



Government of **Western Australia**
Department of **Health**

Compliance and Enforcement Guideline for Enforcement Agencies

The options available for compliance and enforcement of the *Food Act 2008 (WA)*, *Food Regulations 2009 (WA)* and *Australia New Zealand Food Standards Code* and the Australian Standards

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APPROVED: MANAGER FOOD UNIT

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The Department of Health WA has prepared a policy based on the Enforcement Guideline (*Department of Health Compliance and Enforcement Policy – Version 3 November 2014*) to apply to the food businesses where it is the appropriate enforcement agency.

This guideline was reviewed April 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 2008 (WA)</i>
<i>Authorised officer</i>	means a person appointed under Part 10, Division 3 of the Food Act
<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

	<ul style="list-style-type: none"> • a person or body, or a person or body within a class of persons or bodies, prescribed by the <i>Food Regulations 2009</i> (WA) for the purposes of this definition
<i>Food Act</i>	refers to the <i>Food Act 2008</i> (WA)
<i>Food Regulations</i>	refers to the <i>Food Regulations 2009</i> (WA)
<i>Improvement notice</i>	<p>means a statutory notice served by an authorised officer (provided for by Section 62 of the Food Act), which may require:</p> <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 requirements 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 in 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 the 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)
<i>Sanctions</i>	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
<i>SAT</i>	means the State Administrative Tribunal which is the primary place for the review of decisions made by government agencies, public officials and local governments
<i>WA</i>	Western Australia

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Compliance and Enforcement Guideline

1. Introduction

This Guideline provides a framework for enforcement agencies to utilise in order to provide consistency in enforcement activity across Western Australia. It is not intended to provide a step by step guide to enforcement activities or instructions on how to conduct enforcement activity.

This Guideline provides for a graduated but proportionate application of enforcement options, generally commencing with, for example, milder options and then progressively applying the more severe enforcement action. The more serious enforcement options open to enforcement agencies, such as prosecution, are generally used for the more serious matters or after the exhaustion of other enforcement options.

This Guideline provides a range of compliance and enforcement options to enforcement agencies in response to food safety compliance failures. Consistency in the application of approach will allow the measures to be tailored to the individual circumstances so that enforcement is proportionate to the circumstances in which the non-compliance occurs and the degree of risk posed by the non-compliance.

The outcome based food safety legislations allows food businesses to have a high level of flexibility in order to achieve compliance with the legislative requirements, avoiding any unnecessary costs or difficulties. Outcomes based legislation requires enforcement agencies to have a sound understanding of both the law and food science. Therefore a high level of training and support is needed to ensure the law is enforced and that the objectives of the legislation are achieved.

2. Objectives

The objectives of this Guideline are:

- to provide for consistency in approach to the enforcement activity by enforcement agencies
- to be efficient in enforcement approach
- to provide transparency to consumers and the food industry on how enforcement agencies will make decisions on enforcement action
- to guide decision making and action by enforcement agencies in the consistent use of enforcement options commensurate with risk
- to use compliance and enforcement strategies in such a way as to best achieve legislated objectives and encourage compliance with legislated provisions
- to provide a framework to implement a cooperative and collaborative approach to enforcement action to achieve compliance in a manner that protects consumers and does not place unnecessary imposts on food businesses

- to provide protection for consumers from inappropriate and/or misleading trade practices.

3. Compliance and enforcement strategies

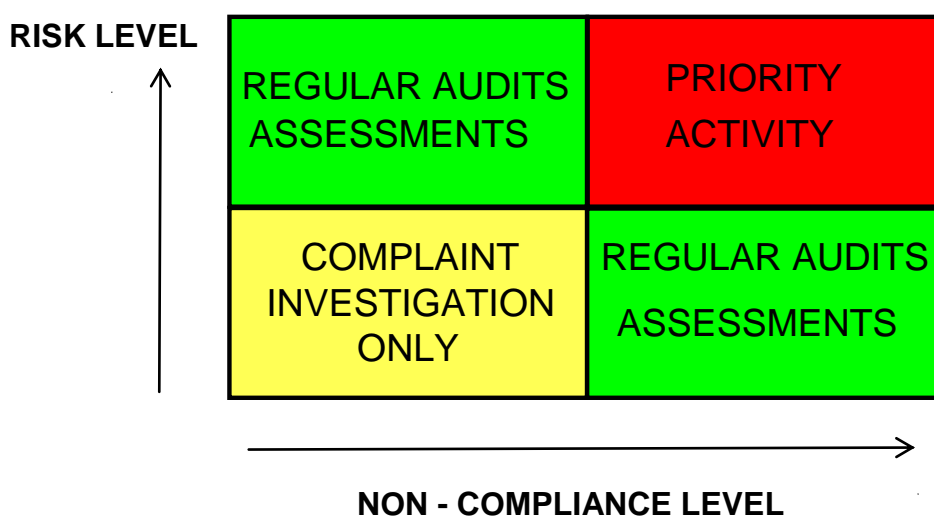
In meeting the objectives stated above, enforcement agencies are advised to adopt a strategic approach to the application of enforcement provisions.

In adopting a strategic approach to enforcement, it is important for enforcement agencies to implement a successful compliance strategy. This strategy should address a number of elements:

- identification of food industry practices likely to result in non-compliance in specific sectors
- identification of food industry sectors where non-compliance will result in greater public health risk or serious fraud
- development of indicators of compliance levels in the food businesses
- prioritisation of enforcement tasks based on a risk and compliance matrix
- identification of behavioural issues
- use of compliance data to evaluate/review the strategy.

A key principle of the new approach to food regulation is that decision making by enforcement agencies is to be made on the basis of risk to the public. These decisions include the food safety surveillance activity levels, food sampling frequency, compliance and enforcement action and promotional activities undertaken by enforcement agencies. The following diagram (Figure 1) illustrates the level of risk and the results of how non-compliance will impact on the level of contact by enforcement agencies.

Figure 1 Risk and compliance matrix



Classifying food businesses based on their level of risk allows enforcement agencies to prioritise their regulatory involvement (such as food business assessment) so that those businesses requiring greater surveillance are regulated appropriately. This can assist with the annual planning process and ensure that adequate resources are available.

Information on assessing the classification of food businesses is contained in the guide *WA Food Regulation: Food Business Risk Profiling*.

4. Key enforcement guideline principles

The essential principles are that effective and ethical enforcement of food law is:

- a graduated and proportionate approach
- authorised by law
- impartial and procedurally fair
- accountable and transparent
- consistent
- in the public interest and
- allow for application of multiple enforcement options under appropriate circumstances.

4.1 Graduated and proportionate enforcement

Food legislation provides a range of enforcement options to enforcement agencies that vary significantly in severity. 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; see the Enforcement Option Box to this Guideline which is available in Appendix A. The application of a graduated response should be a general principle but not be applied so rigorously as to prevent application of enforcement options that are proportionate to the non-compliance identified.

4.1.1 Graduated response

The graduated enforcement approach provides a mechanism for 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 fees being imposed on the food business. If the application of these enforcement options does not achieve compliance, authorised officers should undertake more significant enforcement action such as the issuing of prohibition orders and infringement notices. When the graduated enforcement action fails, or the risk of the non-compliance is severe, the most serious enforcement option i.e. legal action would be used. This is a graduated approach to enforcement and will generally place lower compliance costs on food businesses and is less resource intensive for enforcement agencies.

4.1.2 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 non-compliance on the public
- 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 subject to enforcement action
- the co-operation demonstrated by the alleged offender; both in relation to investigations conducted by the offender's food business 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 non-compliance, such as the full implementation of Australian Standard *AS3806-1998 Compliance Programs*
- the timeframe over which the alleged non-compliance was committed
- It is in the public interest.

The following diagram (Figure 2) illustrates the graduated nature of enforcement responses in concert with the seriousness of the non-compliance.

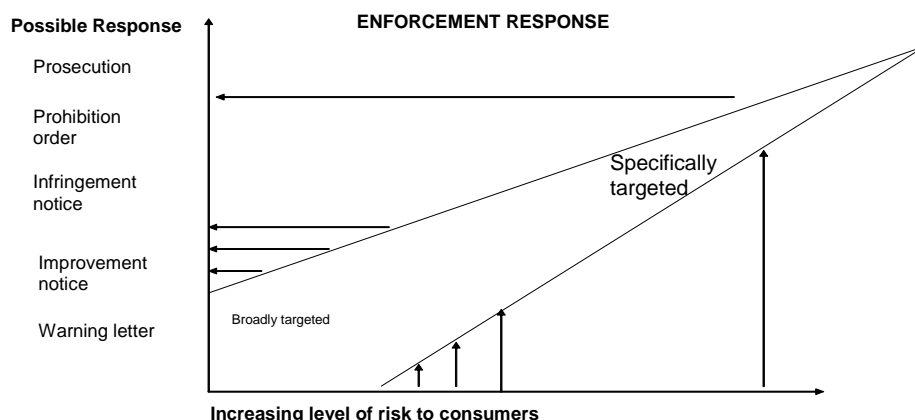


Figure 2 - Enforcement response

4.2 Authorised by law

Authorised officers should not exceed their powers vested to them under the Food Act. All evidence must be:

- collected (and secured) and sufficient to substantiate the alleged non compliance
- properly obtained within not only the requirements of food legislation, but also criminal law more broadly
- admissible under the rules of evidence, regardless of the severity of the enforcement action being implemented and sufficient to establish that an offence has been committed – this is essential to ensure that action is not taken against innocent people
- sufficient to support the case against any appeal such as for an infringement notice that is referred to a court for a defended hearing or a matter that is appealable to SAT.

Prosecution proceedings should not proceed unless there is a reasonable prospect of a conviction, were the matter to be placed before a court.

4.3 Impartiality and procedural fairness

Enforcement agencies must be consistent in the way they apply enforcement actions and there should not be any arbitrary or inexplicable differences in the way individual cases, or classes of cases are treated.

There must be no discrimination, i.e. ethnicity, religion, age or gender, race, colour, sex, social position, marital status, sexual preference, political opinions or cultural views of the alleged offender when undertaking enforcement action.

Decision making regarding enforcement action should not be influenced by:

- political advantage or disadvantage to a government or any political party or group
- the consequences of a decision to undertake enforcement action on the personal or professional circumstances of those responsible for the decision making, or
- the personal feelings of the decision makers towards the offenders.

Enforcement action must be timely to ensure the food business associates the action with the non-compliance in order to undertake the necessary remedial action.

If statutory procedures are initiated, the proprietor of the food business will receive advice in writing of any statutory right of appeal available within the relevant food legislation.

4.4 Accountability and transparency

The measures enforcement agencies apply in achieving accountability and transparency should include:

- ensuring legislation, enforcement policies, complaints procedures and relevant information is easily accessible to food businesses and the public
- the use of plain language when communicating with the public and industry
- outlining the policies and procedures that will be followed in addressing issues raised by stakeholders
- advising of any process of complaint or appeal that is available, with details of the process and likely timescales and
- any fees and charges that will be applied in discharging obligations or services under the relevant legislation.

The constraints of any policy, legislation and confidentiality requirements must be considered and observed in respecting the privacy of food businesses. When a conviction has been obtained through Court proceedings and finalised (including where applicable, a confirmation of the conviction after avenues of appeal have been exhausted), information on the name of an offender will be made publically available on the Department of Health website (Notification of Names of Offenders) in accordance with the requirements set out in Section 143 of the Food Act.

4.5 Consistency

Consistent enforcement of food law is fundamental to ensure that consumers and food businesses are not unfairly advantaged or disadvantaged.

Consequently enforcement agencies should ensure that they train staff adequately and monitor performance to ensure that enforcement officers treat food businesses in a consistent manner. Appropriate approaches should also consider for example, staff rotation, peer review and secondment.

4.6 The Public interest

The overriding consideration in taking enforcement action will always be in the interest of protecting public health and safety.

4.7 Application of multiple enforcement options

While a gradual approach to the application of individual enforcement options is advocated in this Guideline, under the appropriate circumstances, it may be necessary to apply multiple enforcement options simultaneously for the one non-compliance. For example, it may be appropriate to issue an infringement notice and prohibition order for a serious hygiene breach.

Additionally there may be circumstances where there are multiple non-compliances detected, each of varying significance. In such circumstances, the use of differing enforcement options may be warranted. Equally the existence of multiple breaches may indicate system failure which may result in the use of more significant enforcement options.

5. Cross jurisdictional issues

Mutual recognition legislation ensures foods manufactured within Western Australia or imported into Western Australia from other jurisdictions and New Zealand are freely traded across jurisdictional boundaries (also referred to as the “Home Jurisdiction Rule”). The qualifier to this is that the product has to comply with the relevant requirements of that State, Territory or New Zealand.

The Home Jurisdiction Rule is an administrative process for liaison and coordination between enforcement agencies where goods produced and used by food businesses are traded across borders and where the head office of a business is located in a different State or Territory.

The Home Jurisdictional Rule aims to:

- provide a framework for enforcement agencies to manage issues of legislative non-compliance or complaints outside the scope of the National Food Incident Response Protocol (NFIRP) for foods processed in one State or Territory and sold, transported or traded to another
- facilitate and support efficient communication between enforcement agencies on cross jurisdictional matters
- reduce duplication of enforcement action in more than one jurisdiction

6. Communication strategy

Enforcement agencies can assist by providing ready access to legislation by using websites and industry newsletters to provide advice on where to obtain copies of the relevant legislation. The Department of Health website is also available and located at <http://www.public.health.wa.gov.au/2/1061/2/food.pm>

Appendix A – Enforcement option box

1. Enforcement options

In instigating enforcement action available to enforcement agencies, there are various approaches including:

- increasing the frequency of assessments or audits at cost to the food business
- written warnings
- the issue of a statutory improvement notice
- the issue of an infringement notice
- the issue of a prohibition order which controls certain activities, the use of certain equipment or prevents operation of the food business where there is failure to comply with an improvement notice or to prevent or mitigate a serious danger to public health
- the institution of proceedings (prosecution) in the Magistrates Court or the Supreme Court
- publication of the names of offenders after conviction in accordance with Section 143 of the Food Act
- request for court orders for corrective advertising by a person found guilty of an offence and
- Injunctions or injunctive relief

2. Application of enforcement options

These enforcement options are listed in a graduated order of seriousness that will generally reflect the order in which they are applied (refer to Figure 3 on page 18) in a graduated and proportionate enforcement response. Figure 3 outlines and recommends a graduated and proportionate use of enforcement options.

2.1 Written warnings

It is recommended enforcement agencies exercise discretion when issuing warning letters as opposed to improvement notices. Generally speaking letters should only be used for breaches where an improvement notice cannot be served as the breach does not relate to Section 62 of the Food Act, and other enforcement options are not considered proportionate to the alleged offence.

Warnings letters should detail the exact nature of the offence, cite the relevant legislation and specific provisions breached, state the required remedial action, in terms of desired outcome, the timeframe for compliance, specify the maximum penalty for the offence, and the intention of the enforcement agency to enforce the legislation should the business fail to ensure the required actions have been undertaken.

Warning letters dealing with serious issues must be followed-up after the expiry of the timeframe for compliance. Enforcement agencies are encouraged to allow no more than 3 months following the expiry of a timeframe in a warning letter before following up to ensure the required actions have been taken.

Failure to comply with a warning letter will result in further action and enforcement agencies have a number of options in relation to further action. Further written warnings should not be issued for continued non-compliance or a subsequent similar offence.

2.2 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 notices 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 should contain certain information. The following should 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 enforcement agency should 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 improvement 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 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 are advised that failure to comply with an improvement notice will generally result in implementation of more serious enforcement action such as a prohibition order, infringement notice, or both.

2.3 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 breaches (serious or imminent threat to food safety or public health) of the Food Act, Food Regulations or the Code.

Not complying with an infringement notice can 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 the 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.

A provision of Section 126(7) of the Food Act allows for the withdrawal of an infringement notice. It may be 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.

2.4 Prohibition orders

The CEO or other enforcement agency may issue a prohibition order. Prohibition orders may be issued 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.

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.

It should be noted that Section 70 of the Food Act provides for compensation to be paid if there were insufficient grounds for the making of the prohibition order.

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
- 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 specify that it is issued under Section 65 of the Food Act.

A brief of evidence sufficient to prove all the elements of an offence to instigate a prosecution will be the normal standard required prior to the 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 a 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 or other enforcement agency who made the order to cause the premises to be inspected by an authorised officer (Section 67(1) of the Food Act). The proprietor of a 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 or other enforcement agency who made the order to cause the vehicle or equipment to be inspected by an authorised officer (Section 67(2) of the Food Act):

- 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 or other enforcement agency that made the order has agreed to.

If a request for inspection is made 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 or other enforcement agency, then 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 or other enforcement agency 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.

The CEO or other enforcement agency may refuse to issue a certificate of clearance (Section 67(4) of the Food Act). The CEO or other enforcement agency 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 has occurred under Section 66 and 67 of the Food Act.

The proprietor of a food business may apply to the SAT for a review of the CEO's or enforcement agency's decision to refuse to issue a certificate of clearance. An application must be made to the SAT within 28 days after the day on which the food proprietor received notification of that decision.

2.5 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 the Magistrates Court, consideration should be given to having matters heard before the District or the Supreme Court.

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

2.6 Corrective advertising

Requests may be made for court orders for corrective advertising should a person found guilty of an offence where there is potential ongoing risk to public health, or where it has been proven that a food has been promoted through advertising, in an inappropriate or intentionally misleading way.

2.7 Injunctions or injunctive relief

It is also possible for enforcement agencies to seek an injunction or injunctive relief to prevent continuing activity that does not comply with the Food Act, Food Regulations or the Code. Consideration should however be given to the potential for compensation following failure of any subsequent related prosecution.

2.8 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*.

2.9 Action against registration

In WA, food legislation requires food businesses to be registered. Operation of a food business without current registration issued by the enforcement agency is an offence.

A food business that fails to comply with regulatory requirements is subject to enforcement action. Registrations 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 enforcement agency or
- as a result of the food business ceasing to be conducted or
- as the result of the request of the holder of the certificate of business registration.

3 Powers of entry, inspection and seizure

3.1 Entry and inspection

Under Part 5 Division 1 of the Food Act, an authorised officer has wide powers to enter and inspect a food transport vehicle or premises at a reasonable time where the officer believes that it is being used in connection with the handling of any food intended for sale, or for sale, in order to make any investigations and inquiries that may be necessary to ascertain whether an offence under the Food Act has been or is being committed; Section 38 of the Food Act sets out the extent of those powers.

An authorised officer may however, only enter and inspect that part of the premises being used solely for residential purposes with the occupier's consent, or where a search warrant has been issued under Section 42 of the Food Act, or where that part of the premises is being used for the preparation or service of meals provided with paid accommodation.

3.2 Seizure

The severity of seizure as an evidence gathering measure can vary considerably, dependent 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 (refer to Figure 4).

Authorised officers have seizure powers under the Food Act to seize food, vehicles, equipment, packages or labelling, advertising materials or any other thing that the authorised officer reasonably believes is evidence that a provision of the Food Act, Food Regulations or the Code have been contravened. Authorised officers can only seize items if the item seized is the evidence which demonstrates that the non-compliance occurred.

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.

In circumstances where an enforcement agency 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).

Figure 3 - Graduated and proportionate use of enforcement options

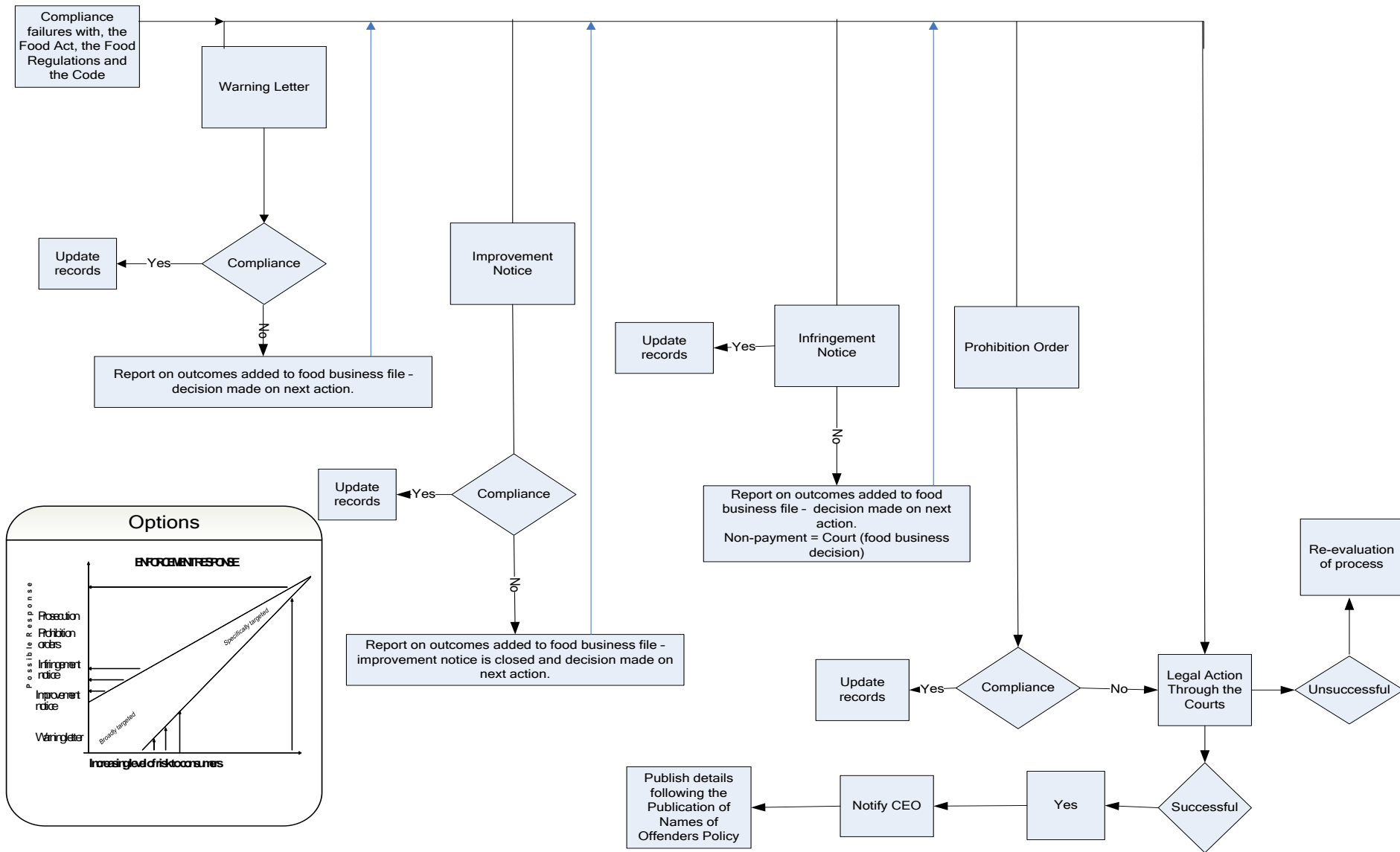
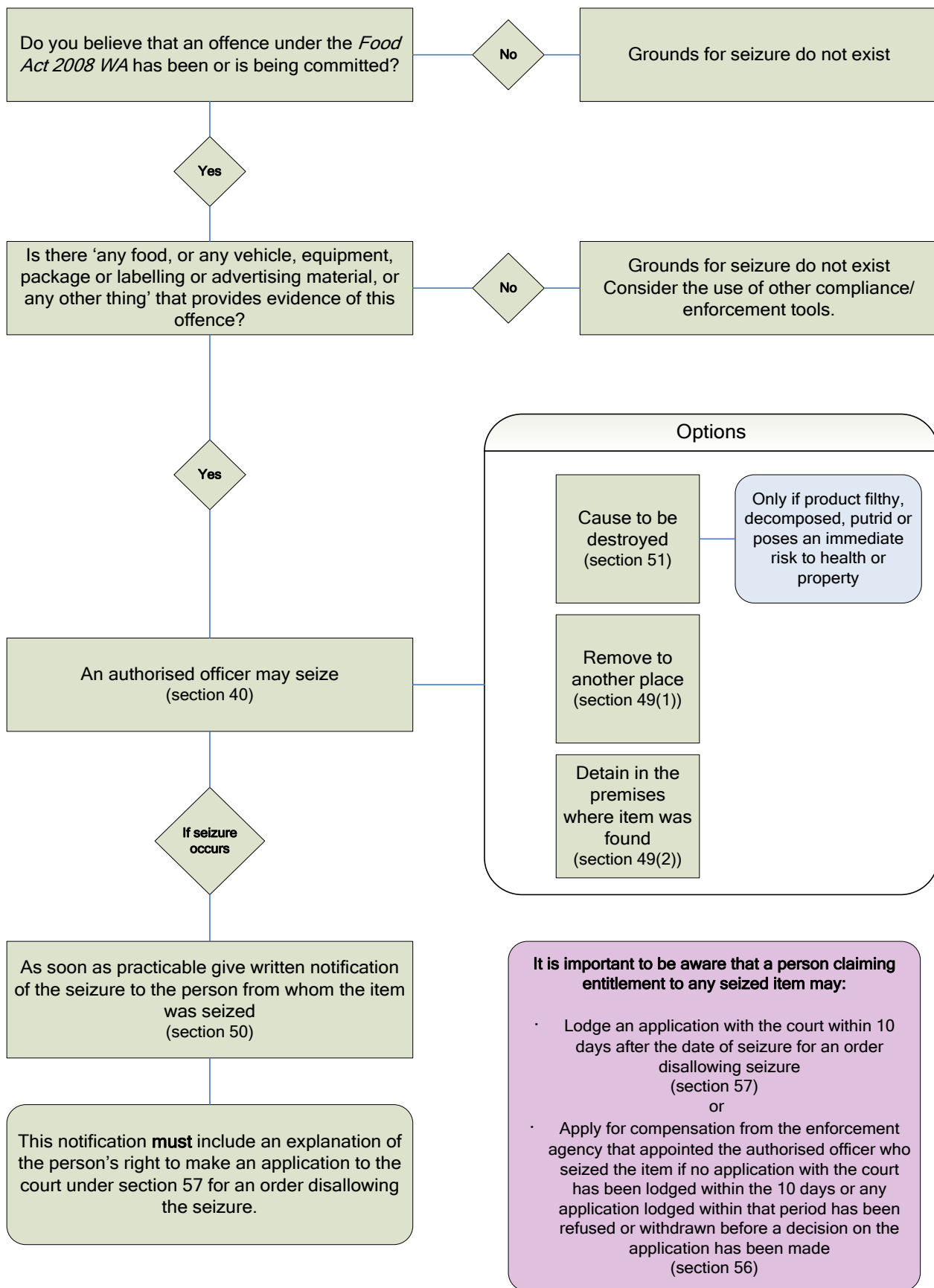


Figure 4 - Seizure process





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