

HANDLING FOOD IN AN UNSAFE MANNER IN OTHER CIRCUMSTANCES

Overview

A person who handles food intended for sale in a manner they ought reasonably to have known would render the food unsafe, is guilty of a serious (indictable) criminal offence. This offence is provided for under s 8A of the *Food Act 1984* (FA).

Police Interview

If police allege you have handled food intended for sale in a manner you ought reasonably to have known would render the food unsafe, they will take you to a Police station for questioning and to decide whether or not to formally arrest you. You are granted leave to call our Office where a lawyer can provide you with legal advice and a clear strategy before you consent to participate in the interview to avoid common mistakes that may hinder your defence. The interview is recorded and involves Police posing a number of interrogative questions around the circumstances that led you to handle food intended for sale in a manner you ought reasonably to have known would render the food unsafe, and recording responses to your answers to build a strong case against you. This is used for the purposes of obtaining admissions and gathering evidence to form their case and limit a reasonably arguable defence case by you. You need not cooperate with Police, however it is usually in your best interest to do so.

What to Consider/Needs to be Established?

To determine whether you have handled food intended for sale in a manner you ought reasonably to have known would render the food unsafe, it is important to consider what constitutes the offence (see definition above). In other words, can the disputing party establish to the criminal standard of beyond reasonable doubt all elements of the offence (s 8A of the FA)?

- You *handled food intended for sale*?
- In a manner you *ought reasonably to have known would likely cause the food to be unsafe*?

NB: Whether or not the food is/is not safe is not relevant to making out this offence.

In addition, is evidence available to show you have a record for exhibiting similar behaviour? If so, this will likely impact what will occur at Court.

Penalties

Matters are always dealt with summarily, which means any summons for either offence will be dealt with by way of a contested hearing in the Magistrates Court of Victoria.

This is a strict liability offence, which means criminal guilt is established without the need to prove fault.

If you plead or are found guilty of handling food in an unsafe manner in other circumstances, the following heavy penalty will likely be imposed:

- A **financial fine** (conviction or non-conviction)
 - **Individual** (maximum **\$75000**)
 - **Corporation** (maximum **\$375000**)

NB: 1 penalty unit equates to \$161.19.

To determine whether the conduct was a serious contravention, the Magistrate or Judge will consider all relevant considerations, including:

- The nature of the offence
- Mitigating factors for handling food in an unsafe manner
- The level of planning
- Whether any aggravating circumstances were present
- Whether the offence formed a part of any other offence/s
- Whether a co-accused was involved
- How well available penalties fit the crime
- The complexity of proceedings in determining the charge

In order to have a conviction or non-conviction applied for any of the penalties above, our Lawyers must make the relevant s 8 application to the Court following the conviction.

A conviction is where you have a disclosable criminal history, whilst a non-conviction is where you have no disclosable criminal history.

The Victorian Department of Treasury and Finance review and update financial penalties at the end of each financial year, so maximum penalties are likely to change.

Questions and Next Steps

To determine whether you have a good prospect of success in defending your charge in Court for handling food intended for sale in a manner you ought reasonably to have known would render the food unsafe, it is important to weigh up the following important points:

- Has the prosecution correctly given me particulars of the charge/s I have been charged with?
- Does the prosecution have a strong case against me and can establish all elements of the offence?
 - Did I handle food intended for sale in a manner that I should reasonably have known would make it unsafe?
- Should I plead guilty or not guilty where I defend my charge at a contested hearing or a trial?
 - What is the link and is it clear?
- When and how did the breach arise?
- Have I previously been charged with a similar offence?
- What options are available to minimise my penalty?

- Do I have a lawful reason to justify why I carried out the offence (can a **defence** be relied on to argue my innocence)?

These are all questions Lawyers are here to help answer and prepare a strong case for you.

Defences

If you are pleading not guilty to handling food intended for sale in a manner you ought reasonably to have known would render the food unsafe, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach.

Possible defences include:

- The prosecution cannot prove all elements of the offence
- Factual dispute/wrongful identification
 - No unsafe handling occurred - you have been incorrectly identified as the person who handled food intended for sale in a manner you ought reasonably to have known would render the food unsafe (another person was responsible)
- Honest and reasonable mistake of fact

Our experienced criminal defence Lawyers are well equipped with understanding your charge for handling food intended for sale in a manner you ought reasonably to have known would render the food unsafe, how the matter will proceed as a contested hearing and the likely penalties. We have successfully avoided convictions and harsh fines and withdrawn, downgraded and amended the Police's versions of events to more closely align with the truth of our clients' cases. We proactively look at why you committed the offence and implement processes to help fight your innocence, by considering important factors like: weaknesses to the Police brief and how they allege the breach occurred; reviewing evidence Police have to support the allegations; what relevant evidence needs to be obtained and preserved (like disclosure material, CCTV footage and character references); and whether there are witnesses who can assist matters who Police have not spoken with to mitigate the available penalties.

Contact our experienced team of criminal defence lawyers for free legal advice 24/7 on 1800 130 120 or marcus.mklawfirm.com.au.