**prescribed period**” means 12 months, or such longer period as the court may, on application by the Chief Inspector, allow.

**PART 8 – COMPLIANCE NOTICES AND
PROHIBITION ORDERS**

47. Meaning of legislative requirement in this Part

For the purposes of this Part –

“legislative requirement” means –

- (a) any requirement or condition of an accreditation; or
- (b) any requirement or provision of a food safety program; or
- (c) any requirement or provision of a food safety scheme; or
- (d) any requirement or provision of the Food Standards Code; or
- (e) any requirement of a compliance notice issued under this Part; or
- (f) any other requirement or provision of this Act.

48. Compliance notice

- (1) If an authorised officer suspects on reasonable grounds that, in the course of carrying on a primary production activity to which a food safety scheme applies, a person has contravened or is contravening a legislative requirement, the

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authorised officer may issue and serve a compliance notice on the person.

- (2) A compliance notice issued under this section may –
 - (a) require specified action to be taken within 7 days from the service of the notice (or a lesser period specified in the notice) to rectify the contravention; or
 - (b) require specified action to be taken within 7 days from the service of the notice (or a lesser period specified in the notice) to ensure compliance with the legislative requirement.
- (3) A compliance notice issued under this section must –
 - (a) be in writing; and
 - (b) specify the grounds on which it is issued; and
 - (c) specify the requirements of the notice, including the action which must be taken to comply with the notice.
- (4) A fee fixed by the Secretary is payable by a person served with a compliance notice under this section for each inspection carried out by an authorised officer that is necessary to determine whether the requirements of the notice have been complied with.

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- (5) A person must not, without reasonable excuse, contravene or fail to comply with a compliance notice served on the person under this section.

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.

49. Prohibition order

- (1) If the Chief Inspector suspects on reasonable grounds that, in the course of carrying on a primary production activity to which a food safety scheme applies, a person has contravened or is contravening a legislative requirement, the Chief Inspector may issue and serve a prohibition order on the person.
- (2) A prohibition order issued under this section may prohibit the use of specified premises, part of premises, vehicles, plant or equipment for or in connection with the primary production activity until –
- (a) specified action is taken within a specified time to rectify the contravention; or
 - (b) specified action is taken within a specified time to ensure compliance with the legislative requirement.

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- (3) A prohibition order issued under this section must –
 - (a) be in writing; and
 - (b) specify the grounds upon which it is issued; and
 - (c) specify the requirements of the order, including the action which must be taken to comply with the order.
- (4) A prohibition order issued under this section takes effect from the time that it is served and remains in force until it is revoked.
- (5) The Chief Inspector may vary or revoke a prohibition order issued under this section at any time by serving a written notice of the variation or revocation on the person originally served with the order.
- (6) A person served with a prohibition order may, at any time, apply in writing to the Chief Inspector for the revocation of the order on the grounds that the requirements of the order have been fully complied with.
- (7) If the Chief Inspector has received an application under subsection (6), the Chief Inspector must, within 14 days of receiving the application, cause an authorised officer to carry out any inspections and investigations that are reasonably necessary to determine whether the requirements of the prohibition order have been fully complied with.

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- (8) An authorised officer is to report the findings of any inspection or investigation the authorised officer has carried out under subsection (7) to the Chief Inspector as soon as is reasonably practicable after the inspection or investigation is completed.
- (9) The Chief Inspector must revoke a prohibition order if satisfied on reasonable grounds that the requirements of the order have been fully complied with.
- (10) However, if –
- (a) a person applies to the Chief Inspector for the revocation of a prohibition order in accordance with subsection (6); and
 - (b) through no fault of the person who applied for the revocation, an authorised officer fails to carry out any inspection or investigation within 14 days in accordance with subsection (7) –
- the prohibition order is revoked and the revocation takes effect at the expiry of the 14-day period in which the relevant inspection or investigation should have taken place.
- (11) A fee fixed by the Secretary is payable by a person served with a prohibition order under this section for each inspection carried out by an authorised officer that is reasonably necessary to determine whether the requirements of the order have been complied with.

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- (12) A person must not, without reasonable excuse, contravene or fail to comply with a prohibition order served on the person under this section.

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.

50. Compensation

- (1) A person bound by a prohibition order issued under section 49 who suffers loss as a result of the issuing or variation of the order or the refusal by the Chief Inspector to revoke the order, may apply to the Chief Inspector for compensation if the person considers that there were no reasonable grounds for the issuing or variation of the order, or alternatively, for refusing to revoke the order.
- (2) If, after considering an application under subsection (1), the Chief Inspector determines that there were no reasonable grounds for the issuing or variation of the prohibition order or for the refusal to revoke the prohibition order, the Chief Inspector is to pay such compensation to the applicant as is just and reasonable.

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- (3) The Chief Inspector is to send written notice to the applicant of his or her determination as to the payment of compensation under this section.
 - (4) If the Chief Inspector has not determined an application for compensation under this section within 28 days of receiving the application, the Chief Inspector is taken to have refused to pay any compensation.

51. Review of decisions relating to prohibition orders

- (1) A person aggrieved by a decision of the Chief Inspector under this Part relating to any of the following may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision:
 - (a) the issuing of a prohibition order;
 - (b) the variation of a prohibition order;
 - (c) the requirements of a prohibition order;
 - (d) an application for the revocation of a prohibition order;
 - (e) an application for compensation under section 50.
- (2) An application under this section must be made within 28 days after service of the written notice of the relevant decision by the Chief Inspector.

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Part 9 – Other Remedies

PART 9 – OTHER REMEDIES

52. Infringement notices

- (1) An authorised officer may serve an infringement notice on a person, other than a person under the age of 16 years, if of the opinion that the person has committed an offence prescribed in the regulations.
- (2) An infringement notice is not to relate to 4 or more offences.
- (3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.

PART 10 – FOOD SAFETY PROGRAMS

53. Food safety programs

- (1) This section applies to a person who is required to prepare and implement a food safety program under a food safety scheme.
- (2) The food safety program must –
 - (a) identify all significant food safety hazards associated with the primary production activities carried out by the person; and
 - (b) state how the hazards are to be monitored and controlled; and
 - (c) state how hygienic and safe conditions for the relevant primary production activities are to be monitored and maintained; and
 - (d) state how often the program is to be reviewed; and
 - (e) contain a product recall procedure; and
 - (f) comply, and allow compliance with, any prescribed standard, code, guideline or testing regime that is applicable to any primary production activity carried out by the person; and
 - (g) contain any other information required under the relevant food safety scheme.

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- (3) The person must ensure that all requirements imposed by a food safety scheme in relation to the preparation, implementation, maintenance and monitoring of a food safety program for a primary production activity are 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.

54. Auditing of food safety programs

A person to whom section 53 applies must ensure that the food safety program is audited at the frequency determined by the Chief Inspector.

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.

55. Frequency of audits for food safety purposes

- (1) The Chief Inspector may, by written notice given to the person who is subject to an audit under this Part, determine the frequency of audits

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required under section 54 taking into account the following:

- (a) the minimum, maximum and average number of audits required for similar primary produce businesses;
 - (b) any national guidelines;
 - (c) the length of time that person has been undertaking the primary production activities that are the subject of the food safety program;
 - (d) the technical expertise of that person including the expertise of that person's employees or agents;
 - (e) the past audit history of that person, that person's employees or agents, and the primary produce business that person is operating;
 - (f) any recommendations from food safety auditors as to the frequency of audits;
 - (g) the past history of that person, that person's employees or agents, and the primary produce business that person is operating in relation to compliance with this Act, the *Food Act 2003* and any corresponding law.
- (2) The Chief Inspector may require that all or some of the audits be unannounced and require that a food safety auditor selected by the Chief

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Inspector should be used for some or all of the audits.

- (3) The Chief Inspector may, by written notice, at any time vary any determination made under subsection (1).
- (4) Any determination, or variation of a determination, by the Chief Inspector under this section must comply with the auditing requirements (if any) specified in the food safety scheme under which the food safety program is required.

56. Check audits

- (1) The Chief Inspector may, by written notice given to the person who is subject to an audit under this Part, direct that a check audit be undertaken in order to assess the performance of a food safety auditor.
- (2) An audit referred to in subsection (1) may be directed to be made in relation to all or part of the food safety program and may be conducted at the same time as scheduled audits required by the Chief Inspector under section 55 or at a different time.
- (3) An audit referred to in subsection (1) must not be undertaken by the same food safety auditor who undertook the audit required under section 55 in the previous 12 months.

PART 11 – AUDITORS

57. Approval of food safety auditor

- (1) The Chief Inspector may approve an individual to be a food safety auditor for the purposes of this Act if satisfied that the individual is competent to carry out the functions of a food safety auditor having regard to –
 - (a) the individual's technical skills and experience; and
 - (b) any guidelines approved by the Chief Inspector relating to competency criteria.
- (2) An individual may be approved under subsection (1) if the Chief Inspector considers the individual to be a fit and proper person to be approved.
- (3) An individual may not be approved under subsection (1) if his or her name has been removed from a register of food safety auditors in another State or a Territory for reasons related to character or performance.
- (4) An individual may make an application, in a form approved by the Chief Inspector, to the Chief Inspector for approval under this Part.
- (5) An authorised officer, a State Service officer or State Service employee, a person employed by the Commonwealth or a person employed by a council may be approved under subsection (1) and may hold that approval in conjunction with

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holding the office of an authorised officer under this Act or with his or her employment in the State Service, the Commonwealth or a council, as the case may be.

- (6) An application for approval under this Part is to be accompanied by –
 - (a) such information as the Chief Inspector requires to determine the application; and
 - (b) the fee, if any, prescribed in the regulations.
- (7) The Chief Inspector may, after considering an application for approval under this Part –
 - (a) grant the approval with or without conditions; or
 - (b) refuse the application.
- (8) If the Chief Inspector grants an application for approval, the Chief Inspector must issue the applicant with a written approval that sets out any conditions to which the approval is subject.
- (9) If the Chief Inspector refuses an application for approval, the Chief Inspector must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

58. Term of approval

Except during any period of suspension, an approval granted under this Part remains in force

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for the period specified in the approval unless sooner cancelled.

59. Declaration of interest

- (1) A food safety auditor must notify the Chief Inspector of any direct or indirect interest in any person or primary produce business that may be subject to an audit under this Act.

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 person or primary produce business for the purposes of this section.

60. Variation of conditions, or suspension or cancellation, of approval of food safety auditor

- (1) The Chief Inspector may vary the conditions of, or suspend or cancel, the approval of a person as a food safety auditor.
- (2) An approval of a person as a food safety auditor may be suspended or cancelled on one or more of the following grounds:
 - (a) the Chief Inspector is satisfied that the person has wilfully or negligently contravened a provision of this Act, the *Food Act 2003* or a corresponding law;

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- (b) the Chief Inspector can no longer be satisfied the person is a fit and proper person;
 - (c) the Chief Inspector is satisfied that the person has contravened a condition to which the approval is subject;
 - (d) the Chief Inspector is satisfied that the person has not competently carried out a duty of a food safety auditor under this Act;
 - (e) if the Chief Inspector is satisfied that the person has a direct or indirect interest in any person or primary produce 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;
 - (f) the person's name has been removed from the register of food safety auditors of another State or a Territory for reasons related to character or performance;
 - (g) at the request of the person;
 - (h) for any other reason that the Chief Inspector considers appropriate.
- (3) The Chief Inspector may only vary the conditions of, or suspend or cancel, the approval of a person as a food safety auditor –
- (a) after having given the person –

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- (i) written reasons for the Chief Inspector's intention to vary, suspend or cancel the approval; and
 - (ii) 14 days to make submissions; and
 - (b) after having considered any submissions made by the person.
 - (4) Subsection (3) does not apply to the cancellation of a person's approval as a food safety auditor made at the request of that person.
 - (5) A variation of the conditions of, or the suspension or cancellation of, the approval of a person as a food safety auditor –
 - (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.

61. Review of decisions relating to approval

- (1) A person aggrieved by a decision of the Chief Inspector relating to any of the following may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision:

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- (a) the grant or refusal of an application for an approval as a food safety auditor under this Part;
 - (b) the imposition of conditions on an approval as a food safety auditor under this Part;
 - (c) the variation of conditions of an approval as a food safety auditor under this Part;
 - (d) the suspension or cancellation of an approval as a food safety auditor under this Part.
- (2) An application under this section may only be made within 28 days after service of –
- (a) the written notice of approval or refusal of the application for approval as a food safety auditor under this Part; or
 - (b) the written notice of variation of conditions of an approval as a food safety auditor under this Part; or
 - (c) the written notice of suspension or cancellation of an approval as a food safety auditor under this Part.

62. Duties of food safety auditors

A food safety auditor has the following duties:

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- (a) to carry out audits of any food safety programs required pursuant to a food safety scheme;
 - (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 food safety program identified in the audit;
 - (c) to carry out assessments of producers to ascertain their compliance with the requirements of a food safety scheme;
 - (d) to report in accordance with section 63.

63. Reporting requirements

- (1) A food safety auditor must report in writing to the Chief Inspector the results of any audit or assessment carried out by the food safety auditor for the purposes of this Act.
- (2) A report must –
 - (a) be in a form approved by the Chief Inspector; and
 - (b) be submitted to the Chief Inspector within 21 days after the completion of the audit or assessment; and
 - (c) take into account any action taken before the submission of the report to remedy

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any deficiency identified by the food safety auditor.

- (3) A food safety auditor must indicate in a report of an audit or assessment –
 - (a) whether or not the food safety auditor is of the opinion that any relevant primary production activity is being performed in accordance with the requirements of the food safety scheme relating to the food safety program; and
 - (b) any other requirements of this Act, a food safety scheme or the Food Standards Code that the food safety auditor is of the opinion are being contravened and the manner in which they are being contravened.
- (4) A food safety auditor must report any contravention of this Act, a food safety scheme or the Food Standards Code 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 constitutes an imminent and serious risk to the safety of primary produce intended for supply; or
 - (b) that will cause primary produce intended for supply to be unsuitable for that purpose –

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

- (5) A food safety auditor must report in writing to the Chief Inspector, giving reasons, if the food safety auditor considers that the frequency of audits of a producer that has been audited by the food safety auditor should be changed.
- (6) A food safety auditor must give a copy of a report provided to the Chief Inspector in relation to an audit or assessment to the producer who is the subject of the audit.

64. Certificates of approval of food safety auditors

- (1) The Chief Inspector is to provide each food safety auditor with a certificate of approval as a food safety auditor.
- (2) The certificate of approval 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 as a food safety auditor is subject; and

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- (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.

65. Identification of food safety auditor

- (1) The Chief Inspector is to issue a food safety auditor approved under this Part with an identity card –
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is a food safety auditor under this Act; and
 - (c) stating any conditions or limitations in relation to primary production activities that the food safety auditor can audit.
- (2) A food safety auditor must, at the request of a person in relation to whom the food safety auditor intends to perform any functions or duties under this Act, produce for the inspection of the person his or her identity card.

Penalty: Fine not exceeding 50 penalty units.

66. Register of food safety auditors to be maintained

- (1) The Chief Inspector is to prepare and maintain a register of food safety auditors.

- (2) The register is to be made publicly available and is to be revised at least annually.

67. 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 performance of the food safety auditor's functions or duties 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.

68. Threatening or abusing food safety auditors

A person must not threaten, intimidate, abuse or assault a food safety auditor in the performance of the food safety auditor's functions or duties under this Act.

Penalty: Fine not exceeding 500 penalty units.

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**PART 12 – EVIDENTIARY AND PROCEDURAL
PROVISIONS**

69. Nature of proceedings for offences

Unless the contrary intention appears, proceedings for an offence under this Act are to be dealt with summarily.

70. Institution of proceedings

(1) Proceedings for an offence under this Act –

(a) may be instituted only by –

(i) the Minister or a person authorised by the Minister; or

(ii) an authorised officer; or

(iii) the Chief Inspector; and

(b) may be instituted within 3 years after the date on which the offence is alleged to have been committed.

(2) A person may apply to a magistrate within the time limit referred to in subsection (1) to extend that time limit.

71. Offences by employers

(1) If an employee or agent contravenes any provision of this Act, the employer or the

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principal of the agent is taken to have contravened the same provision.

- (2) It is a defence in proceedings against an employer or principal for such a contravention if it is proved that the employer or principal could not, despite taking all reasonable precautions and exercising all due diligence, prevent the contravention.
- (3) An employer or principal may be proceeded against and convicted under a provision pursuant to this section whether or not the employee or agent has been proceeded against or been convicted under that provision.

72. Offences by bodies corporate

- (1) If a body corporate contravenes, whether by act or omission, any provision of this Act, each person who is a member of the governing body of the body corporate or who is concerned in the management of the body corporate is taken to have contravened the same provision if the person knowingly or negligently authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the body corporate has been proceeded against or been convicted under that provision.

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- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate under this Act.

73. Liability of employees and agents

- (1) Except as provided in subsection (2), it is no defence in proceedings for an offence under this Act that the defendant was, at the time of the commission of the offence, an employee or agent of another person.
- (2) In any proceedings for an offence under this Act, it is a defence for the defendant to prove that the defendant was under the supervision of the proprietor of the primary produce business, or the owner or person in charge of the premises, place, or vehicle, in relation to which the offence was committed or of another person representing that proprietor, owner or person in charge.
- (3) Except by leave of the court, a defence under subsection (2) is only available if the person intending to rely on that defence gives notice in writing to the court and the complainant –
 - (a) stating that intention; and
 - (b) stating the name and address of the proprietor, owner or person in charge.

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74. Continuing offence

- (1) A person who commits an offence under this Act that is a continuing offence is liable, in addition to any other penalty, to a further penalty not exceeding one-fifth of the maximum penalty prescribed for that offence for each day during which the offence continues.
- (2) For the purposes of this section, an obligation to do anything continues until it is done, notwithstanding that any period within which, or time before which, the thing is required to be done has ended or passed.

75. Presumptions

In any proceedings for an offence under this Act, it is presumed, until on the balance of probabilities the contrary is proved, that –

- (a) a person supplies primary produce if he or she supplies anything of which primary produce is a constituent; and
- (b) any primary produce that was supplied and that was capable of being used as food, either immediately at the time of supply or at a later time, with or without any further transformation or processing of the produce, was primary produce supplied for human consumption; and
- (c) any primary produce capable of being used as food is not for human

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consumption if it is prominently marked as not being for human consumption, or with words to that effect; and

- (d) primary produce that is part of a batch, lot or consignment of primary produce of the same class or description is representative of all the primary produce in that batch, lot or consignment; and
- (e) each part of a sample of primary produce divided for the purpose of analysis under this Act is of uniform composition with every other part of that sample; and
- (f) a person who supplied primary produce in the conduct of a primary produce business and who was not the proprietor of the primary produce business or the accredited producer with respect to the primary produce business, supplied the primary produce as the agent of the proprietor or accredited producer; and
- (g) any primary produce found in any premises or vehicle used in connection with any primary production activity is intended –
 - (i) to be used in the primary production activity; and
 - (ii) for human consumption; and
- (h) a person who appears from any statement on a package containing primary produce to have imported, produced, packed,

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prepared or conveyed the primary produce is the importer, producer, packager, preparer or conveyer of the primary produce, as the case may be; and

- (i) a signature purporting to be that of the Chief Inspector or an authorised officer is that signature.

76. Evidence

- (1) A certificate signed by the Secretary certifying as to the appointment of an authorised officer under this Act is admissible in any proceedings under this Act and is, until the contrary is proved, evidence of the matter so certified.
- (2) A certificate signed by the Chief Inspector certifying as to –
 - (a) an accreditation under this Act; or
 - (b) a food safety program under this Act; or
 - (c) any authorisation, approval, consent or agreement given by the Chief Inspector under this Act; or
 - (d) any clearance given by the Chief Inspector under this Act; or
 - (e) any exemption given under this Act; or
 - (f) the compliance by a person with a food safety scheme, or with any notice,

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requirement, order or direction issued under this Act; or

- (g) the approval of a food safety auditor under this Act; or
- (h) any delegation under this Act; or
- (i) any notice, requirement, order or direction issued by the Chief Inspector under this Act; or
- (j) any application made or received under this Act; or
- (k) the receipt or non-receipt by the Chief Inspector of any information or return under this Act; or
- (l) any information held in any public register established or maintained under this Act; or
- (m) the levying, payment or non-payment of any fees or charges under this Act –

is admissible in any proceedings under this Act and is, until the contrary is proved, evidence of the matters so certified.

- (3) A certificate signed by an authorised officer certifying as to –
 - (a) whether any substance is or was primary produce of a particular kind or the product of primary produce of a particular kind; or

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- (b) the premises where, or the person by whom, any primary produce was produced; or
 - (c) the fitness, safety or suitability of any primary produce for human consumption; or
 - (d) the fitness, safety or suitability of any primary produce for consumption by pets; or
 - (e) the inspection by the authorised officer of any primary produce, premises, vehicle or equipment; or
 - (f) the seizure by the authorised officer of any primary produce, equipment, document, record or other thing under this Act; or
 - (g) any sample of anything taken, or any test or analysis performed by the authorised officer under this Act, and the results of any such sample, test or analysis; or
 - (h) any notice, requirement, order or direction issued by the authorised officer under this Act –

is admissible in any proceedings under this Act and is, until the contrary is proved, evidence of the matters so certified.

- (4) If in any proceedings it is proved that any primary produce was on any premises used by a person for or in connection with a primary

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production activity, it shall, unless the contrary is established, be evidence that the primary produce was held in that person's possession for the purpose of supply by that person, either in its present form or as an ingredient or a part of a product supplied by that person.

77. Proceedings relating to third persons

- (1) A person charged with an offence under this Act who alleges that the offence was due to the act or omission of another person may apply to a justice for a summons to that other person to appear in proceedings relating to that offence.
- (2) On receipt of the application, a justice is to –
 - (a) issue the summons; and
 - (b) adjourn the proceedings until the return date of the summons.
- (3) The summons is to include –
 - (a) particulars of the complaint; and
 - (b) the allegations relating to the other person's act or omission.
- (4) The defendant is to forward to the complainant a copy of the application for the summons.
- (5) In proceedings for the offence, the complainant and the other person summonsed to appear may –

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- (a) cross-examine the defendant, if the defendant gives evidence, and any witness called by the defendant; and
 - (b) call evidence in rebuttal.
 - (6) In determining proceedings for the offence, a court –
 - (a) may convict the other person summonsed to appear if the defendant proves that the offence was due to that person's act or omission; and
 - (b) is to dismiss the charge against the defendant if the defendant proves that he or she exercised due diligence to ensure compliance with the provision that gave rise to the offence; and
 - (c) may make any order it considers appropriate for the payment of costs by any party to any other party.
 - (7) If an authorised officer is reasonably satisfied that an offence has been committed by a person and that the offence was due to an act or omission of another person –
 - (a) the authorised officer may cause proceedings to be brought against that other person without first causing proceedings to be brought against the person committing the offence; and
 - (b) the other person may be charged with, and convicted of, that offence.

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78. Disclosure by witnesses

- (1) In any proceedings for an offence under this Act, a witness for the prosecution is not compelled to disclose the fact that the witness received information, the nature of the information received or the name of the person from whom the information was received.
- (2) An authorised officer appearing as a witness in any proceedings is not compelled to produce any document containing any confidential matter made or received in his or her capacity as an authorised officer.
- (3) Despite subsections (1) and (2), a court hearing proceedings for an offence under this Act may order the disclosure of any matter, or the production of a document, referred to in those subsections if the court considers that it is necessary in the interests of justice.

79. Court may order costs and expenses

Without affecting any other power of a court to award costs, a court that hears proceedings for an offence under this Act has power to make such order as it thinks fit in respect of the costs and expenses of and incidental to the examination, seizure, detention, storage, analysis, or destruction or other disposal of anything the subject of those proceedings.

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80. Court may order forfeiture

Without affecting any other power of the court to order forfeiture, a court by which a person is convicted of an offence under this Act may order the forfeiture to the Crown of anything that was used in the commission of the offence.

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Part 13 – Miscellaneous

PART 13 – MISCELLANEOUS

81. Protection from liability

No liability attaches to –

- (a) the Chief Inspector, an authorised officer or any other person engaged in the administration or enforcement of this Act; or
- (b) a person employed by the Crown or the Chief Inspector to carry out analyses or any other function for the purposes of this Act –

for an honest act or omission in the exercise or performance, or purported exercise or performance, of a power, function or duty under this Act.

82. Bribery

A person must not give, procure, offer or promise any bribe, recompense or reward to influence any person in the performance of functions or duties under this Act.

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.

83. Disclosure of information

A person must not disclose any information obtained for the purpose of this Act relating to a person except in accordance with any relevant regulations and –

- (a) with the written consent of the person to whom the information relates; or
- (b) to a person authorised by the Chief Inspector; or
- (c) for the purposes of legal proceedings arising out of this Act; or
- (d) for a purpose authorised or required by this Act or another Act; or
- (e) for the purposes of study or research approved by the Chief Inspector.

Penalty: Fine not exceeding 50 penalty units.

84. Certificate of compliance with food safety scheme

- (1) The Chief Inspector may issue a certificate of compliance with a food safety scheme to a producer if the Chief Inspector is satisfied of the following matters:

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- (a) the producer is not required to be accredited under a food safety scheme which applies to the primary production activity that the producer is carrying out and the producer has, in the carrying out of that primary production activity, fully complied with the food safety scheme;
 - (b) the producer has complied with any requirement of the Chief Inspector relating to –
 - (i) the implementation of a food safety program or other food safety system; and
 - (ii) any inspection or audit, whether announced or unannounced; and
 - (iii) any other matter the Chief Inspector considers to be relevant to compliance with the food safety scheme.
- (2) The Chief Inspector is not to issue a certificate under this section unless any fees set by the Secretary, by notice published in the *Gazette*, have been paid by or on behalf of the producer.
- (3) The certificate of compliance is valid for 12 months.

85. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) Without limiting the generality of subsection (1), the regulations may –
- (a) establish a food safety scheme; and
 - (b) prescribe fees or charges for the purposes of this Act, including (but not limited to) fees or charges for the provision of information, or for the carrying out of any inspection or analysis (whether or not the inspection or analysis was requested or agreed to); and
 - (c) prescribe fees for the making of applications under this Act; and
 - (d) make provision for the remission of, or exemption from liability for, any fees or charges payable under this Act; and
 - (e) impose requirements for the notification by primary produce businesses of information relating to the conduct of those primary produce businesses; and
 - (f) make provision for any matter that may be provided for in a food safety scheme.
- (3) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstances specified in the regulations.
- (4) The regulations may –

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- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 250 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues; and
 - (c) create evidentiary presumptions in relation to specific primary produce.
- (5) The regulations may –
 - (a) authorise any matter to be determined, applied or regulated by a person or body specified in the regulations; and
 - (b) confer a power or impose a duty on a specified person, body or class of persons.
- (6) The regulations may adopt or incorporate the whole or part of any standard, rule, code, specification or guidelines, as amended from time to time, with or without modification, issued, prescribed, made or published by any person or body before or after the regulations take effect.
- (7) The regulations may rescind regulations or other subordinate legislation made under the repealed Acts or any other Act prescribed by the regulations.

86. Saving and transitional arrangements

- (1) A person who held a licence under the *Meat Hygiene Act 1985* immediately before the repeal of that Act, and who is required to hold an accreditation under this Act is taken to have been granted a temporary accreditation under this section.
- (2) A person who was an approved egg producer under the *Egg Industry Act 2002* immediately before the repeal of that Act, and who is required to hold an accreditation under this Act is taken to have been granted a temporary accreditation under this section.
- (3) A temporary accreditation under this section authorises the holder to carry on the activities for which the person was licensed or approved –
 - (a) in the case of the holder of a meat premises licence under the *Meat Hygiene Act 1985* on the conditions of his or her licence in force immediately before the repeal of that Act; or
 - (b) in the case of an approved egg producer under the *Egg Industry Act 2002*, in accordance with the relevant egg production program approved for that person and in force immediately before the repeal of that Act.
- (4) A temporary accreditation under this section operates from the repeal of the *Meat Hygiene Act 1985* or *Egg Industry Act 2002*, as the case may be and continues for a period of 12 months.

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- (5) Any application made under Division 2 of Part III of the *Meat Hygiene Act 1985* but not determined before the repeal of that Act is taken to be an application in relation to an accreditation under this Act.
- (6) An application under section 5 of the *Egg Industry Act 2002* but not determined before the repeal of that Act is taken to be an application in relation to an accreditation under this Act.
- (7) An application made under section 6 of the *Egg Industry Act 2002* but not determined before the repeal of that Act is taken to be an application in relation to an accreditation under this Act.
- (8) The regulations may –
 - (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
 - (b) provide for any of those savings and transitional matters to take effect when this section commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

87. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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- (a) the administration of this Act is assigned to the Minister for Primary Industries and Water; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.

88. Consequential amendments

The legislation specified in Schedule 2 is amended as specified in that Schedule.

89. Legislation repealed

The legislation specified in Schedule 3 is repealed.

90. Legislation further repealed

The legislation specified in Schedule 4 is repealed.

91. Legislation rescinded

The legislation specified in Schedule 5 is rescinded.

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92. Legislation further rescinded

The legislation specified in Schedule 6 is rescinded.

93. Legislation revoked

The legislation specified in Schedule 7 is revoked.

94. Legislation further revoked

The legislation specified in Schedule 8 is revoked.

**SCHEDULE 1 – PROVISIONS WITH RESPECT TO
SEARCH WARRANTS**

Section 37(6)

1. Application for search warrants

- (1) An application for a search warrant is to be made in writing.
- (2) A justice is not to issue a search warrant unless –
 - (a) the application for the search warrant sets out the grounds for seeking the search warrant; and
 - (b) the applicant for the search warrant has given the justice, either orally or in writing, any further information the justice requires concerning the grounds for seeking the search warrant; and
 - (c) the information given by the applicant is verified before the justice on oath or by affidavit.

2. Record of proceedings before justice

A justice who issues a search warrant is to cause a record to be made of all relevant particulars of the grounds the justice has relied on to justify the issue of the search warrant.

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3. Duty to show search warrants

An authorised officer executing a search warrant is to produce the search warrant for inspection by an occupier of the premises if requested to do so by that occupier.

4. Expiry of search warrants

A search warrant ceases to have effect –

- (a) on the date specified in the search warrant as the date on which it ceases to have effect; or
- (b) if it is withdrawn before that date by the justice who issued the search warrant; or
- (c) after it has been executed; or
- (d) if the person to whom it is issued ceases to be an authorised officer –

whichever first occurs.

5. Reports to justice on execution of search warrants, &c.

- (1) The authorised officer to whom a search warrant is issued is to furnish a report in writing to the justice who issued the search warrant –
 - (a) stating whether or not the search warrant has been executed; and

- (b) if the search warrant has been executed, setting out briefly the result of the execution of the search warrant, including a brief description of anything seized; and
 - (c) if the search warrant has not been executed, setting out briefly the reasons why the search warrant has not been executed.
- (2) A report with respect to a search warrant is to be made within the period of 10 days immediately after the execution of the search warrant or the expiry of the search warrant, whichever first occurs.

6. Death, absence, &c., of justice who issued search warrant

If the justice who issued a search warrant has died, has ceased to be a justice or is absent, a report required to be furnished to that justice is to be furnished to another justice.

7. Defects in search warrants

A search warrant is not invalidated by any defect, other than a defect that affects the substance of the search warrant in a material particular.

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SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Section 88

Animal (Brands and Movement) Act 1984

1. Section 25(1A) is amended by omitting “at licensed meat premises within the meaning of the *Meat Hygiene Act 1985*” and substituting “who is the holder of a relevant accreditation under Part 4 of the *Primary Produce Safety Act 2011*”.

Animal (Brands and Movement) Regulations 2003

1. Regulation 3(1) is amended as follows:
 - (a) by inserting the following definition before the definition of “Act”:

“accredited meat premises” means a premises on which a person is authorised by an accreditation under Part 4 of the *Primary Produce Safety Act 2011* to carry out meat processing;
 - (b) by omitting the definition of “licensed meat premises”.
2. Regulation 17(1)(a) is amended by omitting “at licensed meat premises, within the meaning of the *Meat Hygiene Act 1985*” and substituting “by a person who is the holder of a relevant

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accreditation under Part 4 of the *Primary Produce Safety Act 2011* in accordance with that accreditation”.

3. Regulation 20D is amended as follows:

- (a) by omitting from subregulation (1) “licensed” and substituting “accredited”;
- (b) by omitting from subregulation (2) “licensed” first occurring and substituting “accredited”;
- (c) by omitting from subregulation (2)(a) “licensed” and substituting “accredited”;
- (d) by omitting from subregulation (2)(b) “licensed” and substituting “accredited”;
- (e) by omitting from subregulation (3)(d) “licensed” and substituting “accredited”;
- (f) by omitting from subregulation (3)(e) “licensed” twice occurring and substituting “accredited”;
- (g) by omitting the definition of “exempt licensed meat premises” from subregulation (4) and substituting the following definition:

“exempt accredited meat premises”
means accredited meat premises that the Registrar, by instrument in writing, determines to be exempt accredited meat premises

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for the purposes of this
regulation;

4. Schedule 4 is amended as follows:

- (a) by omitting “a licensed” from column 2 of paragraph (b)(i) of item 1 in the table in clause 1(b) and substituting “an accredited”;
- (b) by omitting “a licensed” from column 2 of paragraph (b)(ii) of item 1 in the table in clause 1(b) and substituting “an accredited”;
- (c) by inserting the following definition before the definition of “AQIS” in clause 2:

“accredited meat premises” means a premises on which a person is authorised by an accreditation under Part 4 of the *Primary Produce Safety Act 2011* to carry out meat processing;

- (d) by omitting the definition of “licensed meat premises” from clause 2.

Animal Health Act 1995

- 1.** Section 3(1) is amended by omitting paragraph (a) from the definition of “swill”.

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Environmental Management and Pollution Control Act 1994

1. Clause 4(a) of Schedule 2 is amended as follows:
 - (a) by omitting “premises within the meaning of the *Meat Hygiene Act 1985*” and substituting “processing within the meaning of the *Primary Produce Safety Act 2011*”;
 - (b) by inserting “meat or meat” after “more of”.

Tasmanian Beef Industry (Research and Development) Trust Act 1990

1. Section 3 is amended by omitting “*Meat Hygiene Act 1985*” from the definition of “the Minister” and substituting “*Primary Produce Safety Act 2011*”.

Wildlife (General) Regulations 2010

1. Regulation 3(2) is amended by omitting “at licensed meat premises, or licensed pet food works, within the meaning of the *Meat Hygiene Act 1985*, are taken not to be products of wildlife” and substituting “by the holder of a relevant accreditation under the *Primary Produce Safety Act 2011* in accordance with the accreditation are taken not to be products of wildlife”.

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2. Regulation 13(1) is amended by omitting paragraph (c) and substituting the following paragraph:
 - (c) supply the meat of any wallaby taken by the holder under the licence to a person who is authorised by an accreditation under the *Primary Produce Safety Act 2011* to process wallaby meat or to a person who is an agent or representative of such a person.
3. Regulation 14(1) is amended by omitting paragraph (b) and substituting the following paragraph:
 - (b) supply any juvenile muttonbirds taken by the holder in pursuance of the licence to a person who is authorised by an accreditation under the *Primary Produce Safety Act 2011* to process juvenile muttonbirds or to a person who is an agent or representative of such a person.
4. Regulation 37(5)(c) is amended by omitting “sold by a person authorised under the *Meat Hygiene Act 1985*” and substituting “supplied by a person authorised by an accreditation under Part 4 of the *Primary Produce Safety Act 2011*”.

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SCHEDULE 3 – LEGISLATION REPEALED

Regulation 89

Egg Industry Act 2002 (No. 28 of 2002)

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SCHEDULE 4 – LEGISLATION FURTHER REPEALED

Regulation 90

Meat Hygiene Act 1985 (No. 114 of 1985)

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SCHEDULE 5 – LEGISLATION RESCINDED

Regulation 91

Egg Industry Regulations 2004 (No. 97 of 2004)

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**SCHEDULE 6 – LEGISLATION FURTHER
RESCINDED**

Meat Hygiene Regulations 2003 (No. 23 of 2003) Regulation 92

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SCHEDULE 7 – LEGISLATION REVOKED

Regulation 93

*Proclamation under the Egg Industry Act 2002 (No. 55 of
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*Proclamation under the Egg Industry Act 2002 (No. 2 of
2004)*

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SCHEDULE 8 – LEGISLATION FURTHER REVOKED

Regulation 94

Proclamation under the Meat Hygiene Act 1985 (No. 131 of
1988)