



Health, Environment & Waste

COMPLIANCE STRATEGY FOOD ACT 2006

**BUILDING OUR COMMUNITIES
BUSINESSES AND PRIDE**



Compliance Strategy for the Food Act 2006

The main purposes of the *Food Act 2006* (the Act) are to:

- ensure food for sale is safe and suitable;
- prevent misleading conduct in relation to the sale of food; and
- apply the Australia New Zealand Food Standards Code (the Code)

The role of Local Government in relation to achieving the purposes of the Act is:

- licensing food businesses and accrediting food safety programs;
- inspecting food businesses for compliance with the Act and Chapter 3 of the Code;
- undertaking investigations relating to complaints regarding licenced food businesses, including single cases of food borne illness; and
- education of food businesses and the general public in relation to key food safety matters

The Act is also administered in part by the Department of Health. The Department of Health investigates and enforces the following issues:

- false description of food
- misleading conduct
- sale of unfit equipment, packaging or labelling material
- labelling and composition of food as detailed in the Code
- approval of auditors, conducting check audits
- food recalls and emergency powers
- food-borne illness and foreign matter
- notification of prescribed contaminants; and
- suspected intentional contamination

In addition to the Act, Safe Food Production Queensland (SFPQ) administers the *Food Production (Safety) Act 2000*, which relates only to the primary production of food and does not limit the provisions of the *Food Act 2006*. The combination of the two Acts and the Code ensure that food safety risks are managed on a through-chain approach from agriculture to consumers.

Compliance Objectives for Environmental Health

The objectives of the Environmental Health Program are to prevent, control and reduce risks to public health associated with the retail sale of food, ensure that businesses are regulated in a fair and effective manner and to provide business and public with relevant information in relation to food safety. In addition, the Environmental Health Program will work alongside other regulators and policy makers (i.e. Queensland Health, SFPQ, Food Standards Australia New Zealand, Australian Quarantine and Inspection Service etc) to ensure the overarching purposes of the Act are achieved.

Strategy for Compliance Activities

The Environmental Health Program will utilise this Compliance Strategy as a framework to conduct routine inspections, complaint investigations and proactive regulatory work to achieve the objectives outlined.

Routine Inspection of Licensed Food Businesses

The Environmental Health Program will undertake routine inspections of licensed food businesses under the *Food Act 2006* and the Food Safety Standards. Officers will identify any legislative non-compliances during the inspection and thereafter work with the business operator in order to ensure food is safe and suitable.

Investigation of Customer Requests (Licensed Food Businesses)

The Environmental Health Program investigates complaints relating to the general operation of food businesses selling food through retail. Issues investigated include improper food handling, pest issues, suspected contamination of food, cleanliness of premises, etc. Officers will inspect the business to assess the validity of the complaint and take appropriate action to ensure any non-compliances found are resolved in a suitable timeframe.

Investigation and Management of Food-borne Illness

The Environmental Health Program investigates single cases of food-borne illness. This is where there is one single incident of illness. Where there are multiple incidents that require investigation, the lead is taken by the Department of Health with the support of Council.

The aim of these investigations is to limit the potential risks to public health, identify the source(s)/cause(s), implement appropriate remedial action and develop strategies to prevent recurrence in the future.

Risk Assessment of Compliance Outcomes

The Environmental Health Program identified consistency in decision making, and in particular the adoption of appropriate enforcement tools, as being critical to the work of the Program and to ensure they are an open, fair and transparent regulator. To foster greater consistency between individual officers, this Compliance Strategy for the *Food Act 2006* has been developed.

This Compliance Strategy provides a framework whereby a risk-based assessment can be undertaken, based on the key outcomes of the investigation, to select the most appropriate enforcement tool to adopt. By utilising a risk-based framework it is possible to ensure that a consistent and transparent approach is utilised at all times in the selection of the most appropriate enforcement tool by the Environmental Health Program.

The *Food Act 2006 Enforcement Matrix*, utilises a risk assessment based on two distinct factors. These are the human health risk posed by the breach and also the likelihood of the business operator to resolve the non-compliance in a reasonable timeframe. These factors are independent of each other, however when assessed together in the Enforcement Matrix, provide a 'recommended enforcement option' It is then expected that officers will adopt the 'recommended enforcement option' in regards to securing compliance. If however, an officer believes that an alternative enforcement option is more suitable than the 'recommended enforcement option', the officer must provide an evidence report to their supervisor outlining the reason for this decision. If the evidence report provides clear evidence that another enforcement tool would better secure compliance, then the 'recommended enforcement option' may be replaced with a more appropriate option.

Regardless of the enforcement action that may be required, the officer will always discuss the issues with the business operator / alleged offender. For some lower risk, first time offences, the officer may only provide verbal advice. However, if escalated enforcement action is recommended, the officers will explain this prior to it occurring. The Environmental Health Program is committed to being an open and transparent regulator that works with business operators / customers to achieve compliance.

Levels of Human Health Risk (Actual or Potential)

MINOR (Low Risk)

- Legislative non-compliances which have the potential to result in a minor, temporary threat to human health. Minor non-compliances can be easily rectified during the normal course of business.
- Minor administrative non-compliances.

Examples:

- Minor cleaning issues e.g. small section of unclean flooring, unclean interior to microwave, etc.
- A small number of broken/damaged utensils and/or equipment in the premises.
- No suitable food safety supervisor currently nominated by the business.

MAJOR (High Risk)

- Legislative non-compliances, which have the potential to result in a significant threat to human health. Businesses may not be able to fix major non-compliances during the normal course of business.
- Serious administrative non-compliances.

Examples:

- Serious cleanliness issues, such as floors, walls, ceilings, equipment, fixtures and/or equipment.
- Large quantities of food waste found stored in food storage or preparation areas.
- Serious issues regarding employee hygiene such as open wounds on hands, unclean hands, etc.

- Food business not holding a current food business licence with Council.

CRITICAL (Very High Risk)

- Legislative non-compliances, which represent an imminent and significant threat to human health. Critical non-compliances represent a fundamental breakdown of food safety in the business and require immediate corrective action.

Examples:

- A serious pest infestation of the business, including food preparation and storage areas.
- Potentially hazardous foods, such as cooked chicken, stored for extended periods outside of temperature control without an alternative means of compliance.
- Food contact surfaces of a large number of eating and drinking utensils such as plates, cutlery and glasses found to be unclean.

Categories of Likelihood of Compliance

(Compliance History/Willingness and Capacity to Comply)

CATEGORY A - Indications of future and ongoing compliance is high (Low Risk)

- No known occurrences of historic and/or current ongoing serious non-compliance;
- Good demonstrated awareness of and/or capacity to meet regulatory requirement; and/or
- Reasonable and cooperative attitude.

CATEGORY B - Indications of future and ongoing compliance are uncertain

- Few known occurrences of historic and/or current ongoing non-compliance; and/or
- Questionable awareness of and/or capacity to meet regulatory requirement.

CATEGORY C - Indications of future and ongoing compliance is low

- Numerous known occurrences of historic and/or current ongoing non-compliance; and/or
- Low awareness of and/or capacity to meet regulatory requirement.

CATEGORY D - No indication of future and ongoing compliance

- Historic and/or current wilful violation of regulatory requirement; and/or
- Little or no demonstrated willingness or capacity to meet regulatory requirement.



Food Act 2006 Enforcement Matrix

		HUMAN HEALTH RISK (Actual or Potential)		
		MINOR (low Risk)	MAJOR	CRITICAL (Very High Risk)
LIKELIHOOD OF COMPLIANCE (COMPLIANCE HISTORY/WILLINGNESS AND CAPACITY TO COMPLY)	CATEGORY A (Low Risk)	Verbal Advice	Improvement Notice	Improvement Notice Infringement Notice
	CATEGORY B	Verbal Advice Improvement Notice	Improvement Notice Infringement Notice	Infringement Notice Improvement Notice
	CATEGORY C	Improvement Notice Infringement Notice	Infringement Notice Improvement Notice	Infringement Notice Show Cause Notice Prosecution
	CATEGORY D (High Risk)	Infringement Notice Improvement Notice	Infringement Notice Show Cause Notice Prosecution	Infringement Notice Show Cause Notice Prosecution

Note 1: The enforcement options in the enforcement matrix are a guide only. Enforcement should be undertaken in accordance with the enforcement matrix and unless approval is obtained from the officer's line manager.

Note 2: Officers must always discuss the identified issues / offences and proposed actions with the business operator / alleged offender prior to any documentation / notices being delivered.

Note 3: Officers must always refer to the relevant legislation to determine whether a particular enforcement option (e.g. Infringement Notice/ Improvement Notice/Show Cause) is permitted for a particular offence.

Note 4: If deviating from the above default enforcement options, the decision must be clearly documented and validated by the responsible officer

Note 5: It should be noted that in cases where immediate action is required to address significant risk, verbal advice will be provided, which will then be followed up via an Improvement Notice / Infringement Notice / Show Cause Notice.



Level of Action

VERBAL ADVICE

- Minor compliance issue that is expected to have a high level of compliance; and/or
- Unlikely to result in any imminent human health risk.

IMPROVEMENT NOTICE

- Minor non-compliance where there is doubt in relation to the likelihood of the business to comply ; and/or
- May ultimately result in a serious human health risk if not resolved.

INFRINGEMENT NOTICE

- Evidence of previous, current and/or ongoing serious non-compliance indicating a low likelihood of compliance; and/or
- Wilful non-compliance; and/or
- Serious risk to human health if not resolved swiftly

SHOW CAUSE NOTICE

- Evidence of previous, current and/or ongoing serious non-compliance; and/or
- Wilful non-compliance

PROSECUTION

- Critical imminent risk to human health; and/or
- Known or expected ongoing legislative non-compliance.