



New South Wales

# Food Amendment (Public Information on Offences) Act 2008 No 5

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New South Wales

## **Food Amendment (Public Information on Offences) Act 2008 No 5**

Act No 5, 2008

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An Act to amend the *Food Act 2003* to make further provision for the disclosure of offences relating to the handling and sale of food, to provide for the disclosure of penalty notice information, and to make further provision for payments into the Food Authority Fund. [Assented to 14 April 2008]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Food Amendment (Public Information on Offences) Act 2008*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Food Act 2003 No 43**

The *Food Act 2003* is amended as set out in Schedule 1.

**4 Consequential amendment of Fines Act 1996 No 99**

The *Fines Act 1996* is amended as set out in Schedule 2.

**5 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      Amendment of Food Act 2003

(Section 3)

### [1]    Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*Food Authority Fund* means the fund established under section 117A.

*register of offences* means the register of offences kept under Part 10A.

*register of penalty notices* means the register of penalty notices kept under Part 10A.

### [2]    Section 5 Meaning of “food”

Omit “section 3B” from section 5 (1) (e). Insert instead “section 6”.

### [3]    Section 117D

Insert after section 117C:

#### 117D    Payment of penalties and fines into Food Authority Fund

- (1) Any monetary penalty or fine imposed for an offence under this Act or the regulations and recovered in proceedings instituted by the Food Authority is to be paid into the Food Authority Fund.
- (2) If the amount paid into the Food Authority Fund under this section in any financial year exceeds the maximum amount for the financial year, the amount of the excess is to be paid into the Consolidated Fund.
- (3) The *maximum amount* for a financial year is \$250,000 or, if the regulations make provision for the determination of the maximum amount for the financial year, the maximum amount determined in accordance with those regulations.
- (4) The regulations may make provision for the determination of the maximum amount for a financial year by prescribing a maximum amount for a financial year or by providing for the manner in which the maximum amount for a financial year is to be determined.
- (5) Any such regulation may be made only with the approval of the Treasurer.

- (6) In this section, a reference to proceedings instituted by the Food Authority includes:
- (a) a reference to proceedings instituted under the direction or on behalf, or for the benefit, of the Food Authority, and
  - (b) a reference to penalty notices issued by or under the direction or on behalf of the Food Authority.
- (7) In this section:
- financial year* means the period of 12 months commencing on 1 July in any year.
- fine* does not include any costs (including expenses or disbursements) payable by a person under an order made by a court in proceedings for an offence under this Act or the regulations.

**[4] Part 10A**

Insert after Part 10:

**Part 10A Disclosure of information about offences and alleged offences**

**133 Register of offences**

- (1) The Food Authority may keep a register of information about offences under this Act or the regulations relating to the handling or sale of food (the *register of offences*).
- (2) The register may contain any of the following information in relation to a person who has been convicted by a court of an offence under this Act or the regulations relating to the handling or sale of food, or whose employee or agent has been convicted of such an offence:
- (a) the name of the person,
  - (b) the name and address of the place of business at which the offence was committed, including the local government area in which it is located,
  - (c) the name and address of the usual place of business of the person,
  - (d) the trade name under which the person trades,
  - (e) if the person is a company, the name of the chief executive officer and any director of the company,

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- (f) a description of the nature and circumstances of the offence, the decision of the court, the penalty imposed and any forfeiture incurred,
  - (g) the enforcement agency or other body under the direction of which, or on behalf of whom, the relevant prosecution was conducted,
  - (h) such other information of a general nature in relation to matters connected with food safety or other interests of consumers in food as the Food Authority thinks necessary.
- (3) Information relating to a particular offence is not to be published on the register until after the last day on which an appeal may be made against the conviction.
  - (4) If an appeal is made against the conviction, information relating to the offence is not to be published on the register unless a final order has been made on appeal affirming the conviction.
  - (5) The register of offences may be kept in such form as the Food Authority considers appropriate.
  - (6) For the purposes of this Part, an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in relation to an offence is taken to be a conviction for the offence.

**133A Register of information about penalty notices**

- (1) The Food Authority may keep a register of information about penalty notices issued for alleged offences under this Act or the regulations relating to the handling or sale of food (the ***register of penalty notices***).
- (2) The register may contain any of the following information:
  - (a) the name of any person served with a penalty notice for an alleged offence under this Act or the regulations relating to the handling or sale of food,
  - (b) the name and address of the place of business at which the offence is alleged to have been committed, including the local government area in which it is located,
  - (c) the name and address of the usual place of business of the person,
  - (d) the trade name under which the person trades,
  - (e) if the person is a company, the name of the chief executive officer and any director of the company,
  - (f) a description of the nature and circumstances of the alleged offence, including the short title of the offence,

- (g) the date, time and place of the alleged offence,
  - (h) the penalty notice infringement number,
  - (i) the amount payable under the penalty notice,
  - (j) the date the penalty notice was served,
  - (k) the enforcement agency or other body under the direction of which, or on behalf of whom, the penalty notice was served,
  - (l) the status of the penalty notice (that is, particulars of whether the penalty notice has been fully or partly paid, whether a penalty notice enforcement order under Part 3 of the *Fines Act 1996* has been issued in respect of the penalty notice or whether the penalty notice is unresolved),
  - (m) such other information of a general nature in relation to matters connected with food safety or other interests of consumers in food as the Food Authority thinks necessary.
- (3) Information relating to a penalty notice served on a person is not to be published on the register unless:
- (a) the amount payable under the penalty notice has been fully or partly paid, or
  - (b) a penalty notice enforcement order under Part 3 of the *Fines Act 1996* has been issued in respect of the penalty notice, or
  - (c) at least 70 days has elapsed since the penalty notice was served and the penalty notice is unresolved.
- (4) For the purposes of this section, a penalty notice is ***unresolved*** until one of the following occurs (whichever happens first):
- (a) the amount payable under the penalty notice is paid (in part or in full),
  - (b) a penalty notice enforcement order under Part 3 of the *Fines Act 1996* has been issued in respect of the penalty notice,
  - (c) an election is made by the person served with the penalty notice to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*,
  - (d) a decision is made by the enforcement agency or other body under the direction of which, or on behalf of whom, the penalty notice was issued not to enforce the penalty notice,
  - (e) a penalty reminder notice in respect of the offence is withdrawn under the *Fines Act 1996*.

- (5) The register of penalty notices may be kept in such form as the Food Authority considers appropriate.

**133B Publication of information on registers**

- (1) Any register kept under this Part is to be made available for public inspection on an internet website of the Food Authority.
- (2) Information contained in a register may be provided to members of the public in any other manner approved by the Food Authority.
- (3) Without limiting subsection (2), the Food Authority may publish any information contained in a register kept under this Part in the Gazette or in a newspaper circulating in this State.

**133C Correction of register**

- (1) The Food Authority must correct any error in information in a register kept under this Part as soon as practicable after becoming aware of the error.
- (2) The Food Authority may, at any time, correct any omission from information in a register kept under this Part.
- (3) The Food Authority may correct any error in, or omission from, a register kept under this Part on its own initiative or on an application by a person under this Part.

**133D Removal of information from register**

- (1) The Food Authority may remove any information from a register kept under this Part.
- (2) The Food Authority must remove information about a conviction for a particular offence from the register of offences as soon as practicable after it has become aware that:
- (a) the conviction has been quashed or annulled, or
  - (b) an appeal has been made against the conviction, or
  - (c) a period of 2 years has elapsed since the end of the period during which an appeal could have been made against the conviction, or if an appeal was made against the conviction, the date on which a final order was made affirming the conviction.
- (3) However, in a case where the Food Authority removes information from the register of offences because an appeal is made against a conviction for an offence, the Food Authority may



restore information regarding the offence to the register if it is satisfied that any such appeal was unsuccessful.

- (4) The Food Authority may remove any information about a conviction for an offence from the register of offences if it is appropriate in the circumstances to remove the information from the register.
- (5) The Food Authority must remove information about a particular penalty notice from the register of penalty notices as soon as practicable after it has become aware that:
  - (a) the relevant penalty notice was not properly served, or
  - (b) the person on whom the notice was served has elected to have the matter dealt with by a court, or
  - (c) a decision has been made by the enforcement agency or other body under the direction of which, or on behalf of whom, the penalty notice was issued not to enforce the penalty notice, or
  - (d) a penalty reminder notice or penalty notice enforcement order in respect of the penalty notice has been withdrawn under the *Fines Act 1996* (unless the enforcement action authorised by the enforcement order is authorised by another penalty notice enforcement order), or
  - (e) a penalty notice enforcement order in respect of the penalty notice has been annulled under the *Fines Act 1996* and the matter has been referred to a court, or
  - (f) a period of 12 months has elapsed since the date on which the Food Authority was first authorised to publish information about the particular penalty notice on the register.
- (6) The Food Authority may remove any information about a particular penalty notice from the register of penalty notices if it is satisfied it is appropriate in the circumstances to remove the information from the register (for example, if the issue of the penalty notice contravened any policy of the Food Authority relating to enforcement of the Act).
- (7) The Food Authority may remove information from a register on its own initiative or on an application by a person under this Part.

**133E Addition of information to register**

- (1) If any business named in a register is sold or otherwise disposed of after the date on which an offence is committed, or a penalty notice served, in relation to an offence committed or alleged to

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have been committed in the conduct of the business, the Food Authority may add information to the register for the purpose of indicating that the business has been sold or otherwise disposed of.

- (2) The Food Authority may make such an addition to information on a register on its own initiative or on an application by a person under this Part.

**133F Applications for changes to register**

- (1) An interested person in relation to any information on a register kept under this Part may, by application to the Food Authority, request the Food Authority:
- (a) to make any correction or addition to information on the register that the Food Authority is authorised or required to make under this Part, or
  - (b) to remove information from the register on the ground that the Food Authority is authorised or required by this Part to remove the information.
- (2) A person is an *interested person* in relation to information on a register only if the information relates to the person or to the person's employee or agent, or to a business or company which the person owns or has an interest in.
- (3) An application must:
- (a) be made in a form approved by the Food Authority, and
  - (b) be accompanied by the fee (if any) prescribed by the regulations.
- (4) The Food Authority may reduce or waive payment of the whole or any part of the fee.
- (5) A person who is aggrieved by a decision of the Food Authority not to make any correction or addition to information, or not to remove any information, in accordance with the person's request under this section may apply to the Administrative Decisions Tribunal for a review of the decision.
- (6) An application for such a review must be made within 28 days after the day on which notice of the decision of the Food Authority is received by the person.

**133G Protection from liability (including defamation)**

- (1) No liability is incurred by the State, the Minister or the Food Authority, a person acting under the direction of the Minister or

the Food Authority or any person or body engaged in the administration of this Act or the *Fines Act 1996* in respect of anything done, or omitted to be done, in good faith in connection with the keeping of a register under this Part or the making public of any information contained on a register.

- (2) No liability is incurred by a person for publishing in good faith:
  - (a) any information contained on a register kept under this Part, or
  - (b) a fair report or summary of any such information.
- (3) In this section:

*liability* includes liability for defamation.  
*the State* includes the Crown in right of the State and the Government of the State.

**133H Privacy and personal information**

- (1) The Food Authority may exercise its functions under this Part despite any prohibition in, or the need to comply with, the *Privacy and Personal Information Protection Act 1998*.
- (2) A public sector agency that holds personal information about a person may disclose the information, without the consent of the person, to the Food Authority, or to any person engaged in the administration of this Act, for the purpose of enabling the Food Authority to exercise its functions under this Part.
- (3) In particular, the State Debt Recovery Office, and any person engaged in the administration of the *Fines Act 1996*, is authorised to disclose personal information about a person obtained under that Act to the Food Authority, or to any person engaged in the administration of this Act, for the purpose of enabling the Food Authority to exercise its functions under this Part.
- (4) In this section:

*personal information* has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.  
*public sector agency* has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

**[5] Section 135 Exclusion of liability of the State and others**

Insert after section 135 (3):

- (4) This section does not affect the operation of section 133G.

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**[6] Section 137 Publication of names of offenders**

Omit the section.

**[7] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Food Amendment (Public Information on Offences) Act 2008*

**[8] Schedule 2, Part 5**

Insert after Part 4:

**Part 5 Provisions consequent on enactment of  
Food Amendment (Public Information on  
Offences) Act 2008**

**20 Payment of penalties and fines to Food Authority Fund**

Section 117D, as inserted by the *Food Amendment (Public Information on Offences) Act 2008*, applies to monetary penalties and fines recovered on or after the commencement of that section (regardless of when the relevant proceedings were instituted).

**21 Register of offences**

- (1) New section 133 applies only to offences committed on or after the commencement of that section.
- (2) Section 137 (as in force immediately before its repeal by the *Food Amendment (Public Information on Offences) Act 2008*) continues to apply in relation to any conviction for an offence committed before the commencement of new section 133, as if section 137 had not been repealed. Accordingly, the Food Authority may continue to exercise its functions under section 137 in respect of offences committed before the commencement of new section 133.
- (3) In this clause:  
*new section 133* means section 133, as inserted by the *Food Amendment (Public Information on Offences) Act 2008*.

**22 Register of penalty notices**

Section 133A (as inserted by the *Food Amendment (Public Information on Offences) Act 2008*) applies only to penalty notices served on or after the commencement of that section.

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**Schedule 2 Consequential amendment of Fines Act 1996**

(Section 4)

**Section 117A Disclosure of information by State Debt Recovery Office**

Insert at the end of section 117A (1):

, or

- (d) as authorised or required by or under any other Act.

[Agreement in principle speech made in Legislative Assembly on 28 February 2008  
Second reading speech made in Legislative Council on 1 April 2008]

BY AUTHORITY