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Sub# 10



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30 September 2011

The Research Director  
Health & Disabilities Committee  
Parliament House  
George St  
BRISBANE QLD 4000

11.1.2.3

Dear Sir/Madam

**LOGAN CITY COUNCIL SUBMISSION - HEALTH LEGISLATION AMENDMENT BILL 2011**

Council acknowledges your correspondence of 2<sup>nd</sup> September 2011 inviting submission on the Health Legislation Amendment Bill 2011.

On behalf of Logan City Council, the Bill has been examined by Council's City Standards and Environment & Sustainability Branches. The resultant submission below focuses on the following sections of the Bill:

- Part 2 - Amendment of the *Food Act 2006*
- Part 7 - Amendment of the *Public Health (Infection Control for Personal Appearance Services) Act 2003*

The submission additionally canvasses outstanding issues with both pieces of legislation that have not been covered in the proposed reforms, but have been raised previously - either in writing or verbally through forums such as the SEQ Food Safety and Public Health Working Group.

Please be advised that Council's Environmental Health Compliance Program Leader, Ms Belinda Davies, and Principal Environmental Health Officer, Mr Steven Kekes, will be Council's contacts for this matter. They may be contacted on (07) 3412 3412.

Yours faithfully

Shane Mansfield  
City Standards Manager  
(on behalf of Chris Rose, Chief Executive Officer)



**LOGAN CITY COUNCIL SUBMISSION  
HEALTH LEGISLATION AMENDMENT BILL 2011**

**FOOD ACT 2006**

**Part 3B Food business rating schemes**

Logan City Council does not support the inclusion of Part 3B Food business rating schemes in the *Food Act 2006* when the details of the scheme are not available. Council is concerned that the State has introduced a Bill that raises important changes to the Food Act without the detail required for local government to make a properly informed judgement on these changes. In addition, no timescale has been provided for the delivery of the Regulation which will provide the details of the food business rating scheme. It is also noted that local government will have less ability to debate the amendments to the regulation when the details of the scheme have been finalised.

After extensive research Logan City Council decided to adopt the 'Eat Safe' food business rating scheme developed by Brisbane City Council. This decision was based on the quality of the scheme, the fact that the scheme targeted the major causes of food-borne illness, the scheme was designed through transparent processes with active industry involvement, there is strong industry support for the scheme (as shown by multiple logos on the Eat Safe resources), and regional consistency would be beneficial for consumers and industry. Council is deeply concerned about the impact the passing of the Bill may have on the Eat Safe Logan scheme.

Logan City Council's adoption of the Eat Safe scheme has also demonstrated that local governments intending to introduce such a scheme will endeavour to learn from each other and utilise/build on existing resources. Local governments collaborate well together. Therefore, the assertion in the Explanatory Notes about the prospect or potential for 74 distinct schemes across the State is incorrect.

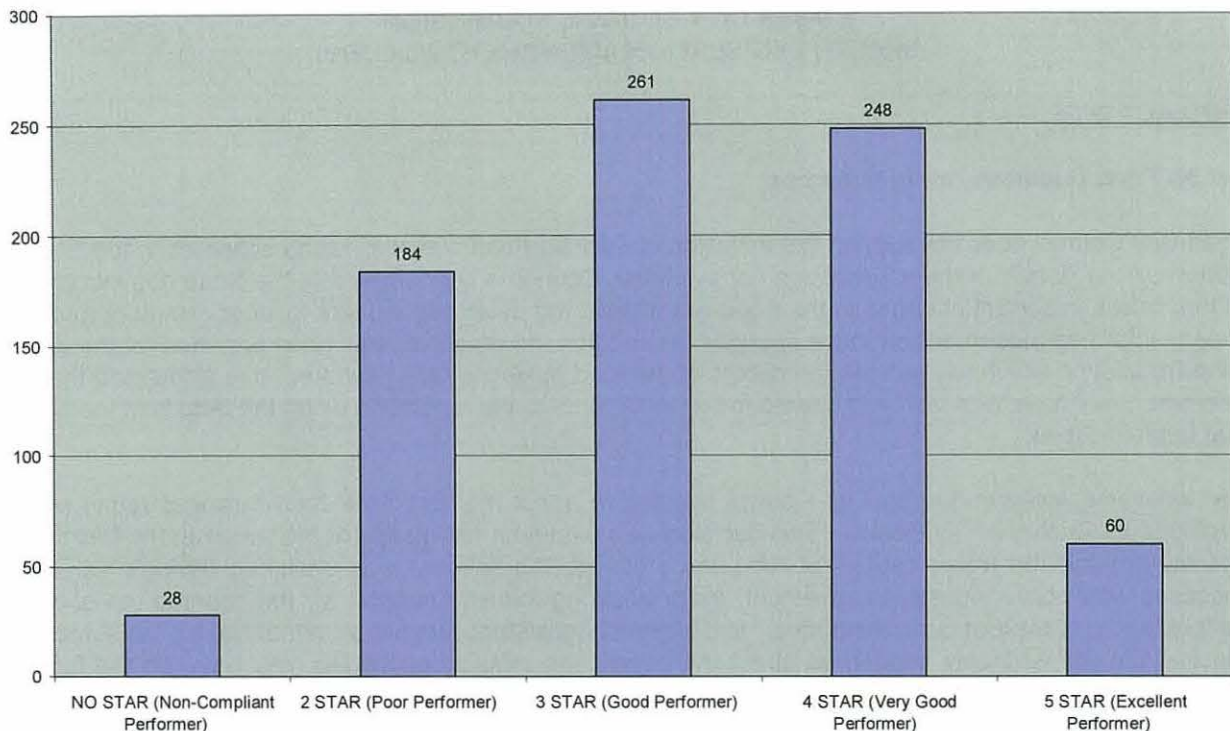
Since Council's adoption of 'Eat Safe Logan', considerable resources have been allocated to develop, implement and refine the scheme in Logan City. Council has also engaged the local food industry to identify the main barriers to compliance. Council has used this information to prioritise the development of industry resources and the format of those resources. By supporting the food industry to tackle barriers to compliance, Council is supporting the businesses to improve food safety standards and achieve a high rating in the Eat Safe Logan scheme. Council also surveyed all food businesses to identify the most common languages among food handlers and have translated Eat Safe Logan resources into an additional three languages. Several businesses have thanked Council for adopting such a supportive process.

In November 2010 Council received correspondence from Queensland Health regarding the development of a national food business rating scheme. Due to the limited consultation and engagement of local government, Council sent a letter to the Director General of Queensland Health dated 3 December 2010 (copy attached).

The response from Queensland Health dated 10 January 2011 (copy attached) includes the following paragraph.

"It is important that any system considered does not place undue regulatory burden on local governments or businesses. Consequently, it is not appropriate to consider systems that may be perceived as mandatory legislative provisions (eg. food safety programs) that are not required of all food businesses, in order to achieve the highest rating."

The lack of understanding of the Eat Safe scheme shown in this paragraph is consistent with verbal comments made by representatives of Queensland Health. The reality is that the Eat Safe scheme is developed to enable any size business to achieve a good rating and rewards businesses to proactively manage food safety risks. The results of the 'educational' scoring phase of Eat Safe Logan are shown below.



These results clearly show businesses can receive a good rating. Based on feedback from businesses and compliance action taken by Council Environmental Health Officers, it is believed many businesses will improve their rating before the next round of inspections which the businesses will be able to display. Council's desire is to improve food safety in Logan City and the Eat Safe Logan scheme, combined with targeted education, is already yielding positive results.

Given the number of food-borne illness cases each year (commonly quoted by government agencies as 1.5 million people per year in Australia), it is clear that the government should be encouraging continual improvement in food safety standards in the food industry as well as increasing community education. Unfortunately the information provided by Queensland Health to date indicates that the national food business rating scheme will encourage mere compliance, i.e. minimum standards. It is believed that by lowering the benchmark (i.e. rewarding mere compliance), the proposed food business rating scheme will not encourage businesses to improve standards or proactively managing food safety risks. Such a scheme would equally reward food businesses operators who aim for minimum compliance level and those who achieve best practice. Introducing a scheme that encourages the proactive management of food safety risks is more consistent with one of the purposes of the *Food Act 2006*, i.e. to "ensure food is safe and suitable for human consumption".

Representatives of the Food Safety Policy and Regulation team, Queensland Health, subsequently asked Logan City Council to trial the food business rating scheme that had been trialled in New South Wales. A copy of Council's assessment of the scheme dated 1 June 2011 is attached. Council raised numerous concerns including apparent flaws in the scoring system used, which permitted a business with a number of serious risks to be graded at the highest possible level of food safety. In the submission Council again encouraged Queensland Health to fully engage with local governments that have experience in developing and implementing food business rating scheme. Since that time minimal information has been passed on to Queensland local governments, but no meaningful engagement has occurred.

Council believes the opportunity remains to engage more constructively and collaboratively on this important matter. As the tier of government that will implement the food business rating scheme in Queensland, it is critical that local government has input into the development of the national scheme. To this extent, Council would request being engaged as a partner. It is believed that genuine engagement with local government representatives would enable the Queensland Health representative to provide better advice at a national level regarding the development of a food business rating scheme.

Therefore, in the current circumstances, Council does not support the insertion of the proposed new Chapter 11, Part 3B into the *Food Act 2006*. As indicated, the reform process so far has lacked the consultative approach and integrity that have been paramount to the successful implementation of the Eat Safe Logan scheme. It is therefore requested that Part 3B for food business rating scheme is not included at this time. The Act could be amended at the same time as the Regulation when the national food business rating scheme is introduced.

#### **s.271H 'Offence about conducting food business rating scheme'**

Council would also like to voice its disappointment with the proposed inclusion of s.271H which will create an offence (maximum penalty 1000 penalty units) for any local government operating a food business rating scheme that does not comply with the Regulation. This proposed section sends negative signals to, and in effect penalises, local governments that have seen fit to invest considerable resources and time into raising awareness of food safety practices in food businesses through a comprehensive rating scheme. The inclusion of such a provision would not be necessary if the State engaged local government and gained support for the national scheme.

It is unfortunate that the State considers it necessary to regulate local governments, who are co-regulators of the Food Act and should be seen as a partner. The inclusion of this provision in the Bill is symptomatic of a deteriorating relationship. Council would rather the relationship between Queensland Health and local government be strengthened to develop a unified approach to food safety issues, including food business rating schemes, which would render s.271H unnecessary.

#### **Lack of transitional arrangements**

Council is also concerned that the Bill does not include transitional arrangements for the implementation of the changes to the Food Act. Councils who have already implemented a food business rating scheme will require a considerable period to make the changes necessary to adopt a new food business rating scheme. Systems will have to be updated, officers trained in the operation of the existing scheme at Council will need to be retrained, food businesses will need to be advised of the changes and the background to them, etc. Given Council has already funded the implementation of one food business rating scheme, Council would anticipate the requisite financial assistance from the State Government to transition to the new scheme.

#### **Food safety supervisors**

Council also wishes to use this reform process to advocate for much needed improvements to the food safety supervisor (FSS) provisions in the *Food Act 2006*. When these provisions commenced, Council attempted to administer them in accordance with the spirit and apparent intent of the law, as prescribed in Queensland Health guidelines at the time. This ultimately couldn't be sustained.

Frustratingly, subsequent advocacy to amend the legislation to foster a more consistent approach to suitability assessment has been to no avail, despite the fact that representatives of the Queensland Health Food Safety Policy and Regulation Unit have regularly been made aware of the inconsistent application of the FSS provisions.

In deciding if a person does meet the definition of a FSS, as prescribed in the Act, local government interpretation and application has been varied. Some local governments have sought their own legal opinions, and it is understood that they have not necessarily been in alignment with Queensland Health advice, purportedly based on crown legal advice.

At present there is no mandatory training requirement for FSS. This is in contrast to the *Public Health (Infection Control for Personal Appearance Services) Act 2003* which includes a mandatory training qualification to be held by higher-risk personal appearance service providers. Currently minimum competency requirements are included in guidelines but cannot be enforced. Consequently, local governments often have to fall back on skills and knowledge requirements of the Food Act. The minimum competencies and the training qualification required should therefore be formalised in the legislation. This can be developed collaboratively across government and industry sectors.

Another issue regarding FSS relates to the interpretation given to 'reasonably available'. It remains Council's perspective that the legislation needs to include a clear definition of this term.

It is assumed that notification of an appropriate FSS would be a criterion of any food business rating scheme, given the importance relevant skills and knowledge play in the prevention of food-borne illness. If an objective of a food rating scheme is to achieve state-wide consistency, then the consistent interpretation and application of the FSS requirements are integral to the process. Therefore, an improvement of the FSS provisions is viewed as a high priority in terms of the implementation of any food business rating scheme.

### **PUBLIC HEALTH (INFECTION CONTROL FOR PERSONAL APPEARANCE SERVICES) ACT 2003**

Council supports the amendments proposed in the Bill in regards to the above Act. Nevertheless, Council wishes to highlight a number of additional outstanding reform issues:

- A penalty infringement notice cannot be issued for the operation of an unlicensed business and non-compliance with a remedial notice. The *State Penalties Enforcement Regulation 2000* should be amended accordingly.
- The Act does not provide the ability for local governments to seek a Court Order to immediately cease the operation of an unlicensed business. Consequently illegal business can continue to present a risk to the community while waiting for the matter to be heard in court. Relevant provisions are required to resolve this issue.
- The licensing renewal provisions under Section 44 the Act currently make the process overly arduous for both industry and Council. The Act provides that operators providing higher-risk personal appearance services must renew their licence a minimum of 30 days prior to the expiry of their licence. If the operator fails to renew their licence by this date, technically the operator has to apply for a new licence (which generally involves a higher fee and is unnecessarily burdensome on Council). It is proposed that the licence renewal procedure in the Act be restructured in alignment with the *Food Act 2006* whereby businesses can renew their licence before it expires and reinstate a licence up to 30 days after its expiry.
- The purpose of the Act is to 'minimise the risk of infection that may result from the provision of personal appearance services'. However, the Act currently only establishes requirements for 'businesses' that undertake personal appearance services. The licensing provisions for higher risk personal appearance services detailed in s.22 only relate to the activities of a 'business'. This creates a loophole for persons who undertake higher risk personal appearance services from unlicensed premises for no apparent gain or reward (e.g. tattooing a friend/relative). Council advocates that such persons be captured by the legislation so as to prevent infection and achieve the purpose of the Act. This could be undertaken in a similar way to the Food Act, i.e. only businesses have to hold a licence, but all people undertaking specific activities have to comply with minimum standards prescribed in the legislation. Council notes s.111 would also require amendment if these changes were introduced.

Logan City Council responded to a survey by Queensland Health in 2008 regarding possible reforms to the 'Personal Appearance Services' legislation and associated administrative systems. It is known that this survey did not lead to any changes - to the legislation or otherwise - but the issues canvassed at the time remain current and should be considered by Queensland Health.

Your Ref: QCHO/1745  
Enquiry Phone: 3412 3412  
Please Quote File: 649848-1  
Document Reference: 6899242/DAVIESB

3 December 2010



Director General  
Queensland Health  
GPO Box 48  
BRISBANE QLD 4001

Dear Sir/Madam

## **FOOD BUSINESS RATING SYSTEMS**

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I refer to the Queensland Health (QH) correspondence dated 26 November 2010 regarding the development and implementation of food business rating systems. A copy is attached for your convenience.

It is noted that several Councils throughout Queensland have successfully implemented a food business rating system. For example, Brisbane City Council (BCC) recently launched Eat Safe Brisbane to consumers. QH consultation regarding this issue should include meetings with each of these Councils.

Logan City Council (LCC) has resolved to develop and implement a food business rating system. After extensive research and industry consultation it was determined that our Council should implement a system that is consistent with Eat Safe Brisbane. This was due to the fact that BCC had undertaken detailed research and developed a system that focused on the main causes of food poisoning outbreaks, was easy to understand and was realistic for industry to implement. The Eat Safe Brisbane model also incorporates recent improvements to international schemes, e.g. the use of 'critical non-compliance' issues. BCC had also actively engaged numerous industry associations, developed strong partnerships and gained their support for the scheme. No other food business rating system in Australia has achieved the same level of industry support.

Adopting the Eat Safe Brisbane model will also result in regional consistency and the opportunity to share resources (e.g. publications translated into multiple languages) increasing benefits to industry and minimising costs to participating Councils.

The quality of the Eat Safe Brisbane design is highlighted by the fact that both LCC and interstate Councils have expressed a desire to implement the scheme. I have also been informed that representatives of the New South Wales Food Authority involved in the 'Scores on Doors' trial have been in contact with BCC to discuss the strengths of their scheme. Consequently, it seems odd that QH is "monitoring the success" of the NSW trial, when representatives of that trial are showing interest in Eat Safe Brisbane. It is also noted that the NSW trial focuses on compliance only and does not create incentives for food businesses to implement best industry practices. The Eat Safe Brisbane scheme assesses compliance, but also rewards businesses that implement practices that proactively manage food safety risks. This is more likely to result in improved standards within the food industry.

LCC has already invested considerable resources in developing and commencing implementation of the food business rating scheme in Logan City. A commitment has been made to the local food industry, industry associations and the local community that Council will implement such a scheme, with the public

release of scores occurring in July 2012. Council does not intend to break that commitment and in the absence of any clear timeframes for the development of a national food business rating system, LCC will continue to implement our food business rating system.

We are concerned that QH is repeating research already conducted by BCC and LCC. This seems to be an inefficient use of funds. Therefore, I encourage QH to contact both agencies and utilise the research already completed. For example, LCC recently surveyed over 20% of local food businesses to identify barriers to compliance. The results of this survey are being used by Council to develop resources that will be used by industry and that will help them comply with food safety laws.

Given the interest shown in the Eat Safe Brisbane model from agencies from various States, I also encourage QH to put forward this model as part of the national discussion (with BCC consent of course). Rather than reinventing a well designed scheme, using the Eat Safe Brisbane model would enable the government to use their funds to develop additional resources to support the food industry to improve their standards. This would have maximum benefit to industry, consumers and all government agencies involved.

If you would like to discuss the above, please contact me on 3412 3412.

Yours faithfully

Shane Mansfield  
City Standards Manager  
(on behalf of Chris Rose, Chief Executive Officer)



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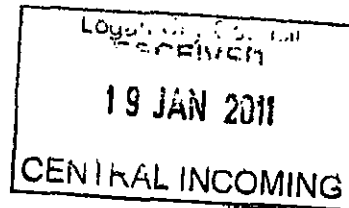
**Queensland  
Government**

Queensland Health

Enquiries to: Ms Tenille Fort  
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Food Safety Policy and  
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File Ref: DG061325

**10 JAN 2011**

Mr S Mansfield  
City Standards Manager  
Logan City Council  
150 Wembley Road  
LOGAN CENTRAL QLD 4114



Dear Mr Mansfield

I refer to your letter dated 3 December 2010, regarding food business rating systems.

Queensland Health endeavours to ensure its legislation is naturally consistent through its signing of the Food Regulation Agreement 2002. Consequently, should a national food business rating system be agreed, Queensland Health will look to adopt this approach.

The issue of consistency in implementation between agencies and local governments has been discussed nationally since 2005 and investigations towards a nationally consistent food business rating system has been a priority since 2009. I note you have regard for this sentiment by seeking consistency between Logan City Council and Brisbane City Council. All States and Territories are working collaboratively to ensure consistency and as part of the investigation and research process, have all provided information on local models. Part of Queensland Health's contribution to this national project included the information provided by Brisbane City Council on the Eat Safe Brisbane model.

As part of the investigation and research process, the New South Wales Food Authority (NSWFA) is conducting a six month trial of the "Scores on Doors" system. While this trial is not complete, representatives from NSWFA have advised that preliminary findings from the Scores on Doors project and information obtained from overseas jurisdictions that have implemented similar systems show that the integrity of any system is dependent on achieving consistent inspection outcomes. This reinforces the importance of national consistency and highlights the need to develop consistent enforcement tools and officer training. This process also highlights the importance of trialling systems so that weaknesses are identified prior to full implementation.

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It is important that any system considered does not place undue regulatory burden on local governments or businesses. Consequently, it is not appropriate to consider systems that may be perceived as mandatory legislative provisions (eg. food safety programs) that are not required of all food businesses, in order to achieve the highest rating.

Queensland Health is not aware of any food business rating systems in Queensland other than the Brisbane City Council's Eat Safe Brisbane. If your Council is aware of other systems currently in place in Queensland, as is stated in your letter, it would be appreciated if information about those systems was forwarded to Queensland Health via [foodsafety@health.qld.gov.au](mailto:foodsafety@health.qld.gov.au) for consideration in national deliberations on this topic.

Queensland Health will continue to work in collaboration with all other jurisdictions towards reaching the most appropriate nationally consistent food business rating system for local government, industry and consumers. Any decisions will be based on substantial research and evaluation aimed at improving food safety and compliance with regulatory requirements but with minimal regulatory cost or burden.

Should you require further information, Queensland Health's contact is Ms Tenille Fort, Director, Food Safety Policy and Regulation, on telephone 332 89310.

Yours sincerely



Michael Reid  
**Director-General**

Your Ref:

Enquiry Phone: Belinda Davies 3412 4268  
Please Quote File: 649848-1  
Document Reference: 7163875/DAVIESB:STARKMI

1 June 2011



Queensland Health  
Environmental Health Branch  
Attention: Leanne Fulmer  
PO Box 2368  
FORTITUDE VALLEY BC QLD 4006

Dear Leanne

## **NATIONAL FOOD BUSINESS RATING SYSTEM**

Thank you for the opportunity to comment on the proposed National Food Business Rating System Proforma.

Logan City Council officers have assessed the proforma through use during food premises assessments in the field, as well as desktop assessments. Feedback regarding the proposed national proforma is attached.

Logan City Council sees the benefits in a state or nationally consistent food business rating system. As you are aware Logan City Council has resolved to implement a food business rating system. After extensive research and industry consultation, Council decided to implement a scheme that is consistent with Eat Safe Brisbane.

After assessing the proposed national proforma, Council is of the firm view that the Eat Safe system is of a higher quality, targets the main causes of food poisoning more effectively, is easy to understand and is realistic for industry to implement. The Eat Safe scheme also has the support of numerous industry associations. Consequently, we continue to recommend that the Eat Safe scheme is adopted nationally.

The proposed national proforma is not supported in its current form. We believe some Councils have a better quality food business scoring system in place. Implementing a scheme that provides very little distinction between fully compliant businesses (i.e. A rated in the current proforma) and businesses with numerous high risk breaches (i.e. potentially a C rated business) is unlikely to achieve the desired outcomes of a food business rating scheme and would not be helpful to consumers. In fact, given a 'C' in many grading schemes (e.g. school grades) is a good grade, this type of system may be misleading or confusing for consumers.

Accordingly, we request that Queensland Health strongly advocate for the national implementation of the Eat Safe scheme or alternatively a greater alignment to such.

It would be advantageous for the group determining the final national proforma to fully engage with local governments in Queensland and other States who are either administering a food business scoring scheme or close to the implementation of such.

I do however reaffirm our commitment to continuing to work with you and also to participating in any future pilots.

If have any queries regarding this matter, please do not hesitate to contact me on 3412 4268.

Yours faithfully,

Belinda Davies  
Environmental Health Compliance Program Leader  
City Standards  
(on behalf of Chris Rose, Chief Executive Officer)

## Issues with Proposed Food Business Audit Proforma

1. Labelling requirements as stated on the proforma raises jurisdictional matters in Queensland between Queensland Health and Local Government.
2. The assessment criteria appears to have been written primarily for café, restaurant and take-away style businesses. The wording of the criteria limits its application to other types of food businesses.
3. The assessment criteria should be written in a way that focuses on the actual food safety hazard or desired outcome. Please refer to the Eat Safe audit checklist for examples of well written assessment criteria.  
For example:
  - Proposed national checklist:  
Food handlers do not handle food if ill (e.g. vomiting, gastro).
  - Eat safe criteria:  
Health of food handlers - What actions are taken to ensure staff members do not engage in food handling if they are suffering from a food borne illness?
4. Some of the criteria do not actually address the food safety risk. For example, 'Accurate temperature measuring device readily accessible (e.g. digital probe thermometer) accurate to +/- 1 degree Celcius'. However, whether the temperature of the food is being checked, if the food handlers know how to safely probe food without contaminating the food, etc is not assessed.
5. The grading scale of 1, 4, 8 relies too much on a quantitative assessment of an individual officer which is likely to result in inconsistent grading which is unfair to business. Therefore more guidance for officers is required. Minor, major and critical non-compliances (as used in the Eat Safe scheme) are more adaptive and use the principles of professional judgement.
6. The proforma is very prescriptive and provides limited scope on how a business can demonstrate compliance (e.g. 'cooked PHF is cooled rapidly' does not consider the 2-hour 4-hour principle which is also a legitimate method of compliance). The information captured on the audit proforma needs to be broadened (e.g. what methods are used to rapidly cool food?).
7. Alternate methods of compliance are not considered in the proforma.
8. There is no mention of the licence display requirements as detailed in the *Food Act 2006* (Qld).
9. No consideration is given to compliance with premises specific licence conditions.
10. The proforma only mentions mechanical ventilation, i.e. there is no mention of natural ventilation.
11. The following areas are not mentioned on proforma:
  - Thawing of food;
  - Recall procedures for food manufacturers; and
  - Toilet facilities.
12. Cross contamination is not specifically and adequately addressed in the proforma.
13. The duties of food businesses, as required in ss.16-18 of Food Safety Standard (FSS) 3.2.2 are not adequately covered in the proforma.
14. Food handing controls need to be broken down into receipt, storage, display and transport, i.e. not grouped together.
15. The requirements of FSS 3.2.3 are covered during the initial assessment, approval and licensing of the food business. During an inspection/audit of an existing business, the government officer will be assessing the maintenance of structural requirements (i.e. s.21 of FSS 3.2.2). The audit proforma should be amended to reflect this.
16. Changes or modifications to existing approved food premises are not considered on the proforma.

17. Some issues are assessed in two of the criteria. For example, 'Processing of foods; items thawed correctly; processed quickly; no contamination risk' (noted as 4 points) and 'Poultry and minced meat products cooked thoroughly' (noted as a higher risk issue, but only 1 point).
18. Items are incorrectly risk rated. For example:
  - Serving partly cooked chicken has the same rating as a spoon in a salad bar being used for two different salads.
  - Using this proforma a business that has an unsafe water supply, an inadequate sewerage system and a dog in the kitchen would still have the potential to be an A grade.
19. The current grades do not adequately distinguish a fully compliant business (i.e. 0 non-compliances and therefore an A grade) with a grossly non-compliant business (e.g. a business where the food handlers do not have skills and knowledge to handle food safely, the food handlers don't wash their hands after going to the toilet or after handling raw food, the food handlers then touch ready-to-eat food with their hands, the food is not protected from contamination and the food containers will cause contamination, which will receive a C grade).
20. Good management practices (e.g. temperature records, cleaning schedules, etc.) should be considered as they build confidence that the business is currently and will continue to be a good performer.
21. More space is required on the proforma for officer notes. Officers need demonstrate what they have seen while undertaking the assessment.