

APPENDIX 18

INSTRUMENT OF DELEGATION UNDER THE FOOD ACT 2001

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.

Sub-delegation

In exercise of the power provided to me by the Council on the 21 February 2017 as above, I, Colin John Davies, Chief Executive Officer on this Twenty-First day of February 2017 hereby sub-delegate the following powers to the officer or officers of the Council as indicated in the column marked "Subdelegate" (including any person appointed to act in any such position).

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

| | SUB-DELEGATE |
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| 1. Seizure | |
| 1.1 The power pursuant to Section 42(2) of the Food Act 2001 ("the Act") to approve the removal or interference with the thing to which a seizure order under Part 4 of the Act relates before an order is made under Section 42(3)(b) or the order is discharged under Section 42(3)(c) of the Act. | |
| 1.2 The power pursuant to Section 42(3)(a) of the Act to authorise – | |
| 1.2.1 upon application, the release of anything seized under Part 4 of the Act to the person from whom it was seized or to any person who had a right to possession of it at the time of its seizure, subject to such conditions as the Delegate thinks fit, including conditions as to the giving of security for satisfaction of an order under Section 42(3)(b)(i)(B) of the Act; or | |
| 1.2.2 in the case of food or any other perishable | |

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| | thing, order that it be forfeited to the Council. | |
| 1.3 | The duty pursuant to Section 42(3)(d) of the Act where any food or other perishable thing is seized under Part 4 of the Act in relation to an expiable offence and the offence is expiated – | |
| 1.3.1 | if the food or other perishable thing has not already been forfeited by order of the Delegate under Section 42(3)(a)(ii) of the Act, to deal with it in accordance with any determination of the Minister; and | |
| 1.3.2 | not make payment of any compensation in respect of the food or other perishable thing. | |
| 1.4 | The power pursuant to Section 42(3)(e) of the Act to dispose of anything seized under Part 4 of the Act and forfeited under Section 42 of the Act, by sale, destruction or otherwise as the Delegate directs. | |
| 2. | Review of Decision to Refuse Certificate of Clearance | |
| 2.1 | The power pursuant to Section 51(1) of the Act where a person aggrieved by a decision to refuse to give a certificate of clearance under Part 5 of the Act makes application to the appropriate review body for a review of the decision, to respond to the review body on behalf of the Council. | |
| 3. | Review of Order | |
| 3.1 | The duty pursuant to Section 52(2) of the Act where there were no grounds for the making of a prohibition order, to pay such compensation to the applicant for compensation as is just and reasonable. | |
| 3.2 | The duty pursuant to Section 52(3) of the Act to send written notification of the determination as to the payment of compensation under Section 52 of the Act, to each applicant for the payment of such compensation. | |
| 3.3 | The power pursuant to Section 52(4) of the Act where an applicant for the payment of compensation under Section 52 of the Act is dissatisfied with a determination under Section 52(3) of the Act, as to the refusal to pay compensation or the amount of compensation and has applied to the appropriate | |

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| | review body for a review of the determination, to respond to that review body on behalf of the Council. | |
| 4. | Auditing and Reporting | |
| 4.1 | The duty pursuant to Section 79(1) of the Act to determine: | |
| 4.1.1 | the priority classification of individual food businesses for the purposes of the application of any requirements of the Regulations relating to food safety programs; and | |
| 4.1.2 | the frequency of auditing of any food safety programs required to be prepared by the Regulations in relation to the food business | |
| | In accordance with Section 79(2) of the Act. | |
| 4.2 | The duty pursuant to Section 79(3) of the Act to provide written notification to the proprietor of a food business of - | |
| 4.2.1 | the priority classification it has determined for the food business; and | |
| 4.2.2 | the frequency of auditing of any food safety programs required to be prepared by the Regulations in relation to the food business; and | |
| 4.2.3 | the date by which the food business must have implemented any food safety program required to be prepared by the Regulations in relation to the food business. | |
| 4.3 | The power pursuant to Section 79(4) of the Act to change the priority classification of an individual food business if the Delegate believes that the classification is inappropriate for any reason, including as a result of changes made to the conduct of a food business. | |
| 4.4 | The duty pursuant to Section 79(5) of the Act to provide written notification to the proprietor of food business of any change in priority classification of the food business under Section 79(4) of the Act. | |

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| 5. Reporting Requirements | |
| 5.1 The duty pursuant to Section 81(1) of the Act to receive a report from a food safety auditor in relation to an order or assessment carried out by the food safety auditor for the purposes of this Act. | |
| 5.2 The duty pursuant to Section 81(7) of the Act to provide a copy of a report in relation to an audit or assessment to the proprietor of the food business concerned. | |
| 6. Notification of Food Businesses | |
| 6.1 The duty pursuant to Section 86(1) of the Act to receive written notice, in the approved form, from the proprietor of a food business of the information specified in the Food Safety Standards that the proprietor is required to notify to the Council before the business is conducted. | |
| 6.2 The duty pursuant to Section 86(2) of the Act to receive written notice, in the approved form, from the proprietor of a food business that is being conducted when the notification requirements of the Food Safety Standards commence, of the information specified in the Food Safety Standard that is to be notified to the Council. | |
| 6.3 The duty pursuant to Section 86(3) of the Act where a food business is transferred to another person or where there is a change in the name or address of a food business to receive written notice, in the approved form, from the proprietor of the food business (being, in the case where a food business is transferred to another person, the new proprietor) of the transfer or change (as the case may be) that would be required to be given to the Council if the notification were an initial notification under Section 86(1) or (2) of the Act. | |

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| 7. Appointment of Authorised Officers | | |
| 7.1 | The power pursuant to Section 94(1) of the Act to appoint a person to be an authorised officer for the purposes of the Act, subject to the duty upon the Delegate to be satisfied that the person has appropriate qualifications or experience to exercise the functions of an authorised officer. | |
| 7.2 | The duty pursuant to Section 94(2) of the Act to prepare and maintain a list of authorised officers appointed for the purposes of Section 94(1) of the Act. | |
| 7.3 | The duty pursuant to Section 95(1) of the Act to provide each authorised officer with a certificate of authority as an authorised officer. | |
| 7.4 | The power pursuant to Section 95(2) of the Act to limit the powers of an authorised officer through the certificate of authority which is provided pursuant to Section 95(1) of the Act. | |
| 8. Offences | | |
| 8.1 | The power pursuant to Section 29(2) of the Act where the Delegate forms the opinion that an offence has been committed under the Act to take proceedings by way of prosecution (or, at the discretion of the Delegate, by the issuing of an expiation notice or notices where the offence is expiable) in respect of the following offences – | |
| Section | Offence | |
| Section 13(1) | Handling food intended for sale in a manner that the person knows will render, or is likely to render, the food unsafe. | |
| Section 13(2) | Handling food intended for sale in a manner that the person ought reasonably to know is likely to render the food unsafe. | |
| Section 14(1) | Selling food that the person knows is unsafe. | |
| Section 14(2) | Selling food that the person ought reasonably to know is unsafe | |
| Section 16(1) | Handling food intended for sale in a manner | |

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| | that will render, or is likely to render, the food unsafe. | |
| Section 16(2) | Selling food that is unsafe. | |
| Section 17(1) | Handling food intended for sale in a manner that will render or is likely to render the food unsuitable. | |
| Section 17(2) | Selling food that is unsuitable. | |
| Section 21(1) | Failing to comply with any requirement imposed by a provision of the Foods Standards Code in relation to the conduct of a food business or to food intended for sale or food for sale. | |
| Section 21(2) | Selling food that does not comply with any requirement of the Food Standards Code that relates to the food. | |
| Section 39 | Failure, without reasonable excuse, to comply with a requirement of an authorised officer. | |
| Section 40 | Providing information or producing any document that the person knows is false or misleading in a material particular. | |
| Section 41(1) | Resisting, obstructing, or attempting to obstruct, without reasonable excuse, an authorised officer in the exercise of his/her functions under the Act. | |
| Section 41(2) | Impersonating an authorised officer. | |
| Section 42(2) | Removing or interfering with a thing seized under Part 4 of the Food Act 2001 without the approval of the Council. | |
| Section 50 | Contravening or failing, without reasonable excuse, to comply with an improvement notice or a prohibition order. | |
| Section 86(1) | Failure to notify of a food business before the business is conducted. | |
| Section 86(2) | Failure to notify of a food business that is being conducted. | |
| Section 86(3) | Failure to notify of a food business that is | |

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| | transferred or which has changed its name or address. | |
| 8.2 | The power to elect to charge a person who is alleged to have committed an offence against Division 2, Part 2 of the Act, with a summary offence. | |
| 8.3 | The duty pursuant to Section 29(4) of the Act where a person who is alleged to have committed an offence against Division 2, Part 2 of the Act has been given an expiation notice in respect of the offence and does not expiate the offence, to bring proceedings for prosecution of the offence as a summary offence. | |

SCHEDULE OF CONDITIONS

**CONDITIONS OR LIMITATIONS
APPLICABLE TO DELEGATIONS
CONTAINED IN THIS INSTRUMENT**

| Paragraph(s) in instrument to which conditions/limitations apply | Conditions / Limitations |
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| NIL | NIL |