

## FOOD SAFETY PROSECUTIONS MELBOURNE

### **If You Have Been Charged by the Council with Breaching the *Food Act 1984* (FA) You Need Representation**

If yes, you must engage a law firm with proven specialist experience in food safety criminal law.

MK Law has a team of expert criminal defence lawyers across our 4 offices (Melbourne, New South Wales, South Australia and Western Australia). We have represented thousands of parties and prepared and defended a large and broad number of strong and successful food safety prosecutions in the Victorian Courts. This has involved us significantly reducing fines. We take all allegations very seriously.

Contact our experienced team of food safety prosecution defence lawyers for free legal advice 24/7 on 1800 130 120 or [marcus.mklawfirm.com.au](http://marcus.mklawfirm.com.au). It is important we are consulted urgently and well in advance to your Court appearance. Preparation is often key to receiving a sound outcome and a criminal conviction.

### **What are Food Safety Prosecutions?**

Food safety charges are provided for under the FA, mainly in ss 8-17. Some offences are more serious than others and thus they attract more harsh penalties. The most serious of these offences is knowingly handling food in an unsafe manner (s 8 FA).

Councils who carry out the prosecutions may impose may charges on the individual and/or business/corporation. It is not unusual to be accused of between 20-100 charges. These charges can be negotiated, and the Council may agree to withdraw some.

Pleading guilty or being found guilty of a food safety prosecution can result in a number of repercussions for both individuals and businesses/corporations - reputational and financial (ranging from \$1000-\$1000000). For a business/corporation, reputational damage is likely caused as a result of the business/company name being published on the Victorian Government Department of Health's register of convictions.

### **Questions to Consider Before Pleading Guilty or Not Guilty**

To determine whether you have a good prospect of success in defending your any food safety prosecution charge/s in Court, 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 and can they prove it was me who carried out the offence/s?
  - 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? (s 8 FA)
    - Did I handle food intended for sale? (ss 8; 11 FA) to be falsely described? (s 10 FA)

- Did I know I would likely make the food unsafe? (ss 8; 11 FA)
- Did I sell food I knew to be falsely described, knowing it may be dangerous to a consumer who relies on its description? (ss 10; 10A FA)
- Was a co-accused charged or did I act alone?
- When did the offence occur and when was I charged by police?
- 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 like mental impairment/illness be relied on to argue my innocence)?

Our experienced Lawyers will help answer all these questions and prepare a strong case for you.

### **Where Are Food Safety Prosecutions Heard?**

All food safety prosecutions are indictable (serious) offence. However, all matters are always dealt with in the lower Court (Magistrates Court of Victoria).

### **S 8 Knowingly handling food in an unsafe manner**

#### **What to Consider/Needs to be Established?**

To determine whether you have been charged with knowingly handling food in an unsafe manner, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 8 FA)?

- You *handled food intended for sale*?
- In a manner you *knew would or would likely cause the food to be unsafe*?

NB: If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### **Penalties**

If you plead or are found guilty of s 8 FA, one of the following penalties will likely be imposed:

- Term of **imprisonment**; and/or
  - **Individual** (maximum **2 years**)
- **Financial fine** (conviction or non-conviction)
  - **Individual** (maximum **\$100000**)
  - **Corporation** (maximum **\$500000**)

### **S 8A Handling food in an unsafe manner in other circumstances**

#### **What to Consider/Needs to be Established?**

To determine whether you have been charged with handling food in an unsafe manner in other circumstances, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 8A 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: If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### **Penalties**

If you plead or are found guilty of s 8A FA, one of the following penalties will likely be imposed:

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

### **S 9 Knowingly selling unsafe food**

#### **What to Consider/Needs to be Established?**

To determine whether you have been charged with knowingly selling unsafe food, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 9 FA)?

- You *sold food*?
- *Knowing* the food was *unsafe*?

NB: If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### **Penalties**

If you plead or are found guilty of s 9 FA, one of the following penalties will likely be imposed:

- **Term of Imprisonment;** and/or
  - **Individual** (maximum **2 years**)
- **Financial fine** (conviction or non-conviction)
  - **Individual** (maximum **\$100000**)
  - **Corporation** (maximum **\$500000**)

### **S 9A Selling unsafe food in other circumstances**

#### **What to Consider/Needs to be Established?**

To determine whether you have been charged with selling unsafe food in other circumstances, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 9A FA)?

- You *sold food*?
- Which you *ought to have reasonably known was unsafe*?

NB: If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### **Penalties**

If you plead or are found guilty of s 9A FA, one of the following penalties will likely be imposed:

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

### **S 10 Knowingly falsely describing food**

#### **What to Consider/Needs to be Established?**

To determine whether you have been charged with knowingly falsely describing food, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 10 FA)?

- You *caused food intended for sale to be falsely described*?
- You *knew that a consumer of the food who relies on the description would/would likely suffer physical harm*?

NB: If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### **Penalties**

If you plead or are found guilty of s 10 FA, one of the following penalties will likely be imposed:

- **Term of Imprisonment;** and/or
  - **Individual** (maximum **2 years**)
- **Financial fine** (conviction or non-conviction)
  - **Individual** (maximum **\$100000**)
  - **Corporation** (maximum **\$500000**)

### **S 10A Knowingly falsely describing food in other circumstances**

#### **What to Consider/Needs to be Established?**

To determine whether you have been charged with knowingly falsely describing food in other circumstances, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 10A FA)?

- You *caused* OR *sold food intended for sale to be falsely described*?
- You *ought reasonably to have known the food was falsely described*?
- You *knew that a consumer of the food who relies on the description would/would likely suffer physical harm*?

NB: If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### **Penalties**

If you plead or are found guilty of s 10A FA, one of the following penalties will likely be imposed:

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

### **S 11 Handling and selling unsafe food**

NB: The offence under s 11(2) FA is a strict liability offence, which means criminal guilt is established by no requirement of fault.

### **What to Consider/Needs to be Established?**

To determine whether you have been charged with handling and selling unsafe food, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 11(1)-(2) FA)?

#### **S 11(1)**

- You *handled food intended for sale*?
- In a way that *would/would likely make the food unsafe*?

#### **S 11(2)**

- You *sold food that was unsafe*?

NB: If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### **Penalties**

If you plead or are found guilty of s 11(1)-(2) FA, one of the following penalties will likely be imposed:

- **Financial fine** (conviction or non-conviction)
  - **Individual** (maximum **\$40000**)
  - **Corporation** (maximum **\$200000**)

## S 12 Handling and selling unsuitable food

### What to Consider/Needs to be Established?

To determine whether you have been charged with handling and selling unsuitable food, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 12(1)-(2) FA)?

#### S 12(1)

- You *handled food intended for sale*?
- *In a way that made/would likely make the food unsuitable*?

#### S 12(2)

- You *sold food that was unsuitable*?

NB: Whether the food is/is not safe is not relevant to making out this offence. If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### Penalties

If you plead or are found guilty of s 12(1)-(2) FA, one of the following penalties will likely be imposed:

- **Financial fine** (conviction or non-conviction)
  - **Individual** (maximum \$40000)
  - **Corporation** (maximum \$200000)

## S 13 Misleading conduct in relation to the sale of food

### What to Consider/Needs to be Established?

To determine whether you have been charged with misleading conduct in relation to the sale of food, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 13(1)-(3) FA)?

#### S 13(1)

- You *carried on a food business*?
- *In the course of carrying out the business you engaged in conduct where you were misleading or deceptive or likely to mislead or deceive?*
- *In relation to the advertising, packing or labelling of the food intended for sale?*

### S 13(2)

- You *carried on a food business*?
- *In the course of carrying out the business you caused the food to be advertised, packed or labelled in a manner to falsely describe the food?*
- *For the purpose of promoting/advertising the sale of the food?*

### S 13(3)

- You *carried on a food business*?
- *In the course of carrying out the business you sold food to be labelled/packed in a manner to falsely describe the food?*

### Penalties

If you plead or are found guilty of s 13(1)-(3) FA, one of the following penalties will likely be imposed:

- **Financial fine** (conviction or non-conviction)
  - **Individual** (maximum \$40000)
  - **Corporation** (maximum \$200000)

### S 14 Selling food that does not comply with the purchaser's demand

#### What to Consider/Needs to be Established?

To determine whether you have been charged with selling food that does not comply with the purchaser's demand, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 14 FA)?

- You *carried on a food business*?
- *In the course of carrying out the business you supplied food for sale?*
- *The food supplied for sale was not of the substance/nature the purchaser demanded?*

NB: Whether the food is/is not safe is not relevant to making out this offence. If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### Penalties

If you plead or are found guilty of s 14 FA, one of the following penalties will likely be imposed:

- **Financial fine** (conviction or non-conviction)
  - **Individual** (maximum \$40000)
  - **Corporation** (maximum \$200000)

## **S 16 Compliance with the *Food Standards Code* (FSC)**

### **What to Consider/Needs to be Established?**

To determine whether you have been charged with failing to comply with the FSC, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 16 FSC)?

- You *failed to comply with the FSC*?
- By carrying out conduct in breach of the FSC (in relation to):
  - Offering a *food business*?
  - Offering *food for sale/intended for sale*?
  - *Advertising packaged/labelled food*?

NB: If the party has been given an exemption order where they need not comply with any requirement/s within the FSC, they have not failed to comply with the FSC (s 5(5) FSC). Also, if the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### **Penalties**

If you plead or are found guilty of s 16 FA, one of the following penalties will likely be imposed:

- **Financial fine** (conviction or non-conviction)
  - **Individual** (maximum **\$40000**)
  - **Corporation** (maximum **\$200000**)

## **S 17 Proprietor's name to be affixed to the premises**

### **What to Consider/Needs to be Established?**

To determine whether you have been charged with proprietor's name to be affixed to the premises, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence (s 17 FA)?

- You were the *proprietor of a food business*?
- You *failed to ensure your name was prominently displayed on food premises for the food business*?

NB: If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

### **Penalties**

If you plead or are found guilty of s 17 FA, one of the following penalties will likely be imposed:

- **Financial fine** (conviction or non-conviction)

- Maximum (**10 penalty units**)

**S 17A False description of food**