



Department of Health Compliance and Enforcement Policy

The Department of Health is an enforcement agency for prescribed food businesses in Western Australia. This policy details the approach for compliance and enforcement of the *Food Act 2008* (WA), *Food Regulations 2009* (WA), *Australia New Zealand Food Standards Code* and Australian Standards. The approach is based on the National Enforcement Guideline.

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APPROVED: MANAGER FOOD UNIT

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Contents

Acknowledgements	iv
Abbreviations, acronyms and definitions	vi
Department of Health Compliance and Enforcement Policy	1
1. Introduction	1
2. Objectives	2
3. Powers of authorised officers	3
4. Graduated and proportionate enforcement options	4
4.1 Graduated response	4
4.2 Proportionate response	4
5. Privacy	5
6. Application of compliance and enforcement options	5
6.1 Written warnings	5
6.2 Improvement notices	6
6.3 Infringement notices	7
6.4 Prohibition orders	8
6.5 Seizure powers	9
6.6 Legal Action through the courts	10
6.7 Corrective advertising	10
6.8 Injunctions or injunctive relief	10
6.9 Publication of the names of offenders	10
6.10 Action against registration	10
Figure 1 - Graduated and proportionate use of enforcement options	11
Figure 2 - Seizure process	12
Appendix 1 – Authorised officer report form	13
Appendix 2 – Template Improvement Notice	14
Appendix 3 – Infringement Notice	16
Appendix 4 – Notice to withdraw Infringement Notice	18
Appendix 5 – Template Prohibition Order	19
Appendix 6 – Template Certificate of Clearance	22

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This policy was reviewed April 2014.

SIGNED

Dr Michael Lindsay

Delegate of

CHIEF EXECUTIVE OFFICER

DEPARTMENT OF HEALTH

November 2014

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Abbreviations, acronyms and definitions

<i>Assessment</i>	means the process of reviewing a food business in order to confirm compliance or non-compliance with the <i>Food Act 2008 (WA)</i> , <i>Food Regulations 2009 (WA)</i> , the <i>Australia New Zealand Food Standards Code</i> or the Australian Standards
<i>Audit</i>	means a systematic, independent and documented process for obtaining evidence and evaluating it objectively to determine the extent to which the audit criteria are fulfilled
<i>Australian Standards</i>	means the Australian Standards as adopted in the <i>Food Regulations 2009 (WA)</i>
<i>Authorised officer</i>	means a person appointed under Part 10, Division 3 of the <i>Food Act 2008 (WA)</i>
<i>CEO</i>	the Chief Executive Officer of the Department of Health
<i>Code</i>	means the <i>Australia New Zealand Food Standards Code</i> as defined in the <u><i>Food Standards Australia New Zealand Act, 1991</i></u> of the Commonwealth of Australia
<i>Compliance</i>	means when persons, food businesses or primary producers are operating within the regulatory requirements that apply to that person, food and associated inputs, food business or primary producer
<i>Court</i>	means <ul style="list-style-type: none">▪ District Court of Western Australia,▪ Magistrates Court of Western Australia, or▪ Supreme Court of Western Australia
<i>Designated officer</i>	means an authorised officer designated by an enforcement agency under Section 126(13) of the <i>Food Act 2008 (WA)</i>
<i>Enforcement</i>	means the use of regulatory options to achieve compliance
<i>Enforcement agency</i>	means <ul style="list-style-type: none">▪ the CEO▪ a local government or▪ a person or body, or a person or body within a class of persons or bodies, prescribed by the <i>Food Regulations 2009 (WA)</i> for the purposes of this definition
<i>Food Act</i>	refers to the <i>Food Act 2008 (WA)</i>
<i>Food Regulations</i>	refers to the <i>Food Regulations 2009 (WA)</i>

<i>Improvement notice</i>	means a statutory notice served by an authorised officer (provided for by Section 62 of the Food Act), which may require: <ul style="list-style-type: none"> ▪ compliance by a food business with the Code, or ▪ cleaning, repair or replacement of equipment, premises or food transport vehicles
<i>Infringement notice</i>	means a statutory notice served by a designated officer (provided for by Section 126 of the Food Act) who has reason to believe that a person has committed a prescribed offence under the Food Act or Food Regulations and sets out the procedures and requirements
<i>Non-Compliance</i>	means when persons, food businesses or primary producers are operating outside any regulatory requirements
<i>Notification</i>	means the requirement under Section 107 of the Food Act where the proprietor of a food business must not conduct the food business at premises unless the proprietor has given written notification to the appropriate enforcement agency (provided for by Section 107 of the Food Act)
<i>Powers of seizure</i>	means an authorised officer may seize any food, or any vehicle, equipment, package or labelling or advertising material, or any other thing, that the authorised officer believes on reasonable grounds is evidence that an offence under the Food Act has been or is being committed (provided for by Section 40 of the Food Act)
<i>Prohibition order</i>	means an order served upon the proprietor of a food business by an enforcement agency (provided for by Section 65 of the Food Act) which believes any of the circumstances specified by Section 62 (a), (b), (c) or (d) of the Food Act exist and that the proprietor of the food business has not complied with an improvement notice within the time required by Section 63 of the Food Act for compliance, or the issue of the order is necessary to prevent or mitigate a serious danger to public health
<i>Prosecution</i>	means the application of legal action through the court procedures to seek a conviction of an offence
<i>Reasonable time</i>	means entry at any time between the hours of 7.00 am and 6.00 pm or hours when the food business is in progress or is usually carried on (extract from Section 349 (1) <i>Health Act 1911</i>)
<i>Registration</i>	means that it is an offence to conduct a food business at any premises unless the food business is registered with the

appropriate enforcement agency in respect of those premises (provided for Section 109 and 110 of the Food Act)

Sanctions

means a range of regulatory responses to a given non-compliance that involves the application of legal powers in response to a given non-compliance or to the consequences of a non-compliance

SAT

means the State Administrative Tribunal which is the primary place for the review of decisions made by government agencies, public officials and local governments

WA

Western Australia

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Department of Health Compliance and Enforcement Policy

1. Introduction

The Department of Health Compliance and Enforcement Policy (the Policy) is based on the national compliance and enforcement guideline. The national guideline provides the framework for the Department of Health policy. It sets out the Department of Health's approach to food regulatory enforcement activity for the food businesses which it is responsible for enforcing. The policy provides a range of compliance and enforcement options in response to compliance failures by food businesses.

Under the Food Regulations, the CEO of the Department of Health is the enforcement agency for the following:

- public hospitals where food is prepared for patients in the hospital
- dairy (primary production, processing, and transportation)
- primary production of seafood or manufacturing of seafood, if the seafood involved is bivalve molluscs, and
- food businesses not within a district.

In addition to the above, the CEO of the Department of Health, under Section 120 of the Food Act, has adopted a guideline with regards to food businesses engaged in the exporting of food and the appropriate enforcement agency. The CEO of the Department of Health is the appropriate enforcement agency, under Section 8 of the Food Act, for food businesses engaged in export of foods:

- prescribed for export on Australian Government Department of Agriculture's behalf, and
- produced at export establishments for the domestic market on Department of Health's behalf in order to rationalise the provision of services pertaining to the goods nominated (for example dairy processing, dairy stores, shellfish estuary and harvest management, fish handling and processing, poultry, eggs and red meat)

Under the Code there are requirements relating to:

- labelling and advertising
- substances added to foods (food additives, vitamins and minerals, processing aids, identity and purity)
- contaminants and residues (metals and toxicants, environmental residues, packing materials, moisture absorbers, mould inhibitors, promotional materials, graphics, prohibited and restricted plants and fungi)

- foods requiring pre-market clearance (novel foods, food produced using gene technology, food irradiation)
- microbiological and processing requirements
- food product standards
- food safety standards (food safety programs, food safety practices and food premises and equipment) and
- primary production and processing standards.

Under the Australian Standards there are requirements relating to the hygienic:

- production and transportation of meat and meat products for human consumption
- production of rabbit meat for human consumption
- production of ratite (emu/ostrich) meat for human consumption
- production of crocodile meat for human consumption
- production of wild game meat for human consumption
- production of poultry meat for human consumption and the construction of those premises
- production of natural casings for human consumption and
- rendering of animal products.

2. Objectives

The objectives of this policy are:

- to provide for consistency in approach to the enforcement activity
- to be efficient in enforcement approach
- to provide transparency to consumers and the food industry on how the Department of Health makes decisions on enforcement action
- to guide decision making and action by the Department of Health in the consistent use of enforcement options commensurate with risk to public health and
- to use compliance and enforcement strategies in such a way as to best achieve legislated objectives and encourage compliance with legislated provisions.

The policy is effective from the date signed by the CEO, or the delegate of the CEO, until revoked.

3. Powers of authorised officers

An authorised officer is appointed by the enforcement agency (the Department of Health) and is issued with a certificate of authority. The authorised officer is required to produce the certificate of authority when asked to do so.

An authorised officer may at any reasonable time do any one or more of the following:

- enter and inspect premises used in connection with the handling of any food intended for sale or the sale of food, or any food transport vehicle
- consent of the occupier or entry by warrant is required for entry into any part of the premises being used solely for residential purposes, unless that part of the premises is being used for the preparation or service of meals provided with paid accommodation
- enter and inspect any premises or food transport vehicle where there are records or documents that relate to the handling of any food intended for sale or the sale of food
- examine any food intended for sale
- open and examine any package that contains any food intended for sale or any equipment
- open and examine any equipment
- examine any labelling or advertising material to be intended for use in connection with any food intended for sale or any equipment
- for the purposes of analysing any food sold or intended for sale or for carrying out any other examination to determine whether the provisions of the Food Act are being complied with – demand, select and obtain samples of any food, subject to Part 7 Division 1 of the Food Act
- for the purposes of analysis, take samples of water or soil or any other thing that is part of the environment in which any food is handled to determine whether that environment poses a risk to the safety of the food for human consumption
- take samples of anything other than for the purposes of analysis that may be used as evidence that an offence has been, or is being committed under the Food Act
- examine any records or documents, make copies and take away and retain them for any time that may be reasonably necessary
- stop and detain any vehicle that the authorised officer is authorised to enter
- open and require to be opened any container used for the conveyance of goods, or any package that contain any food sold or intended for sale or any equipment
- take any photographs, films or audio or visual recordings

- take measurements and make sketches or drawings or any other type of record
- require a person to provide information or answer questions in connection with the Food Act or produce any record, document or thing that the authorised officer is authorised to examine under the Food Act
- require a person to state the person's name and residential address
- generally make any investigations and inquiries to ascertain whether an offence has been or is being committed.

There are penalties for failure to comply with the requirements of an authorised officer, or provide information, or produce any document that the person knows is false or misleading. In addition, it is an offence to obstruct, impersonate or threaten an authorised officer.

4. Graduated and proportionate enforcement options

Food legislation provides a range of enforcement options that vary significantly in severity. A key tenet of this approach to food regulation is that decision making by the Department of Health is made on the basis of risk to public health. These decisions include the food safety surveillance activity levels, food sampling frequency, compliance and enforcement action and promotional activities undertaken by the Department of Health. The Department of Health policy document on the auditing of food businesses it is responsible for enforcing, contains information which should be read in conjunction with this document.

Selecting which option applies in any particular case requires the application of a principle that the response is commensurate with the severity of non-compliance.

4.1 Graduated response

The graduated enforcement approach may utilise the initial use of milder enforcement options, such as, improvement notices or warning letters and/or increased frequency of assessments or audits which may result in increased costs to the food business; however, this will be subject to discussion in accordance with operating procedures and based on the level of public health risk. When the application of these enforcement options does not achieve compliance, authorised officers should take more significant enforcement action such as the issuing of prohibition orders, and infringement notices.

4.2 Proportionate response

Decisions about the proportionality of an enforcement response must be balanced by the severity of the alleged offence and will be influenced by a range of factors including:

- evaluating the impact of the alleged offence on stakeholders
- the particular circumstances of the alleged offence and the individual circumstances of the food business and persons associated with the business that is subject to enforcement action
- the compliance history of the food business that is the subject of enforcement action

- the co-operation demonstrated by the alleged offender; both in relation to investigations conducted on the offender's premises relating to the offence and in respect to the co-operation demonstrated by the alleged offender following commencement of enforcement action
- any remedial action implemented by the alleged offender to address the non-compliance that is the subject of enforcement action
- the degree of care and due diligence exercised by the food business to avoid such non-compliance
- the timeframe over which the alleged offence was committed
- it is in the public interest.

5. Privacy

There is no privacy law or administrative privacy regime in Western Australia; however, information gathered will be used for purposes related to the administration of the Food Act. In accordance with regulation 51 of the Food Regulations certain details (proprietor name, trading name and address details) may be made publicly available.

6. Application of compliance and enforcement options

These enforcement options are listed in a graduated order of seriousness that will generally reflect the order in which they are applied in a graduated and proportionate enforcement response (refer to figure 1 which outlines a graduated use of enforcement options).

Good records are fundamental for authorised officers as part of food safety management. File notes on food businesses must detail all actions taken by authorised officers. Authorised officers will use the report form located in Appendix 1. The declaration will be signed by the authorised officer.

When there is non-compliance with a warning letter, improvement notice, infringement notice or prohibition order the authorised officer will prepare a report and make recommendations on a proposed course of action based on the nature of the offence and previous dealings with the business. The Director of Environmental Health and the Manager of the Food Unit have been delegated powers by the CEO to manage such matters in conjunction with standard operating procedures within the Food Unit.

6.1 Written warnings

Warning letters may be issued where there is non-compliance and an improvement notice cannot be issued as the non-compliance does not relate to Section 62 of the Food Act, and other enforcement options are not considered proportionate to the alleged offence.

Warning letters will detail the exact nature of the offence, cite the relevant legislation and specific clauses breached, state the required remedial action (the outcome required), the time for compliance and specify the maximum penalty for the offence.

Warning letters will be followed-up after the expiry of the allotted time for compliance.

Failure to comply with a warning letter will, in most cases, lead to further compliance and enforcement action. The Department of Health will not continue to issue any further written warnings for continued non-compliance. Continued non-compliance will result in another course of action.

6.2 Improvement notices

Improvement notices are statutory notices that must only address prescribed issues and have prescribed content. An authorised officer may issue an improvement notice to the proprietor of a food business if it is believed that there are grounds for serving an improvement notice in accordance with Section 62 of the Food Act. Improvement notices should only be issued when it is considered to be an appropriate option (i.e. capable of providing sufficient incentive to the food business to address the matter).

The improvement notice must contain certain information. The following must be included:

- the specific reference to Section 63 of the Food Act under which the notice is issued
- the provision(s) of the Code that the authorised officer believes is being, or has been, contravened
- a brief description of how the relevant legislative provision(s) have been or are being breached
- the particular action in terms of desired outcome that the proprietor of the food business should undertake in order to rectify the observed non-compliance
- the timeframe in which the contravention should be resolved by the proprietor of the food business; within 24 hours for more serious issues and only specify a longer period if considered appropriate by the authorised officer
- timeframes allowed for compliance should consider the risk to public health associated with continued non-compliance.

The authorised officers from the Department of Health will conduct follow-up assessments after the timeframe nominated in the notice.

Extensions to the date of compliance provided in an improvement notice may be granted at the discretion of the authorised officer that served the notice, and may only be granted before the end of the period specified in the improvement notice. It is recommended that extensions are only provided in instances where the food business requests an extension in writing **before** the expiry date of the notice. It is further suggested that extensions only be considered for more minor matters such as repairs to equipment or replacement of equipment parts, or for minor revision of a food business food safety management system.

Food businesses will be advised that failure to comply with an improvement notice may result in further more serious enforcement action such as a prohibition order, infringement notice, or both. A copy of a Template Improvement Notice is located in Appendix 2.

6.3 Infringement notices

An infringement notice is a notice to the effect that the person to whom it is directed has committed an alleged specified offence under the Food Act or the Food Regulations, and requires payment of a specified monetary amount for the offence within a specified time. Infringement notices may be served by a designated officer (Section 126(2) of the Food Act) in the prescribed form (Schedule 4 of the Food Regulations).

Infringement notices provide a cost effective and efficient method of dealing with offences. These are not appropriate for significant non-compliances (serious or imminent threat to food safety or public health) of the Food Act, the Food Regulations or the Code.

Not complying with an infringement notice may result in referral to a court for hearing or enforcement action may be taken under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*. While it is not essential that the evidence is used to develop a full brief of evidence, it should be logged and the chain of evidence secured as for legal action.

The *Fines, Penalties and Infringement Notices Enforcement Act 1994* provides that the effect of payment of an infringement notice is that:

- no further prosecution of that matter can take place and
- that payment is not to be taken as admission of any kind for that alleged offence.

The effect of this is that once payment of the fine has occurred any ability to prosecute on that matter is lost. It does not matter if later the fine is refunded, because the original payment extinguished any ability to prosecute.

A designated officer (Section 126(7) of the Food Act) may withdraw an infringement notice (Section 126(7) of the Food Act) by sending a withdrawal notice in the prescribed form to the alleged offender. If an infringement notice is withdrawn after the modified penalty has been paid, the amount paid must be refunded.

The provisions of Section 126(7) of the Food Act are in place to allow for the event that the Department of Health may decide for example that:

- an infringement notice was not justified after the payment was made or
- as this was a first time offence that the person should be given the benefit of the doubt or
- on review a notice was not an appropriate compliance / enforcement response to the issue.

A copy of an Infringement Notice and Withdrawal Notice are located in Appendix 3 and 4.

6.4 Prohibition orders

Prohibition orders may be issued by the CEO of the Department of Health where it is necessary to prevent or mitigate a serious danger to public health or where an improvement notice has been issued and there has been a failure to comply with the specified criteria. It is important to note that it is not the authorised officer who issues a prohibition order.

A prohibition order will prohibit the handling of food on specified food premises, vehicles or equipment. It may also prohibit the handling of food in a specified way or for a specified purpose.

Where a person on whom a prohibition order has been served, believes that there were insufficient grounds for the making of a prohibition order and the person has suffered loss as a result, Section 70 of the Food Act allows that person to apply to the CEO of Department of Health for compensation. The scope of the prohibition order is covered under Section 71 of the Food Act and may be made with respect to any one or more of the following:

- any premises or any part of any premises, any food transport vehicle or any equipment specified in the notice or order
- all equipment, or any specified equipment, contained on any premises or any part of any premises, or in a food transport vehicle, specified in the notice or order
- the handling of food intended for sale by a food business in a specified way or for a specified purpose and
- the carrying out of activities specified in the notice or order in relation to food intended for sale

A prohibition order must specify any provision of the Code to which it relates; and may specify particular action to be taken by a proprietor to ensure compliance with the provision of the Code to which it relates. It must also state that it is issued under Section 65.

A brief of evidence sufficient to prove all elements of a prosecution will be the normal standard required prior to issue of a prohibition order. Breach of a prohibition order is an offence and will normally result in further enforcement action, such as an infringement notice or prosecution.

The proprietor of the food business whose premises (other than a vehicle) are affected by a prohibition order may at any time after the order has been served make a written request to the CEO who made the order to cause the premises to be inspected by an authorised officer (Section 67(1)). The proprietor of the food business whose vehicle or equipment is affected by a prohibition order may at any time after the order has been served make a written request to the CEO who made the order to cause the vehicle or equipment to be inspected by an authorised officer (Section 67(2)) —

- at the place where it was originally inspected or

- if it is not convenient for it to be inspected at that place — at some other place that the CEO that made the order has agreed to.

If a request for inspection is made under Section 67 of the Food Act and the premises, vehicle or equipment concerned, through no fault of the proprietor of the food business, are or is not inspected by an authorised officer within the period of **48 hours** after the receipt of the request by the CEO, a certificate of clearance is taken to have been given to the proprietor of the food business under Section 66 of the Food Act.

The CEO must give a certificate of clearance if, after an inspection by an authorised officer there is no longer found to be a serious danger to public health, and any improvement notices served on the person whom the prohibition order was served have been complied with (Section 66).

The CEO may refuse to issue a certificate of clearance (Section 67(4) of the Food Act). The CEO must give written notification to the proprietor of a food business on whom a prohibition order has been served of the decision not to give a certificate of clearance after an inspection under Section 67(4) or Section 66 of the Food Act. Where a refusal to issue a certificate of clearance for a prohibition order has been made, a proprietor of a food business has a right of appeal to SAT. A copy of a Template Prohibition Order is located in Appendix 5 and a Template Certificate of Clearance is located in Appendix 6.

6.5 Seizure powers

The severity of seizure as an evidence gathering measure can vary considerably, dependant upon not only the value of the food, equipment or materials seized but the subsequent impact of the loss of the food, equipment or materials on the conduct of the business.

Authorised officers have seizure powers under the Food Act to seize food, vehicles, equipment, package, labelling or advertising materials or any other thing that the authorised officer believes on reasonable grounds that there is evidence that a provision of the Food Act, Food Regulations or the Code have been or is being contravened (refer to figure 2 which outlines the process).

The impact of a seizure should be considered in the application of any other enforcement action. An authorised officer should document how they reached their decision.

It should be noted that the Food Act provides for compensation to be paid if there were no grounds for the making of the seizure and the item seized cannot be returned or has because of the seizure depreciated in value.

In circumstances where the Department of Health reviews a seizure action and it becomes evident that there has been no contravention of the Food Act, Food Regulations or the Code in relation to items which have been seized they should be returned as soon as possible to the person from whom the items were seized.

Seized goods forfeited to the Crown should be destroyed or disposed of in a manner that ensures there can be no allegation of improper conduct or corruption, and does not pose a risk to public health and safety (e.g. does not re-enter the food chain).

6.6 Legal Action through the courts

Prosecution will normally be reserved for the more serious breaches or matters where less severe enforcement action has not changed the non-compliant behaviour. Where offences are knowingly committed with intent to not comply with the Food Act, Food Regulations or the Code or where defendants have previously been convicted in Magistrates Court, consideration should be given to having matters heard before the District or the Supreme Court.

Submissions by the Department of Health to courts on penalty should take full account of economic benefit gained by the food business in not complying with the legislation.

6.7 Corrective advertising

Requests can be made for court orders for corrective advertising by a person found guilty of an offence. Should there be an ongoing risk to public health or where the Department of Health considers that there may have been a deliberate attempt to defraud consumers, court action may be appropriate.

6.8 Injunctions or injunctive relief

It is also possible for the Department of Health to seek an injunction or injunctive relief to prevent continuing illegal activity. Consideration should however be given to the potential for compensation following failure of any subsequent related prosecution.

6.9 Publication of the names of offenders

It will be the normal procedure for the CEO of the Department of Health to publicise, within the prescribed timeframe, format and procedure, the details of a conviction. Information on the process is outlined in the *WA Food Regulation: Publication of Names of Offenders Policy*.

6.10 Action against registration

In WA food legislation requires food businesses to be registered unless it is an exempted food business. Operation of a food business without current registration issued by the Department of Health is an offence.

A food business that fails to comply with regulatory requirements is subject to enforcement action. Registration can be cancelled under the following circumstances only:

- as a result of any annual or other fee not being paid by the date prescribed by the Department of Health or
- as a result of the food business ceasing to be conducted at those premises or
- at the request of the holder of the certificate of business registration

Figure 1 - Graduated and proportionate use of enforcement options

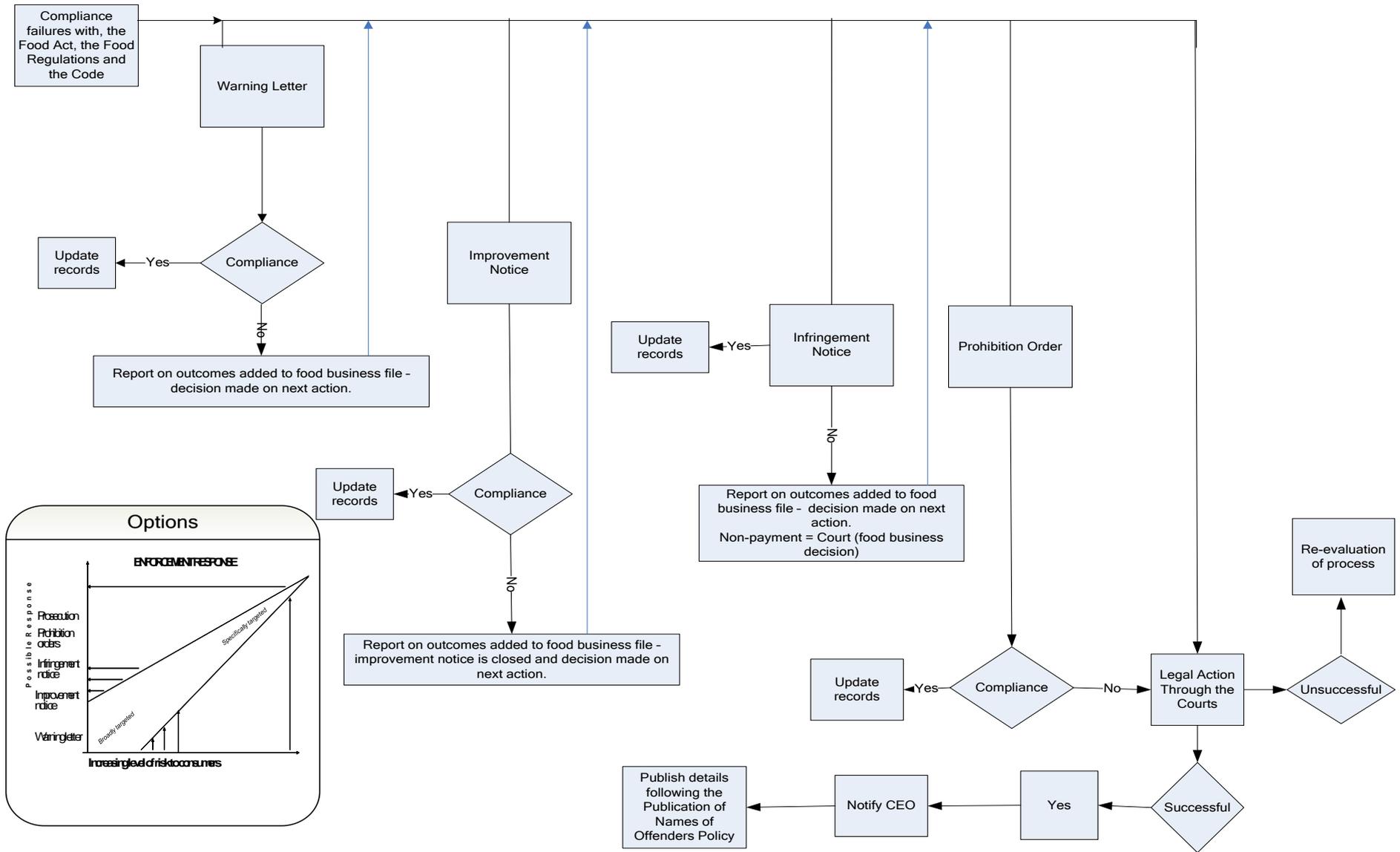
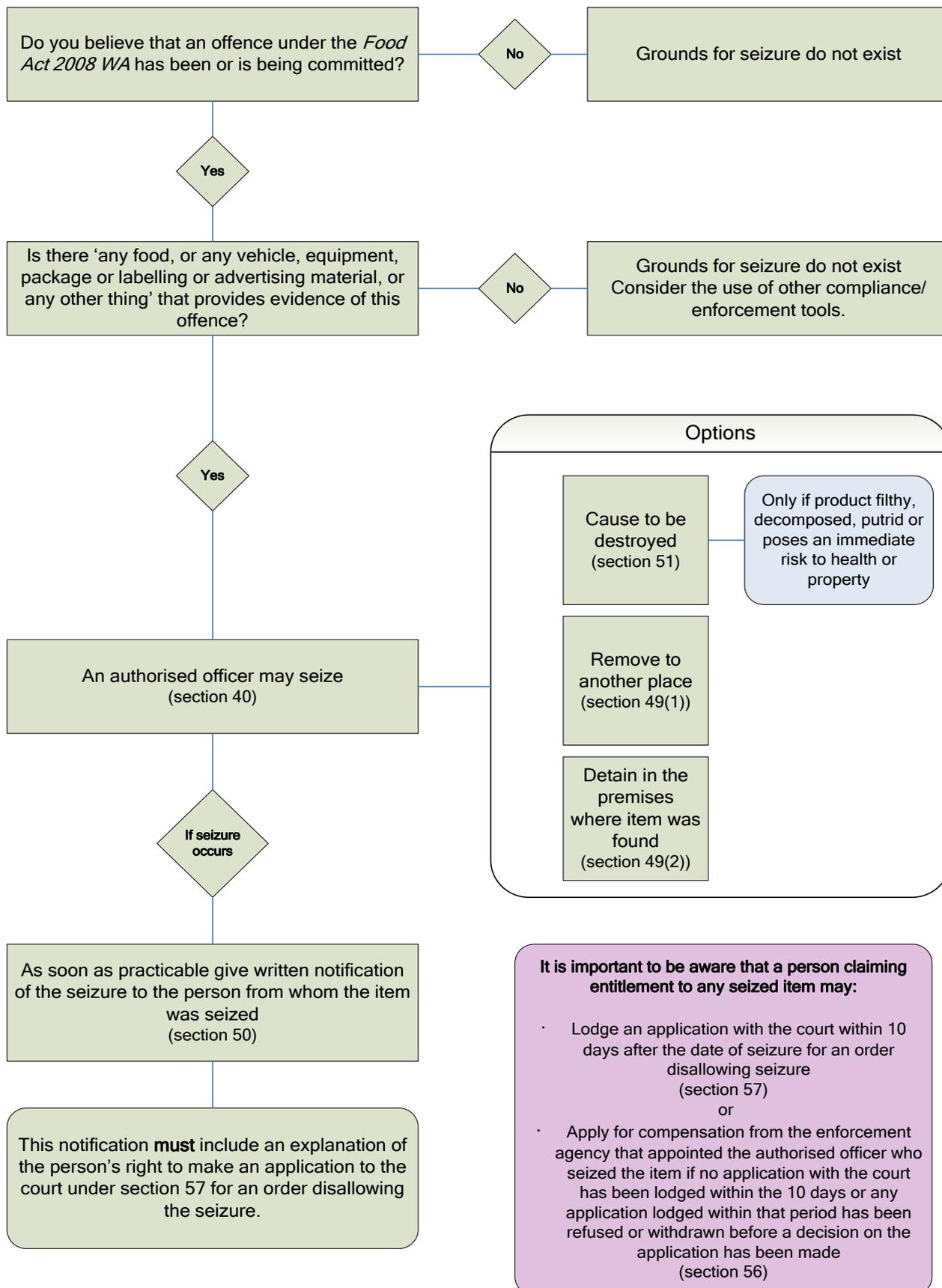


Figure 2 - Seizure process



Appendix 1 – Authorised officer report form

FOOD ACT 2008 (WA)

Authorised Officer Report Form

To be used for the recording of information obtained by an authorised officer in the performance of their functions under the *Food Act 2008 (WA)*

Date		Time		Officer	
------	--	------	--	---------	--

Food Business Details:

Name					
Address					
Proprietor		Person in charge			
File number					

Purpose of Visit:

Details on whether the visit was announced or unannounced	
Information on the reasons for the visit	
Description of the premises	
Who did you see?	

Observations:

--

Reason for Enforcement Action:

--

Recommended enforcement action/timeframe for rectification:

--

Declaration:

I have read and understood the above report and confirm what is represented within:				
Name				
Position				
Signature		Date		

Appendix 2 – Template Improvement Notice

Template Improvement Notice

Food Act 2008 (WA) Part 6 Division 1

Issued to:

Name of proprietor: _____

Name of Food Business: _____

Address of Premises: _____

TAKE NOTICE that I, [name of authorised officer and title] an authorised officer appointed under Part 10 Division 3 of the *Food Act 2008 (WA)* assessed the above mentioned premises on [insert date] and in the course of my assessment I identified [AMEND AS APPROPRIATE TO THE ALLEDGED GROUNDS] In accordance with Part 6 Division 1 Section 62 of the *Food Act 2008 (WA)*, I believe there are reasonable grounds to serve this improvement notice under Section 63.

TAKE NOTICE that in accordance with Section 63 of the *Food Act 2008 (WA)* you are required after service of this Notice to carry out the rectification actions detailed within the following table and by the times specified:

Item	Issue of non-compliance to be rectified:	Action to be completed by (date):	Compliance observed	
			Y/N	Date
Number of additional pages attached:				
Notice served:	Date:	Time:		

This Notice is issued under Section 63 of the *Food Act 2008 (WA)*

AND FURTHER TAKE NOTICE that the above matters must be rectified within the time specified and non-compliance with this notice may result in issue of a Prohibition Order under Section 65 of the *Food Act 2008* (WA) which may prohibit the handling or the conveyance of food or the use of specified equipment or other actions in respect of the food business.

Name: _____

Signature: _____

Date: _____

Appendix 3 – Infringement Notice

Infringement Notice

<i>Food Act 2008 s. 126(3) and Food Regulations 2009 r. 54(1) Infringement Notice</i>		Notice No.	
Alleged offender	Family name or body corporate name and ACN		
	Other names		
	Address	No.	Street name
			Postcode
Alleged offence [*delete whichever is not applicable]	Description of offence		
	*Food Act 2008 s. _____		
	*Food Regulations 2009 r. _____		
	The modified penalty for the offence is \$		
	Where and when offence committed		
Designated officer issuing notice	Name and title of officer and name of enforcement agency		
	Signature		
	Date of notice		
Notice to alleged offender	<p>It is alleged that you have committed the above offence. If you do not wish to be prosecuted for the alleged offence in a court, you may pay the modified penalty within 28 days after the date of this notice.</p> <p>How to pay</p> <p>By post Send the “Cashier’s Copy” of this notice and a cheque or money order payable to [<i>relevant details</i>] to [<i>details of relevant enforcement agency</i>].</p> <p>In person Take the “Cashier’s Copy” of this notice and pay the cashier at [<i>details of relevant enforcement agency</i>].</p> <p>If you do not pay the modified penalty within 28 days, you may be prosecuted for the alleged offence in a court or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>. Under that Act, some or all of the following action may be taken - your driver’s licence may be suspended; your vehicle licence may be suspended or cancelled; your details may be published on a website; your vehicle may be immobilised or have its number plates removed; and your property may be seized and sold. If you need more time to pay the modified penalty, you can apply for an extension of time by writing to [<i>details of relevant enforcement agency</i>].</p> <p>If you want this matter to be dealt with by prosecution in court, sign the “Cashier’s Copy” of this notice here</p> <p>_____</p> <p>and post it to [<i>details of relevant enforcement agency</i>] within 28 days</p>		

	after the date of this notice.
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Appendix 4 – Notice to withdraw Infringement Notice

Notice to withdraw Infringement Notice

<i>Food Act 2008 s. 126(7) and Food Regulations 2009 r. 54(2)</i> Withdrawal of infringement notice		Notice No.	
Alleged offender	Family name or body corporate name and ACN		
	Other names		
	Address	No.	Street name
			Postcode
Infringement notice	Infringement notice No.		
	Date of issue		
Alleged offence <i>[*delete whichever is not applicable]</i>	Description of offence		
	*Food Act 2008 s. _____ *Food Regulations 2009 r. _____		
Designated officer withdrawing notice	Name and title of officer and name of enforcement agency		
	Signature		
	Date of notice		
Withdrawal of infringement notice <i>[*delete whichever is not applicable]</i>	The above infringement notice issued against you has been withdrawn. If you have already paid the modified penalty for the alleged offence you are entitled to a refund. *Your refund is enclosed. Or *If you have paid the modified penalty but a refund is not enclosed, to claim your refund sign this notice and post it to [details of relevant enforcement agency].		
	Signature		

Appendix 5 – Template Prohibition Order

Template Prohibition Order

<Proprietor name>
<Food business name>
<Proprietor address>
<Suburb> <State> <Postcode>

To <Proprietor name>,

FOOD ACT 2008 (WA) **PROHIBITION ORDER UNDER SECTION 65**

WHEREAS:

- A. You are the proprietor of a food business trading as <name of food business> located at <address of food premises>; and
- B. I, as the Delegate of the Chief Executive Officer, Department of Health, am satisfied from an assessment of the above mentioned [insert details of whether it is the premises or vehicle or equipment which is relevant to the prohibition order] on the <date> that reasonable grounds exist in accordance with Section 65 (1) of the *Food Act 2008 (WA)*, namely:
- (1) [insert details of which circumstances specified in Section 62 (a), (b), (c) or (d) of the *Food Act 2008 (WA)* apply];

AND THAT:

- (2) [include paragraphs (i) or (ii) or both, where relevant to the circumstances]
- (i) you as the proprietor of the above named food business have failed to comply with an improvement notice issued to you on <date> within the time required by Section 63 of the *Food Act 2008 (WA)* for compliance.
- (ii) the issue of the order is necessary to prevent or mitigate a serious danger to public health.

TAKE NOTICE THEREFORE that pursuant to Section 65 of the *Food Act 2008 (WA)*, I as the Delegate of the Chief Executive Officer, Department of Health, order that –

Provide details of prohibition; for example –

- *no food intended for sale is to be handled on specified premises or a specified part of premises;*
- *no food intended for sale is to be conveyed in a specified vehicle;*
- *specified equipment is not to be used in connection with food intended for sale;*
- *no food intended for sale is to be handled by a food business in a specified way or for a specified purpose; or*
- *no other specified activities in relation to food intended for sale are to be carried out on specified premises or a specified part of specified premises*

This prohibition order is issued under Section 65 of the *Food Act 2008 (WA)* and will remain in force until a certificate of clearance has been issued to you by the Chief Executive Officer, Department of Health.

FURTHER TAKE NOTICE that failure to comply with this order may result in:

- the issue of an infringement notice under the *Food Regulations 2009 (WA)* which carries penalties of \$500 for an individual or \$1000 in the case of a body corporate; or
- legal action through the Courts for contravention of this Prohibition Order which carries maximum penalties of \$50,000 for an individual or \$250,000 for a body corporate.

Signed:

[NAME]

**Delegate of
THE CHIEF EXECUTIVE OFFICER
DEPARTMENT OF HEALTH
DATE**

CERTIFICATE OF CLEARANCE – SECTION 66

This prohibition remains in force until a certificate of clearance has been provided by the Chief Executive Officer Department of Health or his Delegate.

In order to obtain a certificate of clearance you may request an authorised officer to reinspect the premises, vehicle or equipment affected by this prohibition order at any time after the order has been served. A certificate of clearance will only be issued if the inspection reveals that the premises or part of the premises or vehicle or equipment, or handling food by the business in a specified way or for a specified purpose or the carrying out of specified activities are (a) not a serious danger to public health and (b) the person on whom the prohibition order was served has complied with the prohibition order and any improvement notices served on the person.

In accordance with section 67 the request for re-inspection must be in writing and is to be forwarded to:

[NAME]

MANAGER FOOD UNIT

DEPARTMENT OF HEALTH

PO Box 8172

PERTH BUSINESS CENTRE WA 6849

NOTE: You may apply to the State Administrative Tribunal for a review of a decision of the Department of Health to refuse to give a certificate of clearance within 28 days after the day on which notification of the decision was received.

Appendix 6 – Template Certificate of Clearance

Template Certificate of Clearance

FOOD ACT 2008 (WA) CERTIFICATE OF CLEARANCE UNDER SECTION 66

Following an assessment of the food business:

[Name of food business]

Owned by:

[Name of proprietor]

Located at:

[Address of food premises]

By the Department of Health's authorised officer:

[Name of officer and title]

On the:

[Date of assessment]

I as [Delegate of the CEO name and title] am satisfied that:

[Provide details of the premises/part of the premises, vehicle or equipment/the handling of food by the food business in a specified way or for the specified purpose or the carrying out of the specified activities]

Are not/is not [*delete appropriate*] a serious danger to public health; and
The person on whom the prohibition order dated:

[Date of prohibition order]

was served has complied with the prohibition order and improvement notices dated:

[Date of improvement notices if applicable]

Served on the person

Signed:

[NAME]
**Delegate of
THE CHIEF EXECUTIVE OFFICER
DEPARTMENT OF HEALTH**
DATE



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