

1998  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Ms Tucker)

**Food (Amendment) Bill (No. 3) 1998**

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**A BILL**

FOR

**An Act to amend the *Food Act 1992***

The Legislative Assembly for the Australian Capital Territory enacts as follows:

**1. Short title**

This Act may be cited as the *Food (Amendment) Act (No. 3) 1998*.

5 **2. Commencement**

(1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on the first day after the end of the period of 12 months commencing on the day on which this Act is notified in the *Gazette*.  
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**3. Principal Act**

In this Act, "Principal Act" means the *Food Act 1992*.<sup>1</sup>

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Job No. 1998/149

#### 4. Insertion

After Division 1 of Part III of the Principal Act the following Division is inserted.

#### *“Division 1A—Accessory items supplied at eating houses*

##### 5 “21A. Interpretation

“(1) In this Division, unless the contrary intention appears—

‘accessory item’ means—

- 10 (a) a package for food sold by or on behalf of the proprietor of an eating house, other than a package applied to the food before the food was acquired by or on behalf of the proprietor; or
- (b) a plate, cup, saucer, bowl, dish or item of cutlery,

‘eating house’ means premises at which—

- 15 (a) food is sold to members of the public; and
- (b) seating accommodation, at which such food may be consumed, is provided;

‘proprietor’, in relation to an eating house, means a person who carries on the business of selling food at the eating house;

20 ‘recycle’ means treat or process so that new items can be manufactured from the product of the treatment or processing;

‘recycling bin’ means a bin or other receptacle, the contents of which are periodically removed by a refuse collection service or similar service for delivery to a recycling service for recycling;

‘relevant person’, in relation to an eating house, means—

- 25 (a) the proprietor of the eating house; or
- (b) any person who performs duties at the eating house on behalf of, or under the control or direction of, the proprietor.

“(2) For the purposes of this Division, the following provisions apply:

30 (a) the following places shall, if they are provided for the use of persons while consuming food sold at an eating house, be taken to form part of the premises of the eating house:

- (i) other premises (including a part of other premises) that are private premises;
- 35 (ii) an area adjacent to the eating house that is, at a material time, under the control or supervision of the proprietor of the eating house or of another person who is at that time in

charge of the eating house (whether or not any other person also has at that time control or supervision of the area);

- (b) an accessory item supplied at an eating house shall be taken to relate to an item of food sold at an eating house if—

- 5           (i) it is a package for such an item of food; or  
          (ii) it is so supplied for use in relation to the consumption of such an item of food.

**“21B. Disposal of accessory items supplied at eating houses**

“(1) Where, at an eating house—

- 10           (a) an item of food is sold;  
          (b) an accessory item relating to the item of food is—  
              (i) supplied to a person (whether or not that person is the purchaser of the item of food); and  
              (ii) accepted or taken by that person; and  
15           (c) the accessory item remains on the premises of the eating house after—  
              (i) the item of food has been consumed at the eating house; or  
              (ii) the person who accepted or took the accessory item has left the eating house;

20 a relevant person at the eating house shall take all reasonable steps to ensure that the accessory item is dealt with—

- (d) by cleaning it for re-use; or  
          (e) by placing it in a recycling bin or otherwise taking all reasonable steps to ensure that it is recycled.

25 “(2) Where a contravention of subsection (1) occurs at an eating house, each of the following persons is guilty of an offence, namely:

- (a) the proprietor of the eating house;  
          (b) if a person other than the proprietor is in charge of the eating house at the time of the contravention—that person.

30 Penalty: 50 penalty units or imprisonment for 6 months

“(3) It is a defence to a prosecution under subsection (1) to show that—

- (a) the accessory item was in fact dealt with in a way specified in paragraph (1) (d) or (e); or  
35           (b) due to a circumstance beyond the control of any relevant person at the eating house, it was not reasonably practicable for any such person to ensure that the accessory item was dealt with in either of those ways.”.

**5. Grant or refusal**

Section 33 of the Principal Act is amended by inserting after paragraph (3) (d) the following paragraph:

- 5      “(da) whether there are reasonable grounds for believing that the food business would be carried on in contravention of section 21B;”.

**6. Suspension or cancellation of licence**

Section 42 of the Principal Act is amended by inserting in paragraph (2) (b) “except in the case of the conviction of the licensee of an offence against section 21B—” before “it is”

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**NOTES**

**Principal Act**

- 1      Reprinted as at 31 January 1996 See also Acts Nos 46, 70 and 96, 1997, Nos # and #, 1998

**Penalty units**

See section 33AA of the *Interpretation Act 1967*