



AUSTRALIAN CAPITAL TERRITORY

Food Act 1992

No. 47 of 1992

An Act to regulate the preparation and sale of food and drink for human consumption

[Notified in ACT Gazette S 148: 1 September 1992]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Food Act 1992*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Application to the Crown

3. This Act binds the Crown.

Interpretation

4. In this Act, unless the contrary intention appears—

“food” means—

- (a) food within the meaning of the National Food Authority Act; and
- (b) a substance, compound or article declared by the regulations to be food;

but does not include a substance, compound or article excluded from this definition by the regulations;

“handle” includes pack, decorate, serve and transport;

“land” includes—

- (a) a public place; and
- (b) a public street;

within the meaning of the *Motor Traffic Act 1936*;

“National Food Authority Act” means the *National Food Authority Act 1991* of the Commonwealth;

“national standard” means a standard within the meaning of the National Food Authority Act that has effect;

“package” includes a container, wrapper, confining band or other article in which food is packed or contained or by which it is covered;

“premises” includes—

- (a) a structure, building, tent, stall, aircraft or vessel;
- (b) a place or land (whether enclosed or built upon or not);
- (c) a vehicle—
 - (i) in which food is manufactured, prepared, processed, treated or handled for sale;
 - (ii) at or from which food is sold; or
 - (iii) in which food is consumed; and
- (d) a part of premises;

“sell”, in relation to food, includes—

- (a) barter or exchange;
- (b) offer or display for sale, barter or exchange;

- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit;
 - (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial advantage;
 - (e) have in possession for sale;
 - (f) cause or permit to be sold;
 - (g) supply together with other goods or with services or entertainment for which payment is made or required in circumstances where an inclusive charge is made for the food and the goods, service or entertainment (as the case may be);
 - (h) supply with, or as part of, a meal—
 - (i) for which payment is made or required; or
 - (ii) that is supplied by an employer to an employee in accordance with a term of an industrial award or the employee's contract of service, for consumption at the employee's place of work; and
- (i) engaging in a purported sale;
- “standard” means—
- (a) a national standard; or
 - (b) a prescribed standard.

Standards—inconsistency

5. (1) Where a standard is prescribed, a national standard does not apply in so far as it is inconsistent with it.

(2) Where a prescribed standard provides for the interpretation of a national standard, the latter has effect as interpreted in accordance with the former.

Substandard food

6. For the purposes of this Act, food is substandard if it does not comply with a standard applicable to it or to food of that kind.

Presumptions

7. For the purposes of this Act—
- (a) food that is sold shall be presumed to have been sold for human consumption;
 - (b) food found in premises used for the sale, manufacture for sale or handling for sale of food of that kind shall be presumed to be intended to be for sale for human consumption;
 - (c) food or any substance found in premises used for the preparation for sale of food shall be presumed to be intended to be used in the preparation for sale of food; and
 - (d) food found in a food vending machine shall be presumed to be intended to be for sale for human consumption;

but the presumption is rebuttable.

Persons named on package

8. In proceedings relating to food contained in a package, a statement on the package or on a label attached to it to the effect that a person has imported, manufactured or prepared the food is evidence of the matters specified in the statement.

PART II—UNLAWFUL PRACTICES**Preparation of substandard food**

9. A person shall not—
- (a) manufacture;
 - (b) prepare, process or treat; or
 - (c) handle;

for sale substandard food.

Penalty: \$5,000 or imprisonment for 6 months.

Sale of substandard food

10. A person shall not sell substandard food.

Penalty: \$5,000 or imprisonment for 6 months.

False representation of compliance with standards

11. Where a person sells food and—
- (a) falsely represents to the purchaser that the food complies with an applicable standard; or

- (b) the food or any package in which it is contained bears or has attached to it a statement that can reasonably be taken to imply that the food complies with an applicable standard and the statement is false;

the person is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 6 months.

Sale of falsely described food

12. (1) A person shall not sell food that is falsely described.

(2) A person shall not sell food that is displayed in a manner that is misleading as to its nature, substance or quality.

(3) For the purposes of this section false description, in relation to packaged food, includes a statement, word, design or device appearing on any label or written matter attached to or enclosed within the package that could reasonably be taken as relating to—

- (a) the food or any ingredient or substance contained in it; or
- (b) any alleged physiological, curative or therapeutic effect of the food;

that is false or misleading in any material particular.

Penalty: \$5,000 or imprisonment for 6 months.

Sale of food packed incorrectly

13. (1) A person shall not pack or enclose for sale food in a manner that does not comply with an applicable standard.

(2) A person shall not sell food that is packed or enclosed for sale in a manner that does not comply with an applicable standard.

Penalty: \$5,000 or imprisonment for 6 months.

Labelling requirements

14. (1) A person shall not sell packaged food unless the package complies with the requirements of subsection (2).

(2) A package must—

- (a) where a standard requires that a name be used in relation to the food contained in the package—refer to the food by that name;
- (b) where paragraph (a) does not apply—refer to the food contained in the package by a name that describes fairly and sufficiently specifically its true nature;

- (c) display the name and business address in Australia of—
 - (i) in the case of food that has been imported into Australia—the importer; or
 - (ii) in any other case—the manufacturer, packer or vendor; and
- (d) display such other particulars as are required to be displayed by an applicable standard.

(3) A person shall not sell unpackaged food in breach of a labelling requirement in an applicable standard.

Penalty: \$5,000 or imprisonment for 6 months.

Sale not complying with purchaser's demand

15. (1) A person shall not sell food that does not comply with a standard that is applicable to the food demanded by the purchaser.

(2) If—

- (a) a person demands any food by name; and
- (b) there is a standard that applies to food of that name;

the person is to be taken to have demanded food that complies with the standard.

(3) A person shall not sell food that is not of the nature, quality or substance demanded by the purchaser.

Penalty: \$5,000 or imprisonment for 6 months.

False advertising of food

16. (1) A person shall not, for the purpose of effecting or promoting the sale of any food, publish an advertisement that—

- (a) is false in any particular;
- (b) is misleading as to the nature, substance or quality of the food;
- (c) is deceptive; or
- (d) does not comply with an applicable standard.

Penalty: \$3,000.

(2) In proceedings under this section against the manufacturer, producer or importer of any food arising out of an advertisement relating to that food, it shall be presumed that the defendant published the advertisement, but the presumption is rebuttable.

(3) An advertisement published by a person on behalf of another person is to be treated as being an advertisement published by that other person, and by that other person only.

(4) For the purposes of paragraph (1) (c) an advertisement is deceptive notwithstanding that every particular of it is true if it creates, or is intended to create, in the mind of a reasonable reader, listener or viewer, an untrue or inaccurate impression.

Misleading presentation

17. A person shall not, for the purpose of sale, display food in a manner that is likely to mislead as to its nature, substance or quality.

Penalty: \$3,000.

Food dispatched from the Territory

18. A person shall not dispatch—

- (a) substandard food; or
- (b) food that is packaged or labelled in a manner that does not comply with an applicable standard;

from a place within the Territory to a place outside the Territory for the purpose of, or in relation to, a sale of that food.

Penalty: \$5,000 or imprisonment for 6 months.

Defences

19. (1) It is a defence to a prosecution of a person for an offence against this Part that—

- (a) the contravention in respect of which the prosecution was instituted was due to the act or default of another person (other than a director, employee or agent of the defendant), to an accident or to some other cause beyond the defendant's control; and
- (b) the defendant had taken all reasonable precautions and exercised due diligence to avoid the contravention.

(2) It is a defence to a prosecution for a breach of section 9, 10, 13 or 14, subsection 15 (1) or (2) or section 18 that the food in respect of which the prosecution is brought is to be exported to a place outside the Territory and—

- (a) its processing, sale or packaging complies with the law of that place; or

(b) it will, before it is sold, be subjected to processing or further processing as a result of which it will cease to be substandard.

(3) It is a defence to a prosecution for a breach of section 10, paragraph 11 (b), section 13 or 14, subsection 15 (1) or (2) or section 18 that the food was not sold for human consumption.

(4) In this section—

“processing” includes manufacture, preparation, treatment and handling.

PART III—MISCELLANEOUS

Conduct of directors, servants and agents

20. (1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body’s or person’s reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct shall be read as including a reference to failing or refusing to engage in conduct.

Penalty for companies

21. Where a company is convicted of an offence against this Act, the penalty that a court may impose in respect of the offence is a fine not exceeding 5 times the maximum fine that, but for this section, the court could impose as a penalty for the offence.

Regulations

22. (1) The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision with respect to standards relating to—

- (a) the composition of food, including the maximum amounts of contaminants or residues that may be present in the food;
- (b) the microbiological status and safety of food;
- (c) the method of sampling and testing food to determine its composition;
- (d) the production of food, including the maximum or minimum amounts of additives that must or may be used in the preparation of the food;
- (e) the packaging, storage or handling of food;
- (f) information about food, including labelling, promotion and advertising; or
- (g) the interpretation of other standards, including national standards.

[Presentation speech made in Assembly on 18 June 1992]

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