



Food Safety and Enforcement Policy

Public Health



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Purpose

The purpose of this Food Safety and Enforcement Policy (Policy) is to protect the health and wellbeing of the community by minimising adverse health outcomes associated with food produced and sold within the municipality. The Policy outlines the management system that will be implemented by Baw Baw Shire Council to achieve the goals of the Policy. It has been developed to ensure that the administration and enforcement of food laws are applied in a fair and consistent manner and support a risk-based approach to food safety management in the municipality.

The Policy provides a framework to guide the development of processes, procedures, resources and enforcement guidelines that will ensure that food sold in the Baw Baw Shire is safe and suitable for consumption. Underpinned by a risk-based approach, the Policy supports the effective management of Council's legislative responsibilities under the provisions of the *Food Act 1984* and is consistent with the broad objectives of the Baw Baw Shire Council Plan and Public Health and Wellbeing Plan.

Governance Principles

Section 9 of the Local Government Act 2020 (the Act) specifies the overarching governance principles and supporting principles that Council must adhere to in the performance of its role and functions.

This policy gives effect to the following overarching governance principles outlined in Section 9(2) of the Act:

- Council decisions are to be made and actions taken in accordance with the relevant law;
- Priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- The transparency of Council decisions, actions and information is to be ensured.

Definitions

Authorised Officer: An EHO or other delegated officer which is authorised under the *Food Act 1984*

Critical non-compliance: Poses an immediate public health risk.

EHO: Environmental Health Officer.

Food premises classification: All food premises are classified according to the highest level of risk posed by the food handling of the business. Highest risk is class 1 and lowest is class 4.

Food safety risk assessment process: As per the Department of Health 'Food safety assessment: A guide for council authorised officers.'

Food safety auditor: An independent party engaged by a food business to conduct an audit and who is approved under the Act by the Department of Health.

Food Safety Supervisor: A person who knows how to recognise, prevent and alleviate the hazards associated with the handling of food at, or from, that premises; has met an appropriate food safety competency standard for premises of the same nature as the premises; and has the ability and the authority to supervise other people handling food at, or from, the premises and to ensure that that handling is done safely.

HACCP: Hazard analysis critical control point.

Potentially Hazardous Food: Food that requires temperature control to minimise growth of pathogenic microorganisms that may be present in the food or to prevent the formation of toxins in the food.

Proprietor: The person carrying on the food business, or if that person cannot be identified, the person in charge of the food business

Introduction

Baw Baw Shire Council plays a critical role in protecting and improving public health and community safety. The Public Health team within Baw Baw Shire Council is responsible for managing the Council's statutory obligations under the *Food Act 1984* (the Act) and the Australia New Zealand Food Standard Code (the Code). The Act is the key legislation that controls the sale of food in Victoria. Under the Act, food premises owners are legally responsible for ensuring that food sold by them is safe and suitable to eat. Local councils are responsible for the regulation of most food premises in Victoria and are the registration authorities of food premises located within their municipalities. They are responsible for administering the Act, including ensuring that food premises comply with the Act and the Code.

The food industry is constantly evolving and innovating in response to public trends and needs. Baw Baw Shire Council is agile and responsive to the changing needs of its community and ensures that risks to food safety are managed appropriately. This policy supports the Council's statutory obligations under the Act and provides the framework for identifying potential and actual food risk and responding and directing resources as required. The Policy sets out how Baw Baw Shire Council applies a risk-based approach to facilitate compliance under the Act through activities such as education, advice, monitoring compliance and undertaking enforcement action when necessary. It is critical in addressing new and emerging food safety risks to the community, food businesses and council.

Key Objectives

The key objectives of this policy are for Baw Baw Shire Council to:

- protect the health of the community by minimising the health risk associated with the food produced for sale in the municipality
- enhance compliance of food businesses with the Act through prevention-based activities such as education and effective stakeholder management
- support food businesses to reduce unsafe food practises and non-compliance with the Act by encouraging a food safety culture

- monitor and assess trends in compliance and performance of food businesses to inform strategic priorities
- demonstrate transparency and accountability to the community, businesses and council officers when applying enforcement options for food business' non-compliance with the Act
- ensure resources are directed toward non-compliance and food businesses that pose the higher risk to public health
- ensure the consistency and transparency of council's authorised officers' decision making and actions in food safety monitoring and compliance activities
- demonstrate a risk management model in line with national and international guidance on best practice.

Guiding Principles

In line with Baw Baw Shire's legislative responsibilities and strategies, this policy is guided by the following principles:

- *Principle 1: Transparency*

The methods used to ensure food safety compliance, monitoring and enforcement activities are open to enquiry from food businesses and community members.

- *Principle 2: Consistency*

Enforcement of legislation and assessment of compliance regarding food safety risk will be conducted in a fair and consistent manner.

- *Principle 3: Legislative Compliance*

Food businesses will comply with the Act and Food Standards Code through implementation of this policy.

- *Principle 4: Collaboration*

Council will assist food business proprietors to understand their legislative responsibilities under the Act to provide food that is safe and suitable, and will seek opportunities to educate all relevant stakeholders, including food business staff and the community about food safety.

- *Principle 5: Risk-based assessment*

Enforcement priorities will be based on the level of risk posed by a food business due to the likelihood of the types of foods being served causing food safety hazards and the consequences to the consumer from any failure to address food safety hazards at the food premises.

- *Principle 6: Evidence-based decision making*

Decisions relating to enforcement action will be based on assessments of risks.

- *Principle 7: Communication*

Council will provide timely, clear and targeted communications to all relevant stakeholders.

- *Principle 8: Innovation*

Encouragement and incentives for industry innovation in developing effective food safety management strategies.

- *Principle 9: The Precautionary Principle*

This is based on the understanding that the lack of full scientific certainty should not be used as a reason for postponing measures to prevent threats to consumer health.

Legislative context

Australia New Zealand Food Standard Code (the Code)

Food Act 1984 (the Act)

Environmental Protection Act 2017

Environmental Protection Regulations 2021

Infringements Act 2006

Local Government Act 2020

Public Health and Wellbeing Act 2008

Risk Classification and Management

This Policy acknowledges that the Act requires Council to take a risk-based approach to the assessment of food safety at food businesses. To that effect, five classes of food businesses have been gazetted by the Victorian Government:

Class 1 – for premises where the food being handled or served is to vulnerable people within a hospital, aged care, childcare setting, or by home delivery services that provide meals to people who are unable to prepare meals for themselves, such as Meals-on-Wheels

Class 2 – for premises that handle potentially hazardous foods

Class 3A – for premises that are home-based businesses and accommodation getaway premises that undertake specific food handling activities.

Class 3 – for premises that are predominately those that handle low-risk foods or pre-packaged potentially hazardous foods.

Class 4 – for premises that are predominately handling pre-packaged, low-risk foods.

Classification of food premises by the Baw Baw Shire is delegated to the Public Health team with the classification determined by the highest level of risk of food handling activities at the food premises, as set out above.

The Public Health Team will regulate food businesses in accordance with the Act using a risk management approach. The team will also strive to fulfil the Shire's obligation under the Act to inspect food premises with major or critical non-compliances or subject to consumer complaints within suitable time frames, ensure that all Class 1 and 2 food businesses comply with the Code and consider likelihood and consequence of food safety risks when determining the appropriate compliance and enforcement options.

Registration

Food premises within the municipality must be registered with Baw Baw Shire under the Act and comply with the Code to ensure food sold by businesses is safe to eat. This does not apply to food businesses that fall under the licencing responsibilities of Dairy Food Safety Victoria, PrimeSafe or the Department of Jobs, Skills, Industry and Regions (or as amended).

Registration of premises will align with the calendar year and fees will be charged appropriately for the period of registration as per the fees and charges adopted by Council. These fees are subject to Council adopted CPI increases.

Prior to the issuing of registration to a new or transferring business, the proposed proprietor must demonstrate:

- Structural compliance with the Code
- Suitable Waste Management Program
 - Inclusive of Trade Waste Agreement with Water Authority
- Food Safety Qualifications as required by registration classification.

Registration will be refused if the above is not provided, or a wastewater system that meets the requirements of the Shire's Domestic Wastewater Management Plan or the Environmental

Protection Regulations 2021 has not been installed. Registrations from a domestic premises may only be granted with the consent of the appropriate landowner (or owner's agent).

The process once an application is received, is shown in [Appendix 3](#).

Structural Compliance

The Code applies to all new premises, existing premises and domestic premises used for commercial purposes, food transport vehicles and temporary and mobile premises. Food businesses vary in size and complexity, and what is considered as adequate for a food premises is dependent on the food handling activities, processes and risks to food safety. There is no prescribed list of specifications for the design of the premises or equipment, fixtures or fittings however, a well-planned premises that follows the food safety standards will be easy to clean, sanitise and maintain and be suitable for the preparation, storage and sale of safe food.

The following information has been summarised from Standard 3.2.3 of the Code.

Food premises are required to be designed and constructed to:

- Be appropriate for the activities for which the premises are used.
- Provide adequate space for the activities to be conducted on the food premises and for the fixtures, fittings and equipment used for those activities.
- Permit the food premises to be effectively cleaned and, if necessary, sanitised.
- Keep out dirt, dust, fumes, smoke, and other contaminants.

The food premises must always have a constant supply of hot and cold running portable water available, including during times of peak demand. Hot water must be an adequate temperature to effectively clean equipment.

All wastewater generated by the business must be drained to the sewer or approved septic system. Wastewater from a food premises must never be disposed of into a stormwater drain. In many cases, installation and maintenance of a food and oil intercept device may be required. Premises must have a Trade Waste Agreement with the suitable Water Authority who will inform proprietors of the size requirements of a food and oil interceptor or provide exemption.

Auditing, Assessments, and Inspections Compliance

Council as the registering authority for food businesses under the Act has a responsibility to ensure that each food premise/business is inspected and that it complies with the legislation prior to granting applications to register, renew and transfer registration of premises/businesses (*Food Act 1984* Section 39). Council, in granting an application for a premise/business to operate, needs to be satisfied that each premises complies with the legislation, and that it is in a position to demonstrate that it has discharged this legislative responsibility with due diligence.

Parliament has delegated to Council the power to impose a range of sanctions to ensure compliance by businesses with the legislation. These sanctions include prosecution, penalty infringement notices, temporary closure of the business, and revocation/suspension of registration. The objective of this policy is to provide for the appropriate use of, and consistency in, the application of legislative sanctions under the food safety legislation.

To adopt a risk management approach to food safety, non-compliances at food businesses will be classified into minor, major and critical as defined below:

- A critical non-compliance is defined as a non-compliance with the requirements of the Act or Standard where a serious or imminent risk to public health is identified.
- A major non-compliance is a high potential risk situation, where the potential impact is likely to compromise food safety if no remedial action is taken.
- A minor non-compliance is a low risk situation where there is a non-compliance with the requirements of the Act or Food Safety Standards, but the potential impact of the non-compliance is not likely to be a serious or imminent risk to public health.

Routine Inspection Items

Premises are inspected annually to assess the compliance of the business with the Act and the Code. The core items that are assessed during annual assessment include, but are not limited to:

- Food handling practices
- Food storage and display
- Food cooling and reheating procedures
- General cleanliness
- Structure maintenance
- Completion of appropriate records
- Pest management and prevention.

Public Health Officers utilise these inspections as opportunities to discuss other food handling matters, legislative updates, education, and allergen management.

Managing Non-Compliances

The Baw Baw Shire uses a graduated and proportionate, risk-based approach to food safety that recognises that in some instances enforcement action is necessary when unsafe food practices pose an immediate risk to public health.

The highest level of food safety non-compliance influences the overall compliance outcome. Rectifications made by the business at the time of an assessment or inspection, to reduce the risk to public health, do not impact the compliance outcome.

In instances of non-compliance council officers will identify and assess the risk associated with that non-compliance. An escalation of enforcement measures may be applied to ensure that severe and punitive enforcement tools are used where the risks associated with non-compliance are the greatest, and that less severe tools are used where the risks associated with non-compliance are relatively low.

The Department of Health and Human Services Enforcement guidelines: A guide for councils in selecting enforcement tools under the Victorian Food Act 1984 are referenced in selecting the most appropriate enforcement tools.

Council officers will consider a number of factors when making a determination about the most appropriate response to obtain compliance, including: the risk of harm, compliance history of the food premises, intent of the food handler or proprietor, cooperation of the staff, and the willingness of the business to rectify the issues raised by the council officer.

Contemporaneous notes are recorded for all assessments and inspections to provide reference for the council officer to support the direction and form evidence of the most appropriate response.

Enforcement tools used should be commensurate with the risk a food businesses' activities poses. Tools such as a closure order, penalty infringement notice (PIN), revocation of registration or prosecution will be considered in circumstances of major or critical non-compliance that pose a serious or immediate threat to public health.

Council officers will also use their discretion to consider other factors which have contributed to the non-compliance and subsequent actions by the food business. Continued non-compliance may result in escalation of enforcement action by council.

Enforcement actions will follow the non-compliance process flowchart in [Appendix 1](#).

Ratings for Non-Compliance

The below table is a guide to non-compliances which can inform an authorised officer's decision making. This is intended to be a guide only, as non-compliances are not limited to the below items.

Critical	Major	Minor
Potentially hazardous food stored outside of temperature control.	No Statement of Trade submitted.	Unsuitable wastewater disposal.
Food not protected from pests or contaminants.	FSS details not updated with Council.	Unsuitable refuse disposal.
Severe evidence of pests or active infestations.	Unable to validate food handling practices.	Amenity impacts from waste handling processes.
Incorrect allergen declarations.	Unsuitable sanitising of utensils and food contact surfaces.	Cleanliness of walls, floors and non-food preparation areas – dependant on severity.
Inadequate food handler skills and knowledge.	Incorrect food labelling.	Condition of fittings, flashing and services.
Obstructed or unsuitable handwashing facilities.	Unable to produce thermometer.	Thermometer broken or not calibrated.
Potentially hazardous food not reheated to $\geq 60^{\circ}\text{C}$.	Evidence of pest activity.	
Potentially hazardous food cooled incorrectly.	Unprotected/unremedied pest entry points.	

Section 19 Order

A Food Act Order can be issued under S19 of the Act. This order is a legally enforceable document giving directions to a Proprietor to achieve compliance. A Section 19 Order is issued by the Coordinator of Public Health following a report from the inspecting authorised officer. The Public Health Team utilise these orders for extensive non-compliances or as an escalation technique from a standard inspection report. Once compliance with the Order has been achieved, the order is revoked. Non-compliance with the Order is an offence and can be prosecuted in the Magistrates' Court.

Penalty Infringement Options

Baw Baw Shire Council issues Penalty Infringement Notices (PINs) for serious breaches under the Act when the offence or deemed risk is severe. PINs are also issued for repeat offences, such as obstructing a handwash basin.

A PIN can be reviewed once issued, as set out in [Appendix 2](#).

Reviews of PINs are conducted by the Prosecutions Coordinator, not by a member of the Public Health Team. Reviews must be submitted to Council in writing.

The *Infringements Act 2006* dictate the process of review and escalation. Baw Baw Shire complies with the requirements of this Act and endeavour to act in a consistent and transparent manner.

Allergen Management

Baw Baw Shire recognises that there are four main food safety hazards that need to be controlled (microbiological, chemical, physical and allergens). Food allergens are included as a food safety hazard, even though they affect a relatively small number of the population, as the consequences of an allergic reaction can be severe. Any non-compliance associated with allergens is a critical non-compliance and poses an immediate threat to public health.

Baw Baw Shire will encourage education of the community and food handlers regarding allergen management and food safety. Allergen awareness will be promoted during the assessment or inspection of food premises, and through communication methods such as newsletters to proprietors. The Public Health team will also provide educational sessions for not-for-profit, community and sporting organisations that have registered a food premises in the municipality.

The Public Health team aims to ensure that all food sold locally fully comply with the labelling requirements of the Code, including the requirement for all food businesses to provide allergen information to customers on request. Baw Baw Shire will promote allergen awareness at food businesses during assessments and through regular newsletters and social media.

Labelling

Food labels provide a range of information to help consumers make food choices. Food labels also help to protect public health.

All packaged food for retail sale must be labelled in accordance with the Code, with some exceptions.

Where a packaged food is exempt from the general labelling requirements, information may still need to be displayed in connection with the food or provided to the purchaser on request.

Some of the food labelling requirements include:

- Food Identification
- Percentage labelling
- Nutrition Information panel
- Weight
- Ingredient list
- Directions for use and storage
- Date marking
- Country of origin
- Food additives
- Legibility requirements

There are also requirements for allergen information to be declared in a specific format and location on food labels and using simple, plain English terms in bold font.

Customer Complaints

Baw Baw Shire has a duty under s39(3)(b) of the Act to inspect a food premises if a complaint is received from a community member.

The Public Health Team will investigate all consumer complaints regarding the safety of food purchased from or prepared at a local food business in a timely manner. The issues will be resolved as per the inspection policy and when applicable the complainant will be advised of the investigation outcome.

Food Sampling

Under the Act, Council is required to conduct food sampling to ensure food for sale meets the requirements of the Code. The number of samples required by Baw Baw Shire are gazetted each year. Food sampling is undertaken in line with the Food Sampling Policy. All businesses included in the program will be provided with a copy of the results and where an unsatisfactory result is obtained, council officers will work with the food business to identify and address any areas of concern.

Numbers of samples and the results are reported to the Department of Health through quarterly Local Government Performance Reporting Framework (LGPRF), Food Safety (FS) 5. The food sampling program will aim to address risk of premises which do have major or critical non-compliances through the year to better understand and monitor the control measures put in place at these premises.

Temporary Food Premises

Baw Baw Shire has a rich program of festivals, events and markets throughout the year. This policy is to be used to ensure suitable risk management of businesses trading from temporary or mobile food premises.

Council as the registering authority for food businesses under the Act has a responsibility to ensure that each temporary food premise/business is inspected and that it complies with the legislation. This includes premises registered within Baw Baw Shire and trading external to the municipality, as well as those registered external to the Shire but trading within the municipality.

Registering a Temporary Food Premises

Mobile and temporary premises must be registered online through FoodTrader, which is a statewide registration system supported by the Department of Health. Baw Baw Shire Council receives all registration applications for businesses within the municipality. This allows the Public Health team to appropriately assess the premise, activities, and food handling knowledge of the proprietor, akin to the registration process for a fixed premise.

A proprietor may need to hold multiple registrations depending on the food handling practices intended.

If the business and all food handling activities are undertaken within the mobile/temporary premises, then the proprietor will only require a FoodTrader registration. However, a business that manufactures or prepares food at a fixed premises for sale at a mobile/temporary premises, is required to register the fixed premises and maintain a FoodTrader Registration.

Council Attendance at Festivals and Events

Events will be assessed using a risk-based assessment tool to determine if officer attendance is required.

Regular markets are to be inspected twice annually to ensure ongoing compliance and food safety. Seasonal markets will be inspected annually.

Annual or one-off events are to be assessed on:

- Number of mobile premises in attendance
 - Anything ≤5 is a low-risk event.
- Number of attendees
 - Large events such as the Lardner Park Field Days must be attended annually.
- Risk profile of attendees and event
 - Music festivals aimed at young persons are high-risk events.

Food Safety Education

Baw Baw Shire, through the Public Health team, will promote and encourage food handlers to undertake the Department of Health 'DoFoodSafely' free, online learning program for food handlers. In addition, free food safety information guides for food businesses and community groups in the areas of food safety, allergen awareness, healthy eating, accessibility and sustainability will be produced regularly.

All Class 1, Class 2 and Class 3A Businesses cannot be registered without the supply of a Food Safety Supervisors certificate and evidence of food handler training being undertaken by staff.

Policy Implementation and Review

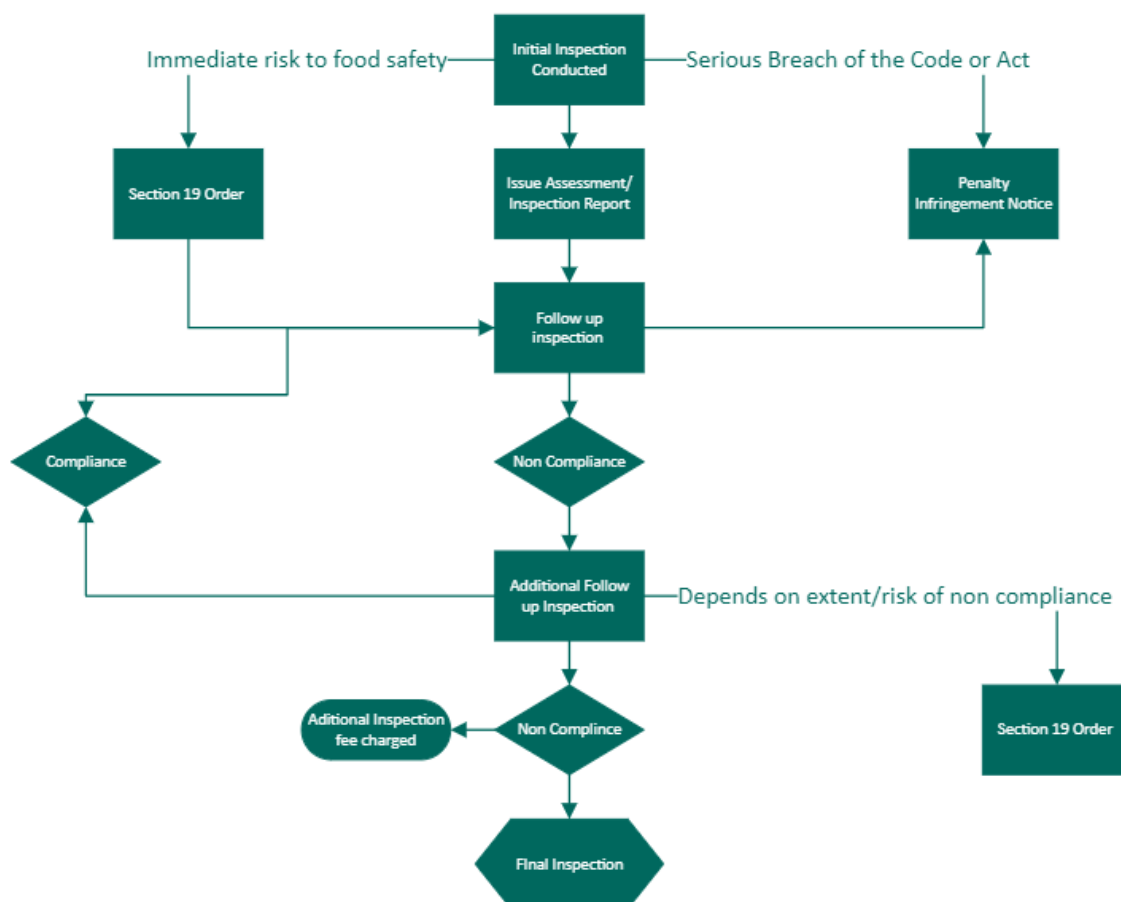
To ensure that the Public Health Team is active and contemporaneous with industry requirements this policy will be reviewed in line with internal Policy guides, including the Public Health Operational Policy and Governance Guidelines.

This policy will also be reviewed as any legislated changes occur, inclusive of Government Gazettes.

Knowledge and familiarity with this policy is instrumental to the induction of new members of the Public Health Team.

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Review term	Annual
Next review date	1 November 2024
Responsible position	Coordinator Public Health
Responsible Director	Director Planning and Development
Version	1.0

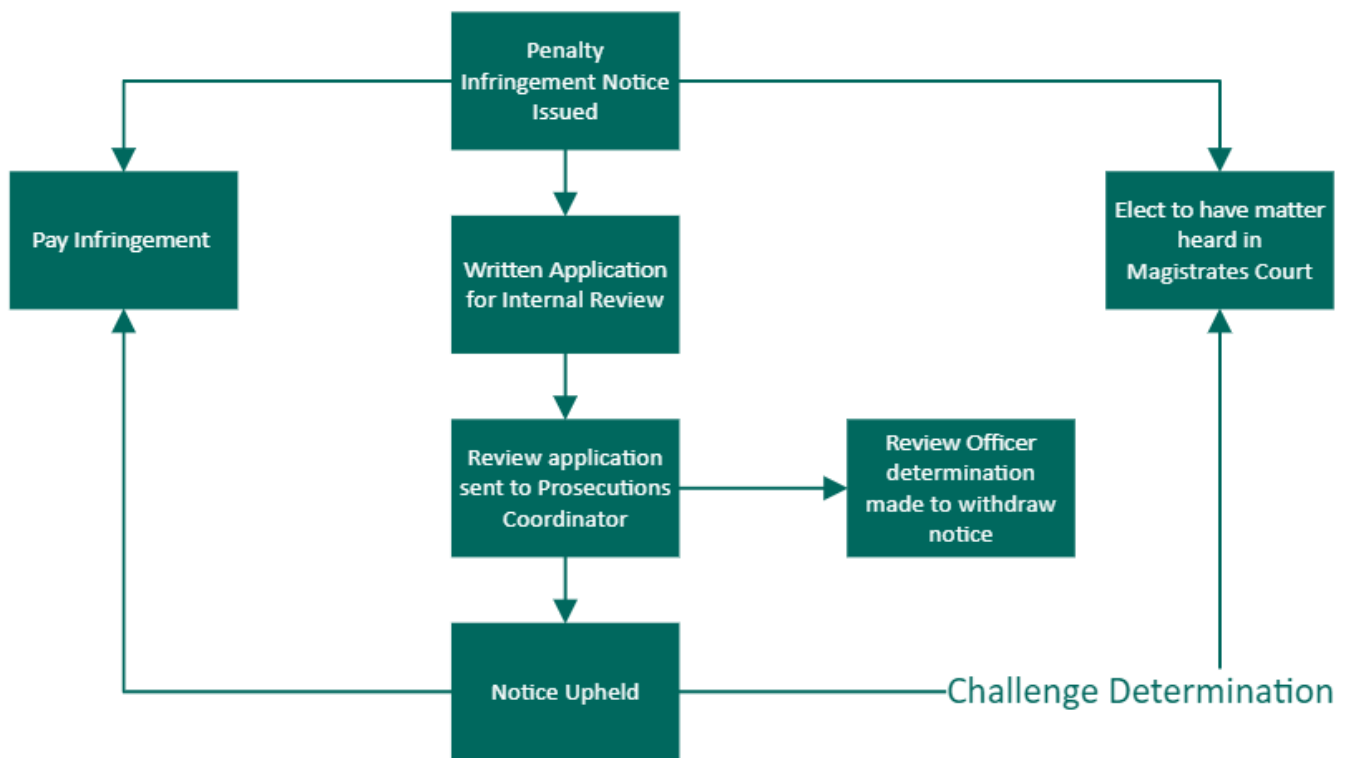
Appendix 1 – Non-Compliant Process



Continued non-compliance or immediate risk to Public Health can escalate to a proprietor being prosecuted under the Act. Non-compliance with a Section 19 Food Act Order may be prosecuted in the Magistrates Court.

Non-compliance	Action by Council	Compliance period
Minor	Inspection letter	14 days
Major	Inspection letter or S19	7 days
Critical	S19 and/or PIN	2 days

Appendix 2 – Review Process



An application for internal review can be made at any stage prior to the escalation of the infringement to Fines Victoria or the matter has been elected to be heard at Court.

Appendix 3 – Registration Application Process

Registration applications are to be received by the Public Health Unit a minimum of 2 weeks prior to the intended commencement of trade. If a business is undertaking structural works, the proposed floor plan should be submitted to Council and endorsed to ensure the proposed structure is compliant with the Code.

