

**Local government  
assessment of  
applications for a  
licence under the  
*Food Act 2006***

**November 2015**

## **Local government assessment of applications for licence under the *Food Act 2006***

Published by the State of Queensland (Queensland Health), September 2015



This document is licensed under a Creative Commons Attribution 3.0 Australia licence. To view a copy of this licence, visit [creativecommons.org/licenses/by/3.0/au](http://creativecommons.org/licenses/by/3.0/au)

© State of Queensland (Queensland Health) **2015**

You are free to copy, communicate and adapt the work, as long as you attribute the State of Queensland (Queensland Health).

For more information contact:

Food Safety Standards and Regulation, Department of Health, GPO Box 48, Brisbane QLD 4001, email [foodsafety@health.qld.gov.au](mailto:foodsafety@health.qld.gov.au), phone 3328 9310.

An electronic version of this document is available at [www.health.qld.gov.au](http://www.health.qld.gov.au)

### **Disclaimer:**

The content presented in this publication is distributed by the Queensland Government as an information source only. The State of Queensland makes no statements, representations or warranties about the accuracy, completeness or reliability of any information contained in this publication. The State of Queensland disclaims all responsibility and all liability (including without limitation for liability in negligence) for all expenses, losses, damages and costs you might incur as a result of the information being inaccurate or incomplete in any way, and for any reason reliance was placed on such information.

# Contents

Summary.....	v
1. Activities exempt from the application of the Act.....	1
2. Which food businesses do not require a licence? .....	1
3. What is a licensable food business? .....	2
4. Application process.....	3
4.1 What an application must state.....	3
4.2 Where an application must go .....	4
4.2.1 Fixed or temporary food premises .....	4
4.2.2 Off-site catering .....	4
4.2.3 Mobile food premises .....	4
4.3 Early application (design approval) .....	4
5. Consideration of application.....	4
5.2 Suitability of person to hold a licence.....	5
5.3 Suitability of premises.....	5
5.4 Food safety programs.....	5
5.4.1 Content of a food safety program .....	6
5.4.2 Accreditation of a food safety program .....	6
5.5 Inquiry about application.....	6
5.6 Decision on application.....	6
5.6.1 Granting an application.....	7
5.6.2 Refusing to grant an application .....	7
5.6.3 Failure to decide licence application .....	7
5.7 Complex applications.....	7
5.8 Final consideration day.....	7
5.9 Term of licence .....	8
5.10 Flow chart of process for assessing licence applications .....	8
5.11 Licence renewal, restoration, amendment and replacement .....	8
5.12 Renewal of licence.....	8
5.13 Restoration of licence .....	9
5.14 Amendment of licence .....	9
5.15 Replacement of licence .....	9
5.16 Notice of expiry of licence.....	9
6. Provisional licence .....	9
6.1 Term of provisional licence .....	10
7. Standard conditions of licence .....	10
8. Other matters.....	11
8.1 Food Safety Supervisors .....	11
8.2 Ongoing inspections and assistance.....	11
Glossary .....	13

## Figures

Figure 1 This is the Figure Ref style ..... **Error! Bookmark not defined.**

## Tables

Table 1 Examples of licensable food businesses..... 3

## Summary

Under the *Food Act 2006* (the Act), certain food businesses are required to be licensed with their relevant local government. This guideline provides guidance on which food businesses are required to be licenced and provides advice to local government on the process for assessing and approving applications for licence, including those applications accompanied by a food safety program. The guideline discusses the process for handling renewal, restoration, amendment and replacement of licenses and covers fixed, temporary and mobile premises.

## 1. Activities exempt from the application of the Act

The Act exempts certain activities from the application of the Act, this means that the provisions of the Act do not apply to these activities and no enforcement action under the Act can be taken against these activities.

The following food activities are **exempt** from the application of the Act:

- State or government owned corporations
- the handling and sale of food at a state school tuckshop operated by a parents and citizens association
- the handling of food at a person's home, intended to be given away to a non-profit organisation for sale by the organisation.

Example

Baking a cake to give to a junior football club committee for sale by the committee at a fundraising stall.

These activities do not require a licence and are exempt from all requirements under the Act and are not subject to enforcement provisions or inspections.

A food businesses sub-leased within a Queensland Government facility by a private commercial activity, is not covered by the exemption and must comply with all the requirements of the Act.

Example

A commercial food business located at a railway station would require a licence with the relevant local government.

If the above mentioned food business was operated by the State government or a government owned corporation, then a licence would not be required.

## 2. Which food businesses do not require a licence?

Section 48(2) of the Act identifies certain food businesses that are exempt from licensing provisions. These include:

- the production of primary produce under an accreditation granted under the *Food Production (Safety) Act 2000* – including meat, dairy, seafood and egg schemes
- the sale of unpackaged snack food such as cakes, biscuits, confectionary, nuts and potato chips which are not potentially hazardous
- the sale of whole fruit or vegetables
- the sale of seeds, spices, dried or glazed fruit, dried herbs, tea leaves, coffee beans or ground coffee
- the grinding of coffee beans

- the sale of drinks (other than fruit or vegetable juice processed at the place of sale) including, for example, tea, coffee, soft drinks and alcohol
- the sale of ice, including flavoured ice, such as slurpees and snow cones or bags of party ice
- the provision of meals by a non-profit organisation that are pre-prepared by another organisation and are stored and heated or otherwise prepared by the non-profit organisation in accordance with the directions of the meal's manufacturer
- the sale of the sale of food, by a non-profit organisation, that is prepared as part of an educational or training activity conducted by the organisation involving food preparation, hospitality or catering
- a food business prescribed by a regulation.

While these food businesses are exempt from the licensing requirements and associated provisions, such as food safety supervisors and food safety programs, they are still required to comply with all other aspects of the Act and the *Australia New Zealand Food Standards Code* (the Code), including the Food Safety Standards. These food businesses may be inspected and are subject to the same offence provisions and enforcement methods as licensed food businesses.

### **3. What is a licensable food business?**

Section 13 of the Act defines a food business as a business, enterprise or activity (other than primary food production) that involves the handling of food for sale, or the sale of food, regardless of whether the business is of a commercial, charitable or community nature, or whether it involves the handling or sale of food on one occasion only.

A licensable food business is defined in section 48 as a food business that:

- involves the manufacture of food, or
- is carried on by an entity other than a non-profit organisation and involves the sale of unpackaged food by retail, or
- is carried on by a non-profit organisation and involves the sale of meals on at least 12 days each financial year.

**Table 1 Examples of licensable food businesses**

Manufacturer	Sale of unpackaged food by retail	Non-profit organisation that provides meals at least 12 occasions each financial year
<ul style="list-style-type: none"> <li>• Cannery</li> <li>• Production of packaged ice</li> <li>• Flour mill</li> <li>• Brewery</li> <li>• Wholesale bakery</li> <li>• Confectionary packer</li> <li>• Pre-prepared meals</li> </ul>	<ul style="list-style-type: none"> <li>• Restaurant or delicatessen</li> <li>• Catering business</li> <li>• Takeaway food shop such as a pizza shop</li> <li>• Motel providing meals with accommodation</li> <li>• Private hospital</li> <li>• Private school tuckshop</li> <li>• Temporary food stall</li> <li>• Child care centre</li> <li>• Bed and breakfast</li> <li>• Mobile food van</li> </ul>	<ul style="list-style-type: none"> <li>• A restaurant, open daily to the public, operated by a sporting club to raise revenue for the club</li> <li>• Meals on Wheels</li> <li>• Meals provided a homeless persons' hostel for a fee</li> </ul>

## 4. Application process

### 4.1 What an application must state

Section 53 of the Act identifies the minimum information required on an application for licence. This includes:

- name of the applicant
- address of the applicant
- address of the premises (for fixed premises)
- description and registration number of mobile premises
- address where a mobile premises can be inspected
- proposed location of temporary premises
- brief description of the type of food business (e.g. café, takeaway etc.)
- make and model of food transport vehicles for off-site catering
- details of any convictions against the applicant
- other information required by the local government to determine the suitability of the applicant or the premises (e.g. plans of the proposed premises)
- name and contact details of the proposed food safety supervisor (if known)
- the requested term of the licence.

The application must be in the approved form, signed by the applicant and be accompanied by any required fee. The *Electronic Transactions (Queensland) Act 2001* allows for applications that must be signed to be made electronically, provided the electronic application:

- identifies the time and place of the dispatch and receipt of an electronic communication; and
- identifies the person sending the application and that person is, or has the authority of, the applicant.



## 4.2 Where an application must go

### 4.2.1 Fixed or temporary food premises

If the food business is to be carried on from fixed premises or temporary premises, the application must be made to the local government for the area in which the premises are, or will be, located.

### 4.2.2 Off-site catering

If the food business involves off-site catering, the application must be made to the local government for the area in which the applicant's principal place of business is located or proposed to be located. This licence will cover the principal place of business and also cover off-site catering where food is handled within another local government area.

### 4.2.3 Mobile food premises

If the food business is to be carried on from mobile premises, a licence is required from only one of the local government in which the business intends to operate.

Queensland Health maintains a publicly available register of licensed mobile food premises available at [www.health.qld.gov.au](http://www.health.qld.gov.au).

Local government and consumers will be able to access this register to determine if a mobile food premises is licensed. For information on enforcement options in relation to licences issued by another local government, see the guideline *Monitoring and Enforcement of the Act Food Act 2006*.

## 4.3 Early application (design approval)

An application for a food licence may be received at a time where a final inspection and determination is not able to be conducted within the time limits imposed by the Act.

#### Example

The development application for a greenfield site includes a licence application for a food business. The completion of the proposed development will not occur for 12 months. The local government is unable to inspect the fit out and final stage of the business within the timeframes in the Act.

The Act provides a method through which this matter may be managed. Section 62 allows for the local government and the applicant to agree to an extended determination date to decide the application.

It is recommended that town planning and Integrated Development Application System (IDAS) management options are considered.

## 5. Consideration of application

A licence may be issued only if the local government is satisfied that:

1. the applicant is a suitable person to hold a licence
2. the premises from which the food business is to be carried on is suitable

3. a food safety program is accredited if required.

These criteria are also used when deciding applications to renew a licence or in deciding whether grounds exist to suspend or cancel a licence.

## 5.1 Suitability of person to hold a licence

The following criteria should be used to determine whether a person is a suitable person to hold a licence:

- whether the applicant has appropriate expertise or experience to provide safe and suitable food or is able to
- obtain the services of other persons with appropriate expertise or experience to provide safe and suitable food
- whether the applicant has a conviction for a relevant offence, other than a spent conviction
- whether the applicant has had a licence suspended, cancelled or an application for a licence refused under the *Food Act 2006*, the *Food Act 1981* or a corresponding law
- anything else relevant to the applicant's ability to sell safe and suitable food.

## 5.2 Suitability of premises

In deciding whether a premises is suitable the local government must assess whether the premises is suitable for carrying on that activity. In deciding if the premises is suitable, local government may consider whether the premises complies with the *Food Standards Code, Standard 3.2.3 – Food Premises and Equipment*.

*Safe Food Australia*, a guide to chapter 3 of the Food Safety Standards, may be used as an interpretive guide. The *Australian Standard for the Design, construction and fit-out of food premises (AS 4674 – 2004)* provides design, construction and fit-out criteria for new food premises and for the renovation or alteration of existing premises.

AS4674 is not a legislative standard in Queensland and it is not mandatory for food premises to comply with it.

However, any premises designed and constructed in accordance with AS4674 would be deemed to comply with small-scale food manufacturers. The Standard does not provide criteria for the design, construction and fit-out of temporary and mobile food premises.

## 5.3 Food safety programs

The following food businesses are required to have a food safety program:

- a food business that involves on-site catering or off-site catering; or
- a food business that is carried on as part of the operations of a private hospital under the Private Health Facilities Act 1999 or processes or serves potentially hazardous food to six or more vulnerable persons.

### **5.3.1 Content of a food safety program**

A food safety program must:

- (a) systematically identify food safety hazards that are reasonably likely to occur in food handling operations of the food business.
- (b) identify where, in a food handling operation of a food business, each hazard identified under paragraph (a) can be controlled and the means of control.
- (c) provide for the systematic monitoring of the means of control.
- (d) provide for appropriate corrective action to be taken when a hazard identified under paragraph (a) is not under control.
- (e) provide for regular review of the program to ensure it is appropriate for the food business.
- (f) provide for the keeping of appropriate records for the food business, including records about action taken to ensure the business is carried on in compliance with the program.
- (g) contain other information, relating to the control of food safety hazards, prescribed under a regulation.

The local government must be reasonably satisfied that the implementation of the program is likely to effectively control the food safety hazards of the business. The local government must have regard to the nature of the food handled and the nature and extent of food handling carried on in the food business.

### **5.3.2 Accreditation of a food safety program**

If the licence application includes a proposed food safety program and the local government decides to grant the licence application, the local government is taken to have accredited the food safety program. The local government will record on the food safety program that it is accredited and give the accredited program to the applicant.

A food safety program is not taken to be accredited on the issue of a provisional licence.

## **5.4 Inquiry about application**

This section applies to applications for a licence, as well as applications for renewal, restoration or amendment of a licence.

The local government may make enquires necessary to gather sufficient information to decide an application. This may mean requesting further information or documentation from the applicant or undertaking an inspection of the information. If the applicant does not comply with the request within the stated period, the applicant is taken to have withdrawn the application.

## **5.5 Decision on application**

This section applies to applications for a licence, as well as applications for renewal, restoration or amendment of a licence.

### 5.5.1 Granting an application

When the local government has made a decision to grant the application, an information notice must be given outlining the decision along with a copy of the licence and accredited food safety program (if applicable). The local government may decide to impose conditions on the licence with the reasons for doing so outlined in the information notice.

### 5.5.2 Refusing to grant an application

If the local government decides to refuse the application, an information notice must be given outlining the reason for the decision.

### 5.5.3 Failure to decide licence application

This section applies to applications for a licence, as well as applications for renewal, restoration or amendment of a licence.

If the local government fails to decide an application within 30 days after its receipt the failure is taken to be a decision by the local government to refuse to renew, restore or amend the licence.

If the local government has required a person to provide further information or a document, the local government is taken to have refused to renew, restore or amend the licence if the local government does not decide the application within 30 days after the further information or document is received.

An information notice must be issued by the local government with the reason for failing to make a decision.

## 5.6 Complex applications

If the local government needs more time to decide an application because of the complexity of the matters that need to be considered the local government may give notice to the applicant to extend the final consideration day by 30 days.

The applicant and the local government may at any time before the final consideration day agree, in writing, to extend the day by which the application is decided.

The local government is taken to have refused the application if the application is not decided on the extended final consideration day.

## 5.7 Final consideration day

The final consideration day is 30 days after the receipt of the application, unless the local government has required the applicant to provide further information. If the local government has required the applicant to provide further information or a document, the day that is 30 days after the day the local government receives the information is the final consideration day.

#### NOTE

A local government may need more time to consider a food safety program included in an application.

## 5.8 Term of licence

Licences, other than provisional licences remain in force for a period of up to three years, unless cancelled suspended or the local government specifies another term. Licences must be renewed at the end of the term of licence. The Act does not include the term “Temporary Food Licence,” but rather states that the term of a licence, other than a provisional licence, remains in force for a term of not more than three years.

### Example

The term for licence to sell unpackaged food at a music festival may be granted for one week.  
The term for a licence for a new restaurant may be granted for one year.

## 5.9 Flow chart of process for assessing licence applications

Appendix 1 contains a flow chart which outlines the process of assessing applications for a licence. It can be applied equally to:

- applications for licence, with or without a food safety program as required
- renewal or restoration of licence
- amendment or replacement of licence.
- After a licence is granted.

## 5.10 Licence renewal, restoration, amendment and replacement

Once a licence has been issued, a licensee is able to apply for renewal, restoration or amendment of that licence.

These applications are subject to the same criteria for suitability and administrative process as applications for a licence.

The renewal, restoration, or amendment of licences does not apply to provisional licences.

## 5.11 Renewal of licence

A licensee may apply for a renewal of licence within 60 days before the licence expires. In addition to the criteria established for issuing a licence, the local government may also consider:

- the results of inspections during the current term of the licence
- whether there are any outstanding fees

If a licensee applies for a renewal of licence the licence is taken to continue in force from the day it would have ended until the application is decided or taken to have been withdrawn.

## 5.12 Restoration of licence

A licensee whose licence has expired may apply for the restoration of the licence within 30 days after the licence ends. In addition to the criteria established for issuing a licence, the local government may also consider:

- the results of inspections during the current term of the licence
- whether there are any outstanding fees.

If a person applies for restoration of a licence the licence is taken to continue in force from the day it ended until the application is decided or taken to have been withdrawn.

## 5.13 Amendment of licence

A licensee may apply for an amendment to their licence. The application must be submitted with the current licence (Note: a copy of the licence would need to be retained for display at the food business to meet licence conditions).

The local government may amend a licence by changing the location of the premises, licensee, the operation of the business (e.g. dry bakery to a production bakery, supermarket to also include a takeaway, café to include off-site catering), clientele - (eg. from general public to catering for a hospital) contact details of the licensee or structure of the premises.

An assessment process may also be required for the changes to occur.

A licence may be amended by endorsing the existing licence with details of the amendment or cancelling the existing licence and issuing another licence to replace it.

## 5.14 Replacement of licence

A licensee may apply for the replacement of their licence in the event that the licence is damaged, destroyed, lost or stolen. The application for replacement must include information about the reason for the replacement.

## 5.15 Notice of expiry of licence

The local government that issued the licence must give the licensee notice of the expiry of the licence at least 60 days before it ends.

# 6. Provisional licence

A provisional licence may be issued before finally deciding on an application if the local government is not fully satisfied that the applicant meets the criteria for granting the application. A provisional licence will only be issued if the local government reasonably believes that it will grant the application, having regard to all the information provided to decide the application.

**Example**

A local government may decide to grant a provisional licence if the applicant is temporarily unable to comply with the proposed food safety program or if the food business premises only needs minor alterations or repairs to the equipment or the fittings to be suitable.

## 6.1 Term of provisional licence

A provisional licence remains in force for a term of not more than three months as decided by the local government.

If the initial term of a provisional licence is less than three months the local government may extend the term of the licence by notice given to the applicant. More than one extension may be provided. However, a local government may not extend a provisional licence beyond three months. The holder of a provisional licence is not required to have an accredited food safety program.

If a licence is issued prior to the expiry of the term of the provisional licence, the provisional licence is taken to have expired on the issuing of the licence.

## 7. Standard conditions of licence

A food business licence is subject to the following conditions:

- the licensee must comply with the *Food Act 2006*
- if the licensee is required to have an accredited food safety program, the licensee must comply with the accredited program
- the licensee must ensure that the licence, or a copy of the licence, is displayed in a prominent position, easily visible to the people at the premises
- the licensee must ensure that each of the licensee's premises under the licence comply with the Food Standards Code, standard 3.2.3 (Food premises and equipment)
- the licensee must ensure that an authorised person has reasonable access to each of the licensee's premises under the licence during normal working hours
- other reasonable conditions the local government considers appropriate for the food business under the licence that are stated in the licence.

A condition may be imposed under a licence when the licence is issued, renewed, restored or amended or at any other time the local government considers it necessary to impose conditions to ensure that the food for sale is safe and suitable for human consumption.

If the local government decides to impose conditions on a licence, other than a provisional licence, to ensure that the food for sale is safe and suitable for human consumption, the local government will give the licensee an information notice for the decision.

## 8. Other matters

### 8.1 Food Safety Supervisors

All licensed food businesses must ensure that they have a food safety supervisor for the food business. The licensee may be the food safety supervisor and may have more than one food safety supervisor. The licensee must ensure that the food safety supervisor is reasonably available to be contacted by the local government while the food business is open for business.

The licensee must advise the local government of:

- the contact details of each food safety supervisor for the food business within 30 days after the licence is issued
- the commencement of a new food safety supervisor within 14 days of their commencement
- any changes to the contact details of the food safety supervisor within 14 days of the change
- a person ceasing to be a food safety supervisor within 14 days.

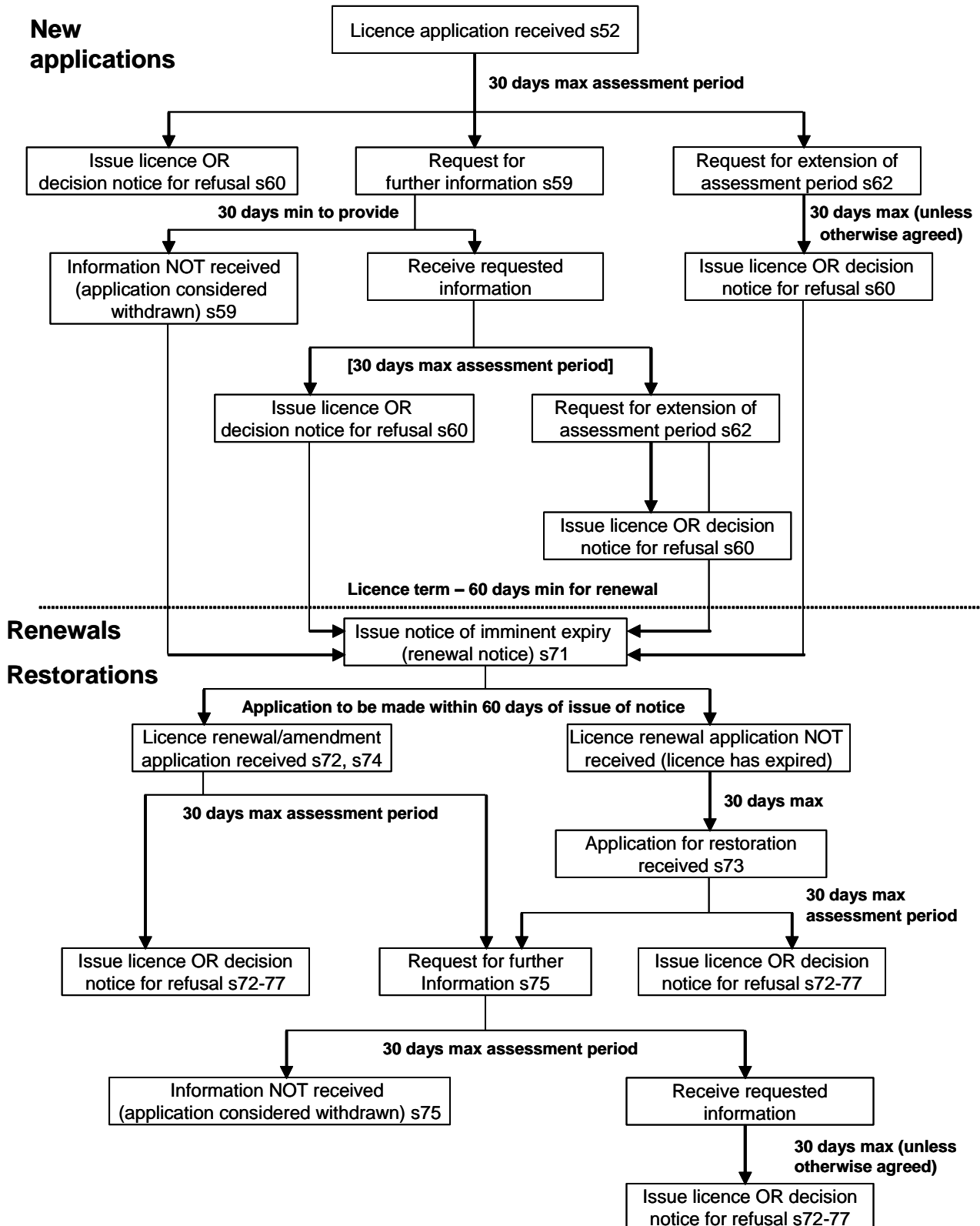
### 8.2 Ongoing inspections and assistance

After the food business has commenced operating, the local government authorised person should conduct inspections of the food business at regular intervals to ensure the food business is operating in accordance with the Food Safety Standards. The authorised person can also provide advice and other information to assist the food business in meeting these standards.



# Appendix 1

## Process for the assessment of an application for a licence under the *Food Act 2006*



## Glossary

<b>Equipment</b>	Means a machine, instrument, apparatus, utensil or appliance, other than a single use item, used or intended to be used in or in connection with food handling and includes any equipment used or intended to be used to clean the food premises or equipment.
<b>Food business</b>	Means a business, enterprise or activity (other than primary food production) that involves: a) the handling of food intended for sale; or b) the sale of food, regardless of whether the business enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.
<b>Food handler</b>	Means any person who directly engages in the handling of food, or who handles surfaces likely to come into contact with food, for a food business.
<b>Food premises</b>	Means any premises including land, vehicles, parts of structures, tents, stalls and other temporary structures, boats, pontoons, including premises used principally as a private dwelling, but does not mean food vending machines or vehicles used only to transport food.
<b>Food Safety Standards</b>	These are part of the Food Standards Code and define requirements for food premises on food handling practices and the structural requirements of food premises.
<b>Primary food production</b>	Is the growing, cultivation, picking, harvesting, collection or catching of food, and includes: a) transport or delivery of food on, from or between the premises on which it was grown, cultivated, picked, harvested, collected or caught b) packing, treating (for example washing) or storing of food on the premises on which it was grown, cultivated, picked, harvested, collected or caught c) any other food production activity prescribed by another Act.
<b>Safe and suitable food</b>	Food is considered unsafe if it is likely to cause physical harm to a person who might later consume it, assuming they treated the food correctly after purchase. Food is considered unsuitable if it is damaged, deteriorated or perished to an extent that affects its intended use
<b>Sanitising</b>	Is a process that significantly reduces the number of micro-organisms present on a surface. This is usually achieved by the use of both heat and water or by chemical sanitisers.
<b>Sinks</b>	Includes sinks for food preparation, cleaners, utensil and equipment washing, and personal hand washing basins.

<b>Temperature control</b>	Means maintaining food at a temperature of: a) 5°C, or below if this is necessary to minimise the growth of infectious or toxigenic micro-organisms in the b) food so that the microbiological safety of the food will not be adversely affected for the time the food is at that temperature c) 60°C or above d) another temperature if the food business can demonstrate this will not adversely affect the microbiological safety of the food.
----------------------------	---

