

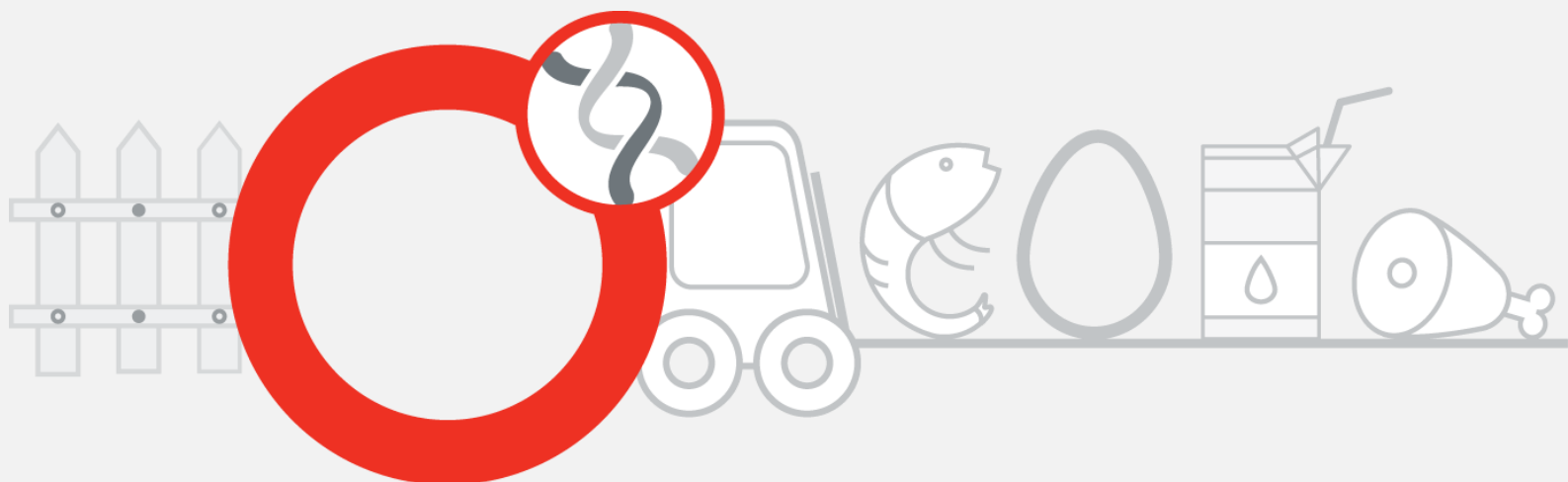
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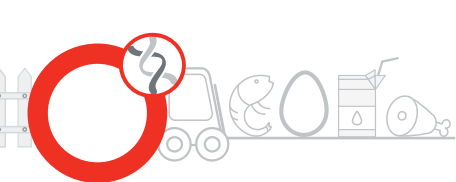
# Compliance Policy

## Safe Food Production QLD

Version 4.0

Publish Date  
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### **Document Version**

Version	Date Modified	Modified by	Date Approved	Approved by	Details
1	20/3/12	General Manager (Strategy, Policy & Development)	18/4/12	Safe Food Production QLD Board	Combined Compliance Policy and Enforcement Policy
2	31/5/13	General Manager (Compliance, Strategy & Response)	17/7/13	Safe Food Production QLD Board	Annual Review
3	30/03/16	General Manager (Compliance, Strategy & Response)	21/4/16	Safe Food Production QLD Board	Update SFPQ abbreviations
4	13/4/2018	Manager – Regulations & Standards	17/4/2018	Safe Food Board	Update position/title references and minor editorial amendments

Approved by:

**Safe Food Production QLD Board**



## **Amendments**

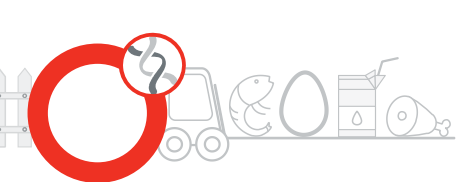
<b>Section</b>	<b>Date of Approval</b>	<b>Amendments</b>	<b>Page No.</b>
Contents	17/7/2013	Insert Contents	3
1	17/7/2013	Delete 'Policy, Strategy and Development'  Replace with 'General Manager – Compliance, Strategy and Response'	5
5	17/7/2013	Delete 'General Manager, Policy, Strategy and Development'  Replace with 'General Manager – Compliance, Strategy and Response'	7
12	17/7/2013	Delete 'General Manager, Policy, Strategy and Development'  Replace with 'General Manager – Compliance, Strategy and Response'	11
15	17/7/2013	Delete 'General Manager, Policy, Strategy and Development'  Replace with 'General Manager – Compliance, Strategy and Response'	13
15.1	17/7/2013	Delete 'General Manager, Policy, Strategy and Development'  Replace with 'General Manager – Compliance, Strategy and Response'	13
15.2	17/7/2013	Delete 'General Manager, Policy, Strategy and Development'  Replace with 'General Manager – Compliance, Strategy and Response'	15
15.2	17/7/2013	Delete 'General Manager, Policy, Strategy and Development'  Replace with 'General Manager – Compliance, Strategy and Response'	15
15.2	17/7/2013	Delete 'General Manager, Policy, Strategy and Development'  Replace with 'General Manager – Compliance, Strategy and Response'	15



Notification Management Process	17/7/2013	Delete 'General Manager, Policy, Strategy and Development'  Replace with 'General Manager – Compliance, Strategy and Response'	23
1 Attachment 2	30/03/2016	Delete ' <i>Food Production (Safety) Regulation 2002</i> '  Replace with ' <i>Food Production (Safety) Regulation 2014</i> '	5  19
5.1	30/03/2016	Delete 'FIRST and Safe Food's verification team'  Replace with 'Risk Response Group'	8
6	30/03/2016	Added: <ul style="list-style-type: none"> <li>recalls/withdrawals</li> <li>service level agreements (SLA's)</li> <li>compliance notices</li> <li>penalty infringement notices (PIN's)*</li> <li>business improvement notices (BIN's)</li> <li>corrective action plans (CAP's)</li> </ul> * Refer to the Safe Food ' <i>Infringement Notice Policy</i> '	8
12.1	30/03/2016	Delete: <ul style="list-style-type: none"> <li>'the issue of a Corrective Action Request (CAR) following an audit</li> <li>the conduct of non-conformance audits to ensure the close-out of a CAR'</li> </ul> Replace with: <ul style="list-style-type: none"> <li>'the issue of a statutory Show Cause Notice'</li> </ul>	12
12.2	30/03/2016	Added new section '12.2 Application of Compliance Options for Approved Auditors'	13
All	30/03/2016	'Safe Food Production Queensland' updated to 'Safe Food Production QLD'  'SFPQ' updated to 'Safe Food'	All
1	16/4/2018	Added reference to Section 60 of Food Production (Safety) Act 2000. Changed reference from General Manager to CEO.	5
5	16/4/2018	Updated references to Department of Agriculture and Fisheries (DAF) and minor editorial changes.	6-7
8	16/4/2018	Minor editorial changes.	9
12	16/4/2018	Change reference from General Manager to CEO. Minor editorial changes.	13-14
13	16/4/2018	Minor editorial changes.	15

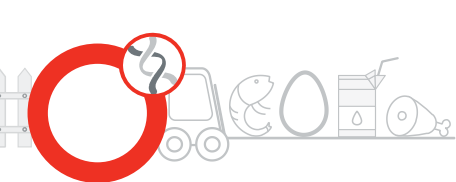


15	16/4/2018	Amend General Manager reference to CEO.	15
Att 2	16/4/2018	Amend Safe Food contact details.	26



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## 1. Policy Statement

This policy supersedes all previous Safe Food Production QLD (Safe Food) policies regarding compliance and enforcement matters.

The purpose of the policy is to provide guidance in relation to Safe Food's functions under Sections 60 and 84 of the *Food Production (Safety) Act 2000* (the Act). Section 60 of the Act provides that the purpose of the auditing system is to ensure places and activities associated with the production of primary produce comply with this Act. Section 84 provides that an authorised officer has the function of conducting investigations and inspections to monitor and enforce compliance with the Act. Enforcement is a function that is critical for Safe Food and will be resourced on a needs basis to ensure a timely, as well as a strictly disciplined, response.

A range of options is available to ensure compliance with the Act and the *Food Production (Safety) Regulation 2014* (the Regulation). Enforcement action usually means other avenues of achieving compliance have been tried and have been unsuccessful or that there is a need for emphatic action to prevent an imminent and adverse food safety event. Decisions about the need for specific enforcement action and the direction on resourcing will be given by Chief Executive Officer (CEO).

This policy includes relevant decision-making guidelines for compliance activities undertaken by Safe Food.

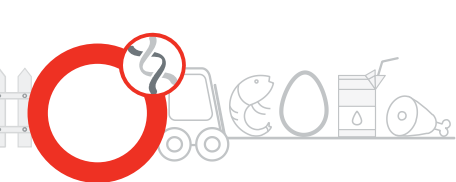
## 2. Policy Principles

This policy is based upon the following principles:

- (a) compliance with the provisions of the Act is essential for the effective management of food safety risks and the supply of food
- (b) the use of compliance tools is to encourage industry to comply with the legislation and to use enforcement tools, such as prosecution, only in appropriate circumstances
- (c) compliance strategies should seek to maximise public health outcomes through regulatory activities that maintain the integrity of the regulatory system
- (d) the most effective compliance strategy is one where the collective expertise and experience available across Safe Food is utilised
- (e) business has the principal role of ensuring food safety and Safe Food's role is to verify that businesses are complying.

## 3. Policy Status

This policy has no legal status and is not legally binding on Safe Food. The policy cannot be used to limit the discretion of Safe Food to take any action. The policy is only to be interpreted as general guidance on how Safe Food will ensure compliance with the Act. Further, Safe Food cannot provide legal advice but may offer practical information on compliance with the relevant legislation.



## 4. Context

Safe Food is constituted under the Act as a statutory body. Its functions include regulating, under food safety schemes, the production of primary produce to ensure primary produce is safe for human and animal consumption.

When businesses fail to meet their obligations under the legislation, Safe Food authorised officers may employ a range of compliance options.

As a general principle, Safe Food will employ one or more of the following compliance tools. However, each case must be evaluated on its particular merits. Following evaluation, there may be instances whereby certain tools may be preferred over others. For example, the use of the emergency provisions contained within the Act may be warranted to address a particular circumstance.

The basic principle underlying the use of the compliance tools is that industry should be encouraged to comply with the legislation. Generally, the use of enforcement tools, such as prosecution, should be regarded as a final resort.

## 5. Food Incident Response/Surveillance Team (FIRST)

Safe Food has resourced core functions within Safe Food, as outlined below.

### 5.1 Surveillance and Incident response

The surveillance and incident response functions within Safe Food are generally carried out by the Food Incident Response/Surveillance Team (FIRST). FIRST has the accountability to critically review effectiveness of existing food safety controls, particularly when a signal is given that there may be a problem.

The FIRST team will also be the contact and coordinating point for interagency collaboration at an operational level when multidisciplinary protocols are activated. This team will not undertake all necessary actions under these protocols, but will give advice and direction and report back on each incident.

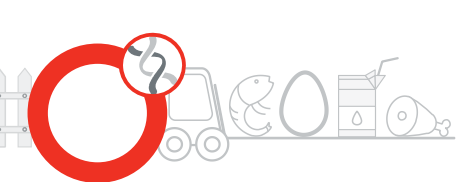
Safe Food's Executive Management Group (EM) will provide the direction and definition necessary for the implementation and ongoing operations of FIRST.

Key elements of FIRST are:

#### **Response (reaction)**

- incident response
- investigations as authorised officers into notifications as required
- following up on complaints as required
- report on outcomes of investigations which may include recommendations for process improvements
- liaison work as part of multidisciplinary teams, e.g. with Queensland Health and the Department of Agriculture and Fisheries (DAF)
- follow the agreed protocols for response to food incidents





### Surveillance (proactive)

- provide intelligence needed to inform compliance functions
- population surveys
- the methodology including use of baselines, scope, design, interpretation, reporting requirements
- publication of population survey results will be recommended to EM by FIRST
- conduct/manage surveys and undertake analysis as required
- real time electronic information
- contribute to the development/specification for electronic data collection of the various schemes from current bases for compliance, e.g. dairy
- promote adoption by accreditation holders of electronic data management, capture and reporting
- monitor performance and protocols for notification of out of specification product
- trouble shooting as required by EM
- training and development of staff

### 5.2 Response to notifications

In addition to proactive surveillance and compliance activities, Safe Food utilises a notification management system. Notifications are a central aspect of ensuring that Safe Food effectively responds to potential food safety incidents. Notifications are provided in various forms and relate to a wide range of matters. Notification sources include accredited businesses, consumers, Queensland Health, other state and territory food safety agencies, local governments, DAF, laboratories and food safety auditors.

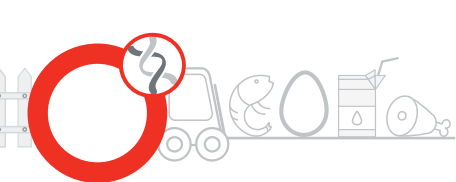
Notification matters may include:

- alleged breaches of conditions of accreditation (e.g. use of sulphites)
- non-compliance with requirements of the Australia New Zealand Food Standards Code, the Act and/or Regulation or relevant Standards (e.g. microbiological limits, agvet chemical residues, antibiotics). Such notifications may be received through one of Safe Food's electronic monitoring arrangements (e.g. CIMS)
- detection of STEC in raw meat processed at export registered establishments
- detection of *Listeria* species in ready-to-eat meat products
- detection of *Campylobacter* or *Salmonella* in poultry meat above industry agreed targets
- the presentation of unacceptable product for processing
- equipment failures at critical control points (e.g. refrigeration breakdowns)
- scenarios that occur which are unable to be managed within existing corrective action procedures in place under a Food Safety Program (i.e. unforeseen circumstances).

An overview of the internal procedures for the management of notifications is provided in Attachment 1. Safe Food's *Protocol for the Management of Non-Conformant Production in Safe Food Accredited Processing Facilities* is provided in Attachment 2.

As required, Safe Food operates in accordance with the *National Food Incident Response Protocol* developed by the National Implementation Subcommittee for Food Regulation (ISFR) and coordinates food recalls involving food products processed by accredited businesses (as per *Food Standards Australia New Zealand's Food Industry Recall Protocol*).

Documentation and procedures associated with the operational aspects of responding to notifications are to be included in a Compliance and Operations Manual.



## 6. Examples of Compliance Tools

The following are examples of the types of compliance tools that Safe Food may employ, depending upon individual circumstances. In some cases, it may be appropriate to make use of a combination of these tools (this list is not intended to be exhaustive):

- education to promote awareness and mentoring as appropriate
- investigation
- recalls/withdrawals
- service level agreements (SLAs)
- verbal instructions/directions
- written warning or advice
- compliance notices
- penalty infringement notices (PINs)\*
- corrective action requests (CARs)
- non-conformance audits
- business improvement notices (BINs)
- corrective action plans (CAPs)
- check audits
- arbitration and mediation
- collection of evidence
- restraining orders
- emergency provisions
- prosecution
- suspension or cancellation of accreditation

\* Refer to the Safe Food '*Infringement Notice Policy*'

## 7. Compliance Activities

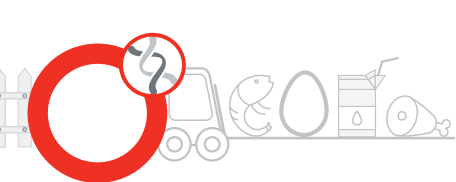
Safe Food routinely undertakes compliance activities. Compliance action may also be as a result of:

- planned monitoring, surveillance and compliance programs
- investigations
- response to notifications
- opportunistic witnessing of breaches of legislation
- advice received from other regulatory agencies.

## 8. Scope and Objectives

### 8.1 Scope

Compliance with the provisions of the Act and Regulation is essential for the effective management of food safety risks. Accordingly, Safe Food is committed to ensuring the highest level of compliance with the legislation.



This policy sets out Safe Food's approach to compliance to support the effective achievement of the legislative goals of the Act in a manner that is:

- proportionate to the risk to health posed by the legislative breach
- authorised by the law
- procedurally fair
- accountable and transparent
- consistent

The policy recognises that most primary production and processing businesses have made provision to comply with the law and produce food that is safe and suitable. The role of Safe Food as a regulator is to verify that compliance is achieved so as to protect consumers from the minority who flout the law or act irresponsibly. This policy supports the proposition that food businesses should consider compliance as an everyday part of business activity.

Some breaches of the Act are classified as quasi-criminal offences and penalties over \$300,000 (3,000 Penalty units) or two years' imprisonment may apply. The range of offences under the Act and Regulation vary in their seriousness and accordingly a variable range of penalties and enforcement options are available. Part 7 of the Act details the Serious Food Safety Offences.

## 8.2 Objectives

The objectives of this policy are:

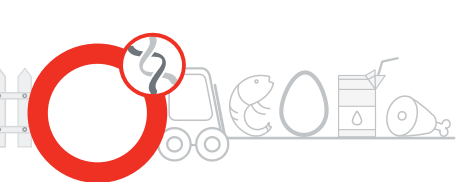
- to provide transparency to stakeholders on how Safe Food will make decisions on compliance action
- to guide decision-making and action by Safe Food staff in the use of compliance options
- to ensure that the use regulatory options occurs in such a way as to best achieve Safe Food's organisational objectives to ensure compliance with the Act

## 9. Compliance Principles

### 9.1 The Public Interest

The overriding consideration in taking compliance action will always be in the public interest. It is in the public interest that the health and safety of the public be protected. A decision to employ a particular compliance strategy involves a principled consideration of a number of factors including, but not limited to:

- risk to public health and safety
- seriousness of the alleged offence
- maintenance of public confidence in the supply of safe and suitable food
- circumstances of the alleged offence
- prevalence of the offence
- alleged offender's circumstances including previous history
- effectiveness of legal action
- cost of proceeding with a prosecution
- effectiveness of particular enforcement measures
- punishment and deterrence



### 9.2 Safe Food Compliance Principles

Safe Food will endeavour to:

- ensure procedural fairness
- act in the public interest
- act consistently, impartially and fairly according to law
- promote consistency through effective liaison with field staff and the adherence to policies and procedures
- ensure we do not discriminate on the basis of irrelevant factors which may include race, religion, sex, national origin or political association
- ensure that enforcement action is taken against the right person for the right offence
- ensure that all relevant evidence is placed before courts
- make food businesses aware of their legal obligations through dissemination of information
- make legislation available to industry through links on our website
- explain the benefits of compliance to food businesses and discuss specific compliance failures or problems
- we will confirm our advice in writing when requested and provide written advice in a clear and simple manner, explaining what and why remedial work is to be undertaken, over what time scale and ensuring legal requirements are explained
- we will provide alleged offenders with an opportunity to discuss the circumstances of their case
- seek the support of industry leaders to influence compliance levels where monitoring indicates an unsatisfactory level of compliance

## 10. Notifications (Complaints)

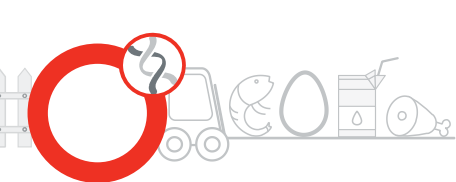
Safe Food is responsible for investigating and dealing with food and related activities that fail to comply with food safety requirements as required by the Act and Regulation. Safe Food is committed to ensuring all notifications of alleged unlawful or non-compliant activity are dealt with appropriately and in a timely manner.

Food safety related complaints can be detected in a number of ways, including during an audit of an accreditation holder's food safety program, a customer notification about food or food handling practices, results of product testing, an allegation of unlawful activity or a referral from another agency.

Regardless of how these matters are identified, Safe Food will in each case assess what it considers to be the relevant factors before determining the most suitable compliance/enforcement option. Safe Food will also adhere to appropriate/relevant documentation and procedures to safeguard the integrity of the investigations. **The internal management system is outlined in Attachment 1.**

Notifications or information about breaches of the Act or Regulation can be lodged with the Safe Food, as follows:

E-mail: [info@safefood.qld.gov.au](mailto:info@safefood.qld.gov.au)  
Telephone: 07 3253 9800  
Facsimile: 07 3253 9810  
Website: [www.safefood.qld.gov.au](http://www.safefood.qld.gov.au)



## 11. Decision-Making Criteria

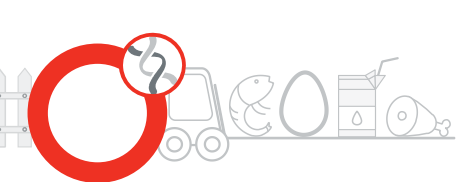
The following issues need to be considered and balanced in making a decision as to the type of compliance action, if any, that is applied:

- is the compliance action required to achieve the objectives of the Act?
- the necessity to maintain public confidence in compliance with the Act
- the existence of any risk to public health and the nature and extent of that risk
- the need to protect consumers
- the knowledge of the alleged offender as to the consequences of their actions
- the age, maturity, intelligence, physical health, mental health or special disability or infirmity of the alleged offender
- the alleged offender's antecedents and background, including culture and language ability
- the openness, honesty and cooperation demonstrated by the alleged offender
- the contrition demonstrated by the alleged offender
- any mitigating or aggravating circumstances
- the culpability of the alleged offender and role played by other parties that may have contributed to the offence
- the staleness, duration and magnitude of the offence
- the totality of offences that may have been committed
- the proportionality of the selected compliance option so that the action will not be unduly harsh or oppressive
- the prevalence of the alleged offence within the industry and any need for a deterrent effect to mitigate against undesirable increasing trends
- the difficulty and resources expended by Safe Food in investigating and proving the elements of the particular offence or the type of offence
- the efficiency and cost to Safe Food of the compliance option that is used

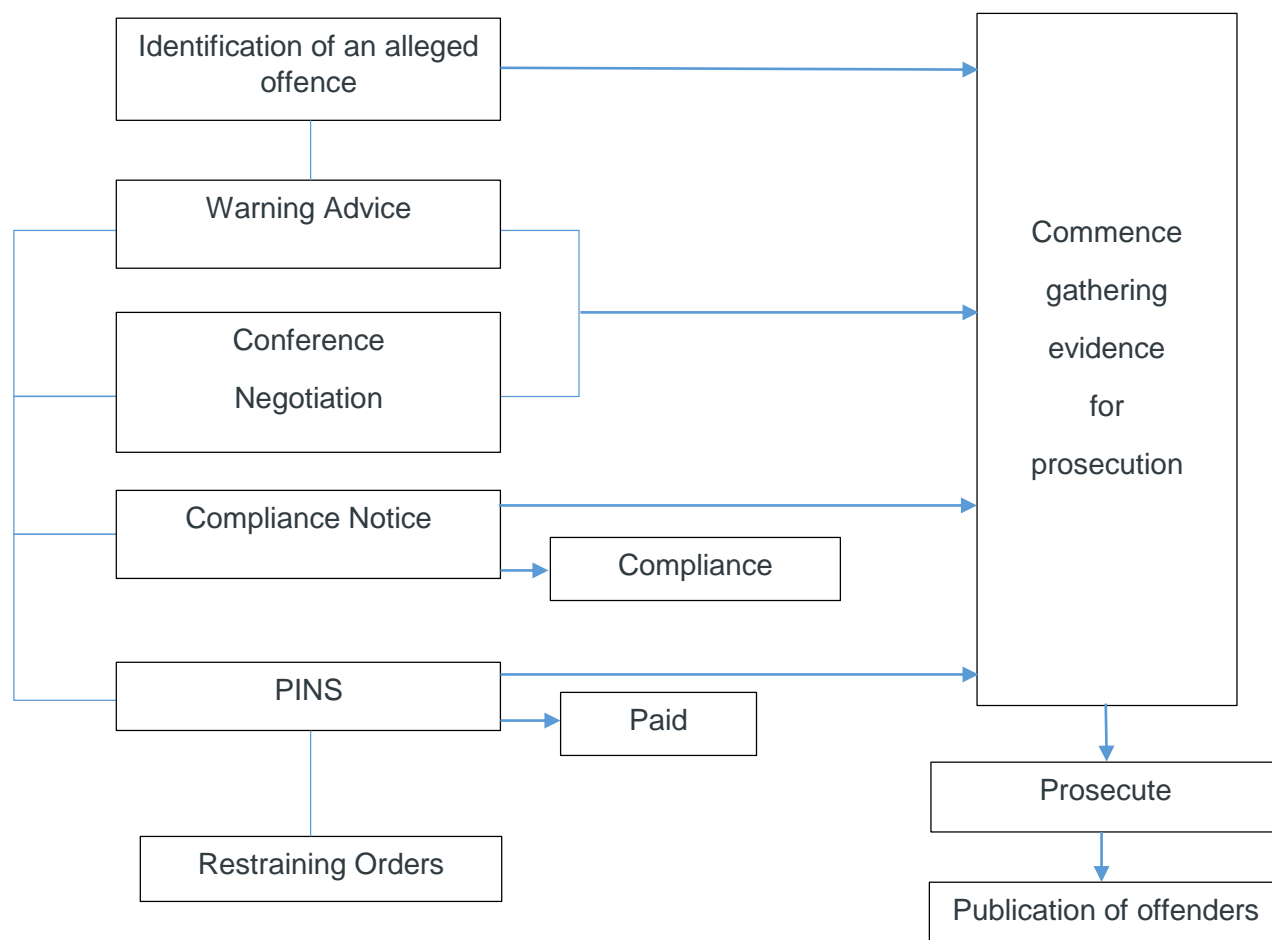
## 12. Application of Compliance Options

Section 6 of this policy details the specific compliance tools available to authorised officers/approved auditors under the Act. However, consideration of the use of these compliance tools needs to be in the context of the objectives of the Act (refer to Attachment 3) and the decision-making criteria outlined above.

Authorised officers/approved auditors should have regard to **ensuring compliance with the legislation as the primary objective** and should use all available resources including appropriate use of conciliation and arbitration in this endeavour.



**Figure 1: Flowchart Demonstrating Compliance Options**

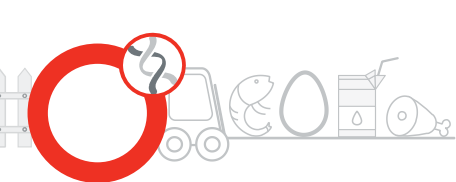


**\*Note:** In order to prosecute, there must be a clear case to answer and a reasonable prospect of conviction. The decision to prosecute will need to balance the criteria specified in Section 9 and 11 of this policy with the specifics of the alleged offence.

## 12.1 Types of Compliance Action

The compliance options available to Safe Food include:

- verbal instructions/directions
- use of mediation and conciliation to encourage compliance
- warning advice
- issue of a statutory Compliance Notice in accordance with section 118 of the Act
- issue of a statutory Show Cause Notice
- arbitration
- seizure of evidence (authorised by the CEO)
- prosecution involving the institution of proceedings in the Magistrates Court
- publication of the names of offenders after conviction
- requiring an approved business to show cause why approval conditions should not be altered or why an approval should not be suspended or cancelled
- the application for a Restraining Order in the District Court



### 12.1.1 Verbal Instructions, Advice and Warnings

Authorised officers will routinely issue verbal instructions on compliance to food businesses. This advice will relate to principles of food safety and will explain the benefits of compliance or the purpose of the law. Verbal instructions should only be given for minor breaches, where the offence is only of a technical nature. It is the policy of Safe Food that all verbal instructions and warnings issued by authorised officers to businesses and accreditation holders will then be followed up by authorised officers with written correspondence.

### 12.1.2 Written Warnings

Where there is evidence that breaches of the Act have occurred, written warnings may be issued at the discretion of the authorised officer.

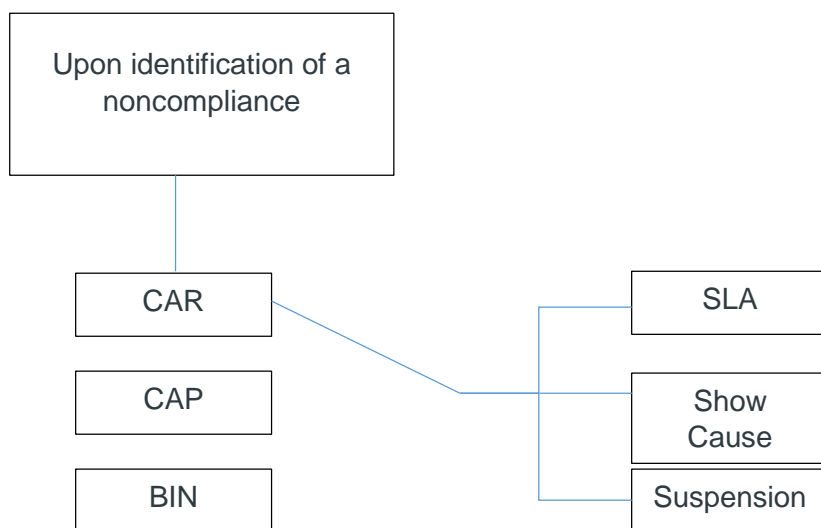
Written warnings may be inappropriate where there are a large number of minor offences on one occasion within one business. Similarly, written warnings will not normally be issued for a series of offences within a relatively short period of time. The totality of the offences should be considered in deciding the appropriate course of action. Where significant non-compliance is evident, more significant enforcement action may be appropriate.

Written warnings will, for example, detail the nature of the alleged offence, cite relevant clauses of the legislation and specify the maximum penalty for the offence, as well as the intention of Safe Food to enforce the legislation.

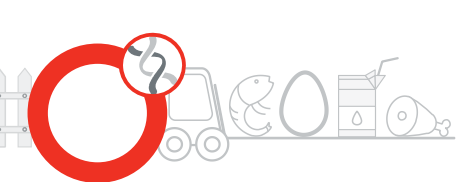
## 12.2 Application of Compliance Options for Approved Auditors

Section 6 of this policy details the specific compliance tools available to approved auditors under the Act. However, consideration of the use of these compliance tools needs to be in the context of the objectives of the Act (refer to Attachment 1) and the decision-making criteria outlined in Figure 2. Approved auditors should have regard to ensuring compliance with the legislation as the primary objective and should use all available resources including appropriate use of conciliation and arbitration in this endeavour.

**Figure 2 Flowchart Demonstrating Compliance Options**







### 12.2.1 Examples of Compliance Tools

- The issue of a corrective action request (CAR) following an audit
- The conduct of non-conformance audits to ensure the close-out of a CAR
- Corrective action plan (CAP)
- Assessment based on awareness, provision and commitment to food safety
- Business improvement notice (BIN)
- Monitoring from data input by businesses
- Service level agreements

## 13. Compliance Notices

Authorised officers may serve Compliance Notices under Section 118 of the Act. This section applies if an authorised officer reasonably believes a person is committing an offence against the Act or has committed an offence against the Act. The maximum penalty for a person not complying with a Compliance Notice is 300 penalty units.

An authorised officer may give the person a Compliance Notice requiring the person to either stop committing the offence and/or rectify the non-conformance.

The Compliance Notice must state:

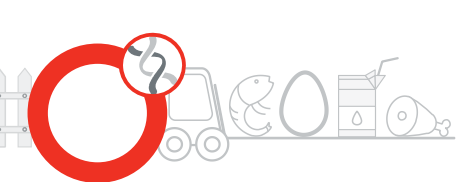
- that the authorised officer believes the person:
  - is committing an offence against the Act; or
  - has committed an offence against the Act; and
- the offence the authorised officer believes is being, or has been, committed; and
- briefly, how it is believed the offence is being, or has been committed; and
- if the notice requires the person to rectify a matter:
  - the matter the authorised officer believes is reasonably capable of being rectified; and
  - the reasonable steps the person must take to rectify the matter; and
  - the stated reasonable period in which the person must take the steps.

A Compliance Notice must specify the specific legislative provision to which it relates and may specify the particular action to be taken by a person. The Compliance Notice must specify the date by which compliance must be achieved.

Compliance Notices should be issued with the same considerations as for warning letters, but should only be used where there is intention to proceed following non-compliance. In other circumstances a warning letter or other enforcement option should be considered.

Compliance Notices must be served on the accreditation holder or the person that the authorised officer reasonably believes is committing an offence. The person to whom a Compliance Notice has been issued must be provided a copy of the Compliance Notice.





## 14. Restraining Orders

Safe Food may bring a proceeding in the District Court for a Restraining Order to restrain a person from continuing or repeating a particular activity. The Court may make a Restraining Order under Section 119 of the Act if satisfied that:

- (a) the person will commit an offence against the Act if the person continues or repeats the activity; and
- (b) the activity may adversely affect the health of persons or animals.

The maximum penalty for a person not complying with a Restraining Order is 1,000 penalty units.

The decision on whether Safe Food will bring a proceeding to seek a Restraining Order must only be made by the Chief Executive Officer or delegate.

Restraining Orders may be sought only where a Compliance Notice has been issued and there has been a failure to comply with the Compliance Notice by the date of completion **or** where the issue of a Restraining Order is necessary to prevent or mitigate a serious danger to public health.

## 15. Seizing Evidence

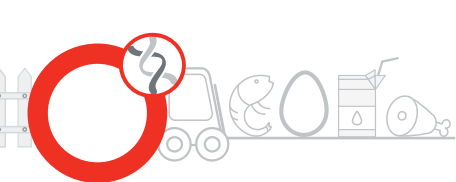
The decision on whether an authorised officer should seize evidence must be made by the Chief Executive Officer.

Authorised officers have power under Sections 99 (2), (3), (4) and (5) of the Act to seize anything at the food business if the authorised officer reasonably believes that the thing is evidence of an alleged offence against the Act and the seizure is necessary to prevent the thing being hidden, lost or destroyed, or used to continue or repeat, the offence. The authorised officer may seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against the Act.

Persons from whom items are seized must be provided with a statement that describes the items seized and states the reasons for the seizure. The authorised officer may include the address at which the evidence is being held.

### 15.1 Evidence Briefs

Authorised officers must prepare evidence briefs in relation to all investigations of alleged offences.



### 15.2 Prosecution

Safe Food resources available for prosecuting alleged breaches are finite and should not be expended pursuing inappropriate cases. Prosecution will normally be reserved for the more serious breaches or repeat offences. Where offences are knowingly committed or the alleged offender ought to reasonably have known, with intent to defraud through substitution or risk injury to consumers, consideration will be given to prosecution under the serious offences provisions of the Act. The decision-making criteria outlined in Section 8 will be considered in making a decision to prosecute.

Section 7 of the Criminal Code extends liability to a wide range of persons who may be involved in some way with contraventions of the Act or Regulation, including employees, proprietors, and companies. Where Safe Food has selected prosecution as the appropriate option, Safe Food will not necessarily proceed against all those who may be potentially liable under the legislation. The general principles that will be applied are that proceedings will be instituted against those who are primarily responsible for the offence and where offences are committed by employees, agents or officers of a corporation in the course of their employment, proceedings will usually be instituted against the corporation.

In taking action against employees their compliance with management procedures or directions will be taken into consideration. Action will normally only be taken against the employees where there is a serious alleged offence.

The charge or charges laid should appropriately reflect the nature and extent of the criminal conduct disclosed by the evidence with due consideration toward the aim of providing the appropriate framework within which the Court can impose a penalty. Care should be taken to ensure that the laying of multiple charges does not infringe the prohibition against double jeopardy.

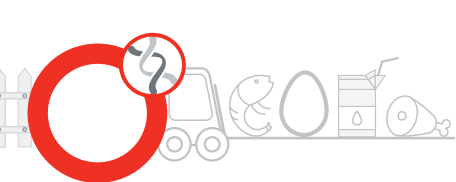
Where multiple charges are laid and a defendant proposes pleading guilty to some, but not all charges, it may in some circumstances be appropriate to accept the defendant's plea in return for dropping other charges. The potential saving in cost and time should be balanced against the likely outcome if the matter went to hearing. Withdrawal of matters will not occur unless the Court is still able to pass a sentence that matches the seriousness of the offences. Additionally, courts should be provided with facts which do not distort the nature of the criminality.

In deciding whether to proceed with the option to prosecute or other compliance strategy or intervention, officers will in addition to considering the matters outlined above have regard to:

- whether the approach taken is consistent with similar breaches of legislation
- similar offences within an industry that suggest emerging issues
- national trends and other circumstances

Prior to determining to prosecute a person under the Act or Regulation, two specific issues must be considered:

- is there a case to answer?
- what is the prospect of conviction?



### **Case to Answer**

Before instigating a legal proceeding, the matter will be reviewed by the FIRST team to ensure that there is a sufficient case to answer. An important issue to be considered in determining if a case to answer exists is to ensure that the evidence reveals that all elements of the offence have been proved.

In coming to a decision to recommend prosecution, Safe Food may seek legal advice to clarify points of law or to determine the likelihood of success.

### **Prospect of Conviction**

Safe Food does have a responsibility to exercise appropriate discretion and judgement in the assessment of the prospect of conviction. The decision to prosecute or not prosecute takes into account the Investigation Report and the Matrix below which includes the likelihood of compliance in a public health/ food safety context.

### **Prosecution Process**

The prosecution process within Safe Food embraces a team approach that utilises the collective experience and expertise throughout Safe Food and other agencies, if necessary. Prior to proceeding with the option to prosecute, the FIRST team should identify all matters potentially affecting the prosecution. FIRST will have responsibility for:

- leading the investigation;
- developing the evidence brief;
- recommending to the General Manager – Compliance, Strategy & Response what actions should be instigated in relation to investigations undertaken;
- keeping the General Manager – Compliance, Strategy & Response informed; and
- evaluating compliance processes as part of legislative review.

### **Decision to Prosecute**

The decision on whether to proceed with a prosecution shall be made by the Chief Executive Officer or nominated delegate based on an investigation report submitted by an authorised officer.

### **Publication of the Names of Offenders**

As a successful prosecution by Safe Food is a matter of public record, it will be the normal procedure for Safe Food to consider the option to publicise the names of persons convicted of offences. This will be at the discretion of the General Manager – Compliance, Strategy & Response.

### **Accreditation Review**

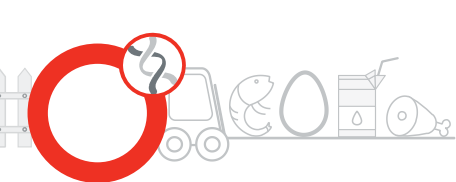
Provisions for review of accreditations having regard to suspension or cancellation are specified in Section 52 of the Act.



## Example of Enforcement Matrix

		Environmental Health Human Health or Safety Impacts (actual or potential)				
LIKELIHOOD OF COMPLIANCE (COMPLIANCE HISTORY / WILLINGNESS AND CAPACITY TO COMPLY)		Level 1 (low/no harm)	Level 2	Level 3	Level 4	Level 5 (severe harm)
	Category A (High Level of compliance expected)	Advice/Education Minor non-conformance notification	Advice/Education Minor non-conformance notification – Caution letter	Compliance Notice	PIN	
	Category B	Advice/Education  Notification – Caution letter	Minor non-conformance notification –  Compliance notice	Compliance audit.  Formal warning  PIN	Prosecution Withdrawal of Licence	
	Category C	Compliance notice with obligations	Compliance audit/survey  Compliance notice			
	Category D	High risk audit  Compliance notice	Compliance audit/survey Formal warning			
	Category E (Low Level of compliance expected)	Compliance audit/Survey  Formal Warning				

Impact on human health (actual or potential)	Likelihood of Compliance (Compliance History / Willingness and Capacity to Comply)
<b>Level 1</b> <ul style="list-style-type: none"> <li>Non-compliance that does not result in any immediate human health impact</li> <li>Minor administrative non-compliance</li> <li>No organisational and regulatory scheme risk</li> </ul>	<b>Category A – indications of future and ongoing compliance are very high</b> <ul style="list-style-type: none"> <li>No previous known occurrences of non-compliance</li> <li>Good demonstrated awareness of and/or capacity to meet regulatory requirements, and /or</li> <li>Offender has a reasonable and cooperative attitude to compliance</li> </ul>
<b>Level 2</b> <ul style="list-style-type: none"> <li>Non-compliance resulting in a minor, temporary threat to human health</li> <li>Moderate administrative non-compliance</li> <li>Failure to meet a Critical Control Point and / or a Critical System failure</li> <li>Negligible organisational and regulatory scheme risk</li> </ul>	<b>Category B – indications of future and ongoing compliance are uncertain</b> <ul style="list-style-type: none"> <li>Few previous known occurrences of non-compliance, and /or</li> <li>Questionable awareness of and /or capacity to meet regulatory requirements</li> </ul>
<b>Level 3</b> <ul style="list-style-type: none"> <li>Non-compliance resulting in a moderate, temporary threat to human health</li> <li>Major administrative non-compliance</li> <li>Moderate organisational and regulatory scheme risk</li> </ul>	<b>Category C – indications of future and ongoing compliance are unlikely</b> <ul style="list-style-type: none"> <li>Numerous previous known occurrences of non-compliance, and /or little or no demonstrated willingness or capacity to meet regulatory requirement</li> </ul>
<b>Level 4</b> <ul style="list-style-type: none"> <li>Non-compliance resulting in significant threat to human health</li> <li>Significant organisational and regulatory scheme risk</li> </ul>	<b>Category D – No indication of future and ongoing compliance</b> <ul style="list-style-type: none"> <li>Wilful violation of departmental regulatory requirement, and /or</li> <li>Little or no demonstrated willingness or capacity to meet regulatory requirement</li> </ul>
<b>Level 5</b> <ul style="list-style-type: none"> <li>Known or likely human health impact that is severe in effect such as hospitalisation and / or chronic human health consequences</li> <li>Extremely high organisational and regulatory scheme impact</li> <li>Larger numbers</li> </ul>	<b>Category E – No indication of future and ongoing compliance</b> <ul style="list-style-type: none"> <li>Wilful violation of departmental regulatory requirement, and /or</li> <li>Little or no demonstrated willingness or capacity to meet regulatory requirement</li> <li>Hindering or obstructing a departmental officer,</li> <li>Refusing to provide required information, and / or</li> <li>Intentionally including false or misleading information in any required document or the like.</li> </ul>



## ATTACHMENT 1

# SAFE FOOD NOTIFICATION MANAGEMENT SYSTEM PROCEDURES

### 1. Purpose

This procedure has been developed to establish a notifications management system within Safe Food based on the minimum standards expected of such systems in a regulatory body.

It should be read in conjunction with Safe Food's *Compliance Policy*, with which it shares the core focus of ensuring that safe and suitable food is provided to the Queensland community.

### 2. Principles

- (a) Safe Food acknowledges the benefits of public and industry notifications as a mechanism to assist the pursuit of compliance with the requirements of the Food Production (Safety) Act 2000 and the *Food Production (Safety) Regulation 2014* (the Act and the Regulation).
- (b) In managing notifications received Safe Food will afford the maximum of fairness, particularly procedural fairness, to both the person who made the notification and any individual or business that may be the subject of the notification.
- (c) All notifications received will be dealt with in the most timely a manner as available resources will permit.
- (d) The process for managing notifications is outlined below.

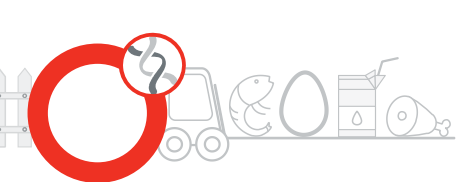
### 3. Management

This procedure has no legal status and is not binding on Safe Food. It cannot be used to limit the discretion of Safe Food as to how it will manage any particular notification. The procedure is only to be interpreted as general guidance on how Safe Food will manage any notifications received.

### 4. Roles and Responsibilities

As well as matters arising from planned monitoring, surveillance and compliance programs and investigations, other critical notification sources include:

- responding to notifications
- opportunistic witnessing of breaches of the legislation
- advice received from other regulatory agencies



Food safety related notifications can be detected in a number of ways, including during an audit of an accreditation holder's food safety program, a customer complaint about food or food handling practices, results of product testing, an allegation of unlawful activity and a referral from another agency.

The expectation is that, although all Safe Food staff will have ownership of this procedure, the responsibility for the receipt and management of notifications will lie with the Food Incident Response/Surveillance Team (FIRST).

A flowchart providing an overview of the notification process is provided in Appendix 1 to this procedure.

## 5. Scope and Objectives

### 5.1 Scope

Compliance with the provisions of the Act and the Regulation is essential for the effective management of food safety risks and the prevention of misleading conduct in connection with the sale of food.

The purpose of this procedure is to ensure the creation and management of a sound, transparent and procedurally fair notification process associated with ensuring accountability and consistency.

### 5.2 Objectives

The objectives of this procedure are:

- to provide transparency to stakeholders on how Safe Food will manage any notifications made to it
- to guide Safe Food staff who may receive notifications or be required to take appropriate action related to them

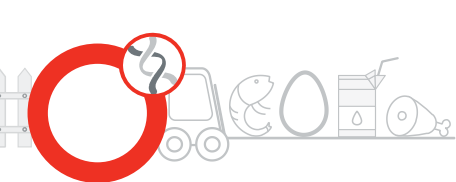
## 6. Notification Management Principles

As a food safety regulator, Safe Food will endeavour to ensure it adopts the following principles with respect to the management of notifications:

### 6.1 Visibility and Access

Safe Food will ensure that information is readily available (e.g. on its website) dealing with the following:

- where and how to lodge a notification
- how Safe Food will manage notifications (time frames, progress reports, delivery of outcomes etc); and
- what reasonable assistance exists for people who wish to make notifications



### 6.2 Responsiveness

Safe Food will ensure its notification management system will have internal mechanisms and strategies in place to:

- inform all relevant Safe Food staff of the existence and operation of the notifications management system
- enable notifications to be responded to in a timely manner
- regularly monitor time frames for the resolution of notifications; and
- communicate with parties about the progress of the notification and any resolution

### 6.3 Assessment and Action

Similarly, Safe Food's notification management system will seek at all times to:

- enable notifications to be dealt with fairly and objectively
- assess speedily the nature of the notification, how the complaint should be dealt with and by whom; and
- refer complaints to more appropriate agencies where required

Following a notification being passed to the Team Leader, FIRST for assessment, the following is considered:

- Is the notification within Safe Food's jurisdiction?
- Are the issues in the notification serious or trivial in their impact? What risk level or priority is applied to the notification?
- Is there a more appropriate mechanism for dealing with the notification?
- Does the notification indicate the existence of a systematic problem or serious food safety issue? Has there been more than one notification for a particular business?
- Whether a food recall is warranted?

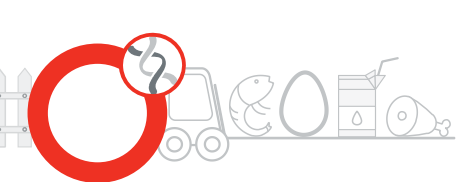
The prescribed pathogen form provided in Appendix 2 to this procedure may be used to assist with the assessment.

Notification investigations must begin within the following timeframes, depending on the prioritisation category that has been allocated to the complaint:

- Urgent – within 24 hours
- High – within 7 days
- Medium – within 1 month
- Low – as soon as practical

Corrective action must be taken, if required, in accordance with Safe Food's Compliance Policy. The investigating officer may use discretion in determining outcomes only in accordance with the provisions of the Compliance Policy. The officer may obtain advice or direction from the FIRST team leader or the General Manager – Compliance, Strategy & Response.





### 6.4 Feedback

In the management of its notification management system Safe Food will aim to:

- provide timely feedback to persons making notifications
- notify people making notifications of any available review or appeal mechanisms
- provided feedback to relevant Safe Food personnel where potential system improvements are identified

### 6.5 Monitoring effectiveness

Safe Food will regularly gather and record information to:

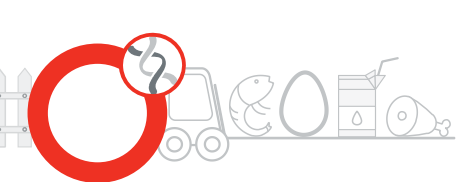
- Meet all statutory, policy or procedural reporting requirements
- Identify notification trends
- Monitor the time taken to resolve notifications

## 7. RTI and Privacy

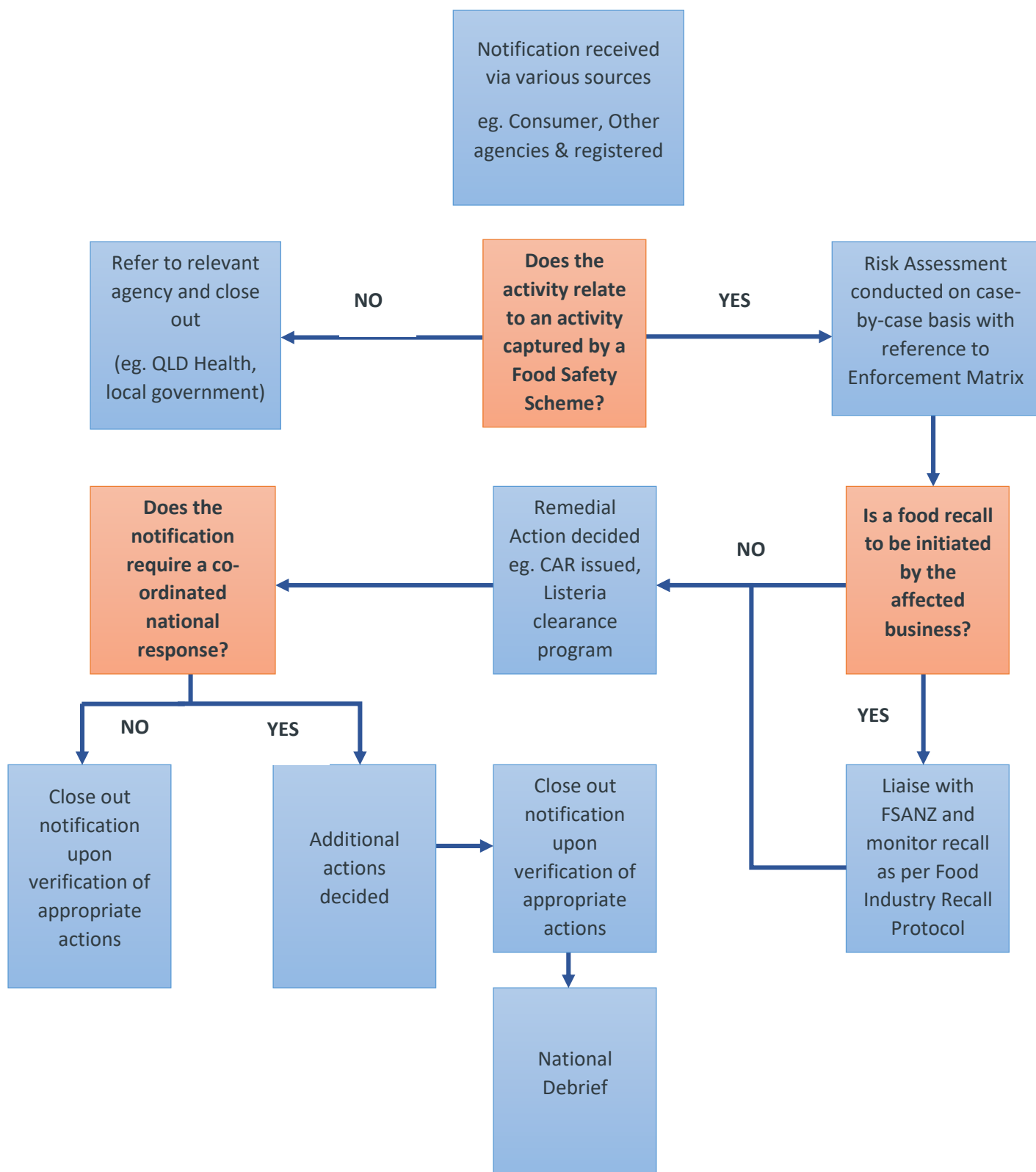
All notifications will be responded to during, or at the conclusion, of the investigation only in accordance with the *Right to Information Act 2009* and the *Information Privacy Act 2009*. The investigating officer must document the method of contact and details of the exchange in the notification report.

Safe Food must comply with the provisions of the *Right to Information Act 2009* and the *Information Privacy Act 2009*. In sharing information with other public sector agencies for law enforcement purposes Safe Food will comply with these provisions where appropriate.





## APPENDIX 1 (TO ATTACHMENT 1): OVERVIEW OF NOTIFICATION PROCESS



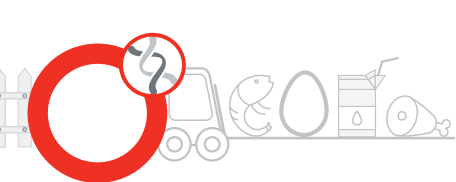


## APPENDIX 2 (TO ATTACHMENT 1): PRESCRIBED PATHOGEN NOTIFICATION

Date		Time	
Officer Name			
Food Business			
Site Address			
Postal Address			
Contact Person		Position	
Phone Number		Email	

Prescribed Pathogen			
Laboratory Name			
Laboratory Phone Number		Laboratory Contact	
Laboratory Address			
Laboratory sent notification to FSS&R			

Product Description (1)			
Pack Type		Brand	
Pack Size		Date Mark	
Batch Code		Quantity of Packs	
Is this product for:	e.g. IMMEDIATE CONSUMPTION – sliced to customer spec. and packaged in presence of customer		
Is the product manufactured on-site (this includes repackaging)			
How much of the product is still on-site?			
How has it been quarantined?			
Describe the sampling method.			
Could cross-contamination to other products have occurred?			
If NO, why not?			
If YES, what product/s may be contaminated?			
How many businesses has product been distributed to?			
Has further product samples been sent to a laboratory			
If NO, why not?			
Have environmental swabs been sent to the laboratory?			
If NO, why not?			
Has the food business ceased trading?			
If NO, why not?			
What parameters will the business use to re-commence trading?			
On-site inspection conducted?			
Referred to:			
Investigation Closed			
Date		Time	
Officer Name		Signature	



## ATTACHMENT 2

# Protocol for the management of non-conformant production in Safe Food accredited processing facilities

### Purpose

The purpose of this document is to assist accreditation holders of Safe Food Production QLD (Safe Food) to ensure that an approved procedure is in place within their approved Food Safety Program (FSP) or Management Statement to notify Safe Food when circumstances arise during primary production or processing that may compromise the acceptability of product for consumption and present a food safety concern.

### Notification to Safe Food

To comply with the requirements of accreditation, holders must advise Safe Food of circumstances that arise outside of an approved program of production immediately, so that Safe Food may assist in assessing the situation and approving an appropriate course of action to ensure food safety outcomes, suitability for market and compliance with legislative requirements.

Examples of such scenarios may include:

- The presentation of unacceptable product for processing.
- Unacceptable microbiological testing results.
- Food recalls.
- Breach of requirements (e.g. time or temperature) as outlined in the relevant standards.
- Equipment failures at critical control points (e.g. refrigeration breakdowns).
- Scenarios that occur which are unable to be managed within existing corrective action procedures in place under a FSP (i.e. unforeseen circumstances).
- Product destined for export that is returned and intended for release on the domestic market.

Following notification of a possible food safety concern, identified product is to be isolated and held under the control of the notifying accreditation holder. Safe Food may arrange for inspection and verification of the product, along with an appropriate sampling and testing regime to confirm the status of the product.

Accreditation holders must provide Safe Food with any requested information, including the intended end use of the product and supporting documentation, and only proceed with a proposed action once approved by Safe Food. Evidence of the approved action (e.g. records or other supporting documentation) will be required to be presented to Safe Food for verification. Furthermore, following notification and assessment, the approved course of action may then be considered for inclusion in an amendment to a FSP to ensure that future incidents may be more readily assessed.



Notification advice can be provided to Safe Food via the following contacts:

Telephone: (07) 3253 9800

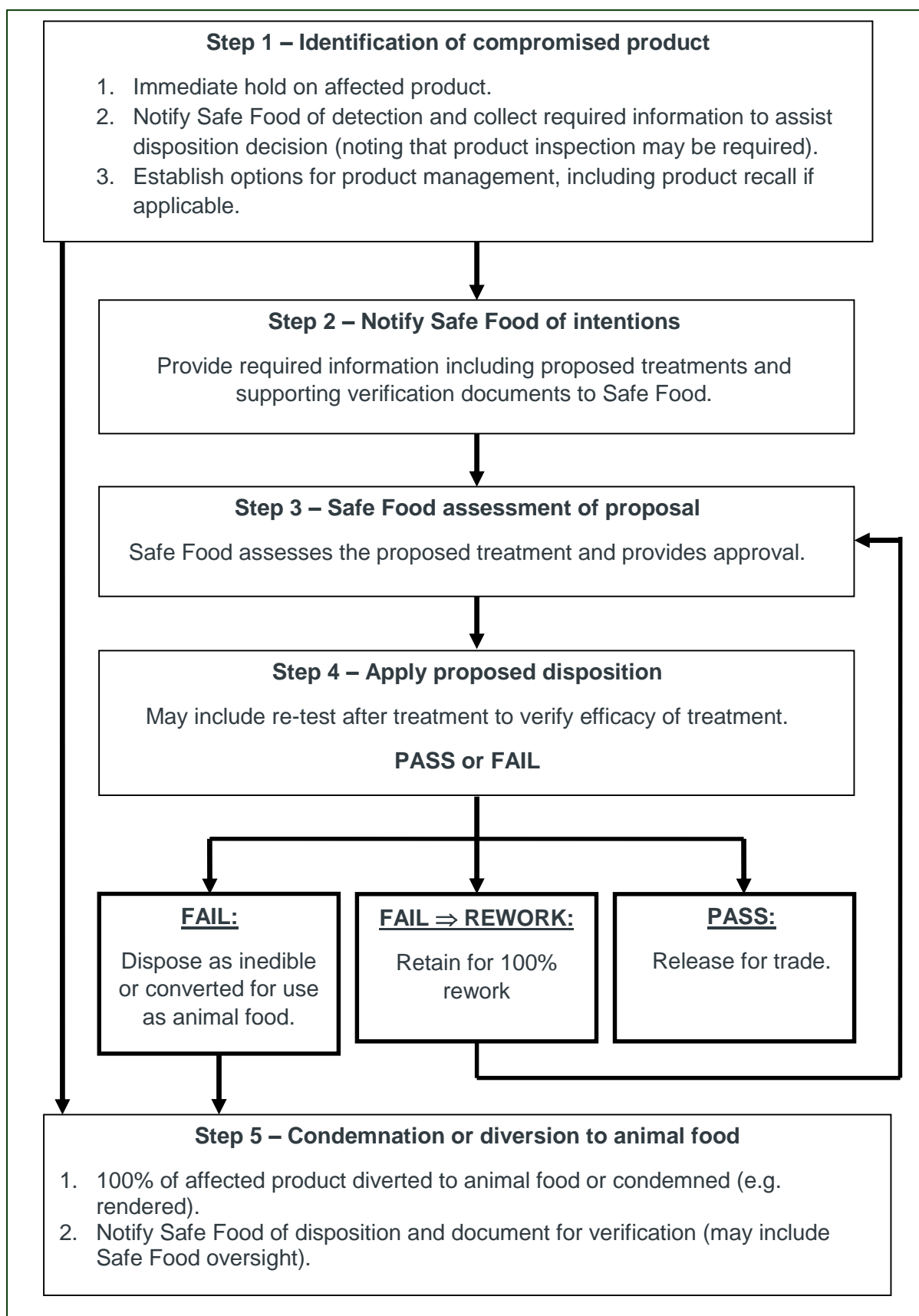
E-mail: [notify@safefood.qld.gov.au](mailto:notify@safefood.qld.gov.au)

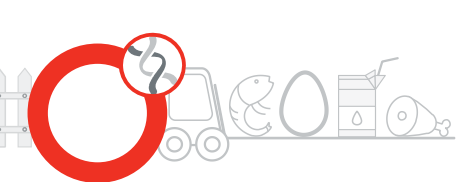
Fax: (07) 3253 9810

A flowchart representing this process is presented in Appendix 1.



## APPENDIX 1 (TO ATTACHMENT 2): FLOWCHART FOR MANAGEMENT OF NON-CONFORMANT PRODUCTS





## ATTACHMENT 3

### Safe Food Production QLD Legislative Functions

Safe Food administers the *Food Production (Safety) Act 2000*. The objectives of the Act include the following:

- (a) to establish Safe Food; and
- (b) to ensure the production of primary produce is carried out in a way that:
  - (i) makes the primary produce fit for human or animal consumption; and
  - (ii) maintains food quality; and
- (c) to provide for food safety measures for the production of primary produce consistent with other State laws relating to food safety.

The functions of Safe Food include to:

- (a) regulate, under food safety schemes, the production of primary produce to ensure primary produce is safe for human and animal consumption;
- (b) advise, or make recommendations to, the Minister about:
  - (i) food safety matters relating to the production of primary produce; and
  - (ii) the development or implementation of food safety schemes;
- (c) monitor the hygiene and operating procedures of premises, vehicles, plant and equipment used for production of primary produce;
- (d) encourage businesses engaged in the production of primary produce:
  - (i) to minimise food safety risks by developing and maintaining food safety programs; and
  - (ii) to develop and adopt quality assurance measures for the primary produce;
- (e) approve or audit quality assurance measures mentioned in paragraph (d)(ii);
- (f) approve food safety programs;
- (g) grant accreditations;
- (h) approve/train individuals to conduct audits to monitor compliance with food safety schemes;
- (i) review audits mentioned in paragraph; and
- (j) commission research relating to food safety matters for primary produce.

Part 4 of the *Food Production (Safety) Act 2000* provides for the making of Food Safety Schemes, which detail specific Standards within the Food Standards Code (the Code) as mandatory standards for persons accredited under the Act. The Code consists of four chapters and has requirements relating to:

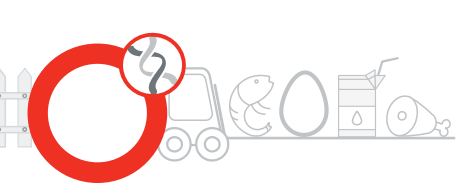
#### Chapter One – Standards that Apply to All Foods

- labelling and advertising
- substances added to foods
- contaminants and residues
- microbiological and processing requirements

#### Chapter Two – Food Product Standards

#### Chapter Three – Food Safety Standards

#### Chapter Four – Primary Production and Processing Standards



The *Food Production (Safety) Regulation 2014* identifies mandatory and advisory standards for each Food Safety Scheme. The Standards within the Food Standards Code are referenced within the Regulation.