



FOOD UNIT NOTICE

SUBJECT: Publication of Names of Offenders Policy

Notice Number: 10.04

Date of Issue: 01/10/2010

Distribution of Notice: Local government enforcement agencies, other government departments, food industry and food industry stakeholders

Purpose:

To update and replace Food Unit Notice 09.09 and advise that the *Food Act 2008* (the Act) defines the responsibilities of Department of Health of Western Australia (DOH) and enforcement agencies in relation to sections 121(2) and 143 of the Act.

Actions:

It is the responsibility of the enforcement agency to provide accurate, timely and verified information to the DOH and to take note of information contained within this notice.

Background:

The DOH maintains a web based publication that lists food businesses and individuals that have been convicted of an offence under the Act and its subsidiary legislation relating to the handling or sale of food. The purpose of maintaining the list is to provide consumers with information to enable them to make informed decisions about where they buy food in Western Australia. Similar web based publications are available in other states and territories within Australia.

Publication of Names of Offenders Policy:

Section 121(2) of the Act places an obligation on enforcement agencies to forward the details of any proceedings for an offence under the Act taken by an Authorised Officer of the agency within one month after the proceedings have been finally dealt with. In the event that any proceedings lead to a conviction, the appropriate



enforcement agency must notify the CEO of the DOH within 14 days from the date of the final order of the conviction.

The CEO of the DOH has approved Version 2 of the policy on the publication of names of offenders. This policy covers section 121 (2) and section 143 of the Act and its subsidiary legislation. This policy covers all convictions under the Act and its subsidiary legislation. It does not extend to include improvement notices, prohibition orders or infringement notices. The policy defines roles and responsibilities and the process to follow when informing the CEO of the DOH on convictions taken by enforcement agencies.

Notification of Conviction Form:

The 'Notification of Conviction' form (Appendix B in the Policy) is to be used. This form is designed to be completed electronically and must be emailed to the Food Unit of the DOH at foodunit@health.wa.gov.au within the 14 day time period. It is important that a copy of the form is retained by the submitting enforcement agency for record purposes. The form has been modified to assist in managing records.

The Food Unit needs to be confident of the quality of the information provided, therefore a single point of contact within each local government is preferred. This single point of contact will be programmed into the Food Unit database. The Food Unit must be notified should this single point of contact change (provision may exist for reasonable amount of redundancy – so consider a deputy etc.). Information received from a non-designated source will not be processed.

Request for Removal of Conviction from Publication Form:

In circumstances where a request is made to remove details of a conviction from the web based publication prior to the 24 month timeframe, a conviction will only be removed when the CEO has received a recommendation from the appropriate enforcement agency that includes adequate justification to support the removal of the conviction.

The reasons for a request to remove a conviction from the web based publication may include:



- the food business has demonstrated to the satisfaction of the enforcement agency a significant improvement in the management of food safety risks
- the food business has been sold
- an appeal has been made against the conviction, or
- a conviction has been quashed or annulled

The 'Request for Removal of Conviction From Publication' form (Appendix C in the Policy) is to be used. This form is designed to be completed electronically and must be emailed to the Food Unit of the DOH at foodunit@health.wa.gov.au. It is important that a copy of the form is retained by the submitting enforcement agency for record purposes and all appropriate evidence needed to support the decision to request the removal of a conviction from publication on the register.

Further Information:

The Food Unit has developed a number of Food Unit Notices that are designed to provide guidance on specific important aspects of the Food Unit's implementation. It is important for all stakeholders to refer to these documents.

Useful Resources and Websites:

- Department of Health WA www.public.health.wa.gov.au
- Food Standards Australia New Zealand <http://www.foodstandards.gov.au>
- Food Regulation Secretariat <http://www.health.gov.au>

Contact the Food Unit:

Any feedback or concerns please utilise the "Food Unit Query" form which can be downloaded from our website:

http://www.public.health.wa.gov.au/2/786/3/food_informatio.pm

Email: FoodUnit@health.wa.gov.au

Ph: (08) 9388 4999

Fax: (08) 9382 8119

www.public.health.wa.gov.au

Note: The information contained in this document covers the food legislation requirements for Western Australia. It is current on the date of publication but may change without notice. The Department of Health is not liable for any costs arising from or associated with decisions based on information here and users should obtain expert advice to satisfy all requirements of the relevant food legislation applicable.