



Australian Capital Territory

# **Food Act 1992**

**A1992-47**

**Republication No 2 (RI)**

**Effective: 18 December 1995 – 18 December 1997**

Republication date of printed version: 31 January 1996

Reissued electronically: 16 January 2014

Last amendment made by A1995-46

Authorised by the ACT Parliamentary Counsel

## **About this republication**

### **The republished law**

This is a republication of the *Food Act 1992* effective 18 December 1995 to 18 December 1997.

### **Kinds of republications**

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.



Australian Capital Territory

---

AUSTRALIAN CAPITAL TERRITORY

---

**FOOD ACT 1992**

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 January 1996

**TABLE OF PROVISIONS**

Section

**PART I—PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation
4. Standards—inconsistency
5. Substandard food
6. Presumptions
7. Persons named on package

**PART II—ADMINISTRATION**

10. Analysts
11. Secrecy

**PART III—UNLAWFUL PRACTICES**

*Division 1—Substandard food*

12. Preparation of substandard food

*Food Act 1992*

**TABLE OF PROVISIONS—continued**

Section	
13.	Sale of substandard food
14.	False representation of compliance with standards
15.	Sale of falsely described food
16.	Sale of food packed incorrectly
17.	Labelling requirements
18.	Sale not complying with purchaser's demand
19.	False advertising of food
20.	Misleading presentation
21.	Food dispatched from the Territory
	<i>Division 2—Food safety requirements</i>
22.	Interpretation
23.	Rendering food unsafe
24.	Sale of unsafe food
	<i>Division 3—Miscellaneous</i>
25.	Certificate evidence
26.	Defences
	<b>PART IV—CODES OF PRACTICE</b>
27.	Preparation
28.	Disallowance
29.	Publication
	<b>PART V—LICENCES</b>
30.	Requirement to be licensed
31.	Application for licence
32.	Further information on licence application
33.	Grant or refusal
34.	Licence not to be granted while premises incomplete
35.	Effect of licence
36.	Inspection of licence
37.	Duration
38.	Renewal
39.	Alteration of food premises
40.	Notice of transfer of food business
41.	Variation of licences
42.	Suspension or cancellation of licences
43.	Emergency suspension of licences
44.	Return of licence
	<b>PART VI—IMPROVEMENT AND PROHIBITION NOTICES</b>
45.	Interpretation

*Food Act 1992*

**TABLE OF PROVISIONS—continued**

Section	
46.	Improvement notices
47.	Prohibition notices
48.	Revocation of notices
49.	Compliance with notices
<b>PART VII—INSPECTION AND ANALYSIS</b>	
<i>Division 1—Preliminary</i>	
50.	Interpretation
<i>Division 2—Health officers' powers</i>	
51.	Entry to premises
52.	Consent to entry
53.	Powers of health officers
54.	Search warrants
<i>Division 3—Things seized by health officers</i>	
55.	Notice of seizure
56.	Storage of things seized
57.	Access to seized records
58.	Return of thing seized
59.	Application for relief against seizure
60.	Appearance to application
61.	Order disallowing seizure
62.	Ancillary orders
63.	Adjournment pending other proceedings
64.	Forfeiture of things seized
65.	Cost of destruction or disposal of things forfeited
66.	Destruction of noxious material
<i>Division 4—Procedure for taking samples</i>	
67.	Owner of sample to be informed
68.	Payment for sample
69.	Sampling procedure
70.	Samples from vending machines
<i>Division 5—Analysis of samples</i>	
71.	Duty of analysts
72.	Certificate evidence
73.	Analysis of spare part of sample
74.	Time limit for certain prosecutions
<i>Division 6—Offences in relation to investigations</i>	
75.	Obstruction of health officers
76.	False information

*Food Act 1992*

**TABLE OF PROVISIONS—continued**

Section

- 77. Prohibited use of analysis
- 78. Interference with things detained

**PART VIII—REVIEW OF DECISIONS**

- 79. Review by Administrative Appeals Tribunal

**PART IX—MISCELLANEOUS**

- 80. Evidentiary value of copies of records
- 81. Conduct of directors, servants and agents
- 82. Fees
- 83. Penalty for companies
- 84. Regulations



Australian Capital Territory

## FOOD ACT 1992

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

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Food Act 1992*.<sup>1</sup>

#### Commencement

2.<sup>1</sup> (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.

#### Interpretation

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

“analyst” means a person appointed as an analyst under section 10;

“appliance” means the whole or part of any utensil, machinery, instrument, device, apparatus or article used, or intended to be used, in or in connection with—

*Food Act 1992*

- (a) the manufacture, preparation, processing, treatment or handling of food for sale;
- (b) the sale of food; or
- (c) the cleaning of another appliance;

“approved code of practice” means a code of practice approved under section 27, as in force under this Act;

“determined fee” means the fee determined under section 82 for the purposes of the provision in which the expression occurs;

“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;

“food business” means the business of—

- (a) manufacturing, preparing, processing, treating or handling food for sale; or
- (b) selling food;

“food premises” means any premises used, or intended to be used, for the purpose of a food business;

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

“health officer” means an Environmental Health Officer under the *Public Health Act 1928*;

“identity card”, in relation to a health officer, means the identity card issued to the officer under the *Public Health Act 1928*;

“improvement notice” means an improvement notice given under section 46;

“injury”, in relation to health, includes any impairment whether of a permanent or a temporary nature;

“land” includes—

- (a) a public place; and



*Food Act 1992*

(b) a public street;

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

“licence” means a licence in force under this Act;

“licensee” means the holder of a licence;

“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;

“prohibition notice” means a prohibition notice given under section 47;

“proprietor”, in relation to a food business, means the person by whom that business is carried on;

“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;

*Food Act 1992*

- (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**

**4. (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**

**5.** 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**

**6.** For the purposes of this Act—

*Food Act 1992*

- (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;
- (d) food found in a food vending machine shall be presumed to be intended to be for sale for human consumption; and
- (e) food that fails to comply with a requirement of this Act or the regulations, being food that is part of a batch, lot or consignment of food of the same class or description, shall be presumed to be representative of all of the food in that batch, lot or consignment;

but the presumption is rebuttable.

**Persons named on package**

7. 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—ADMINISTRATION

### Analysts

**10. (1)** The Minister may, by instrument, appoint suitably qualified persons to be analysts for the purposes of this Act—

- (a) in respect of a particular type of analysis specified in the instrument;  
or
- (b) in respect of all types of analyses.

**(2)** Within 4 weeks of the first appointment under subsection (1), and thereafter annually, the Minister shall publish, by notice in the *Gazette*, the name and address of each person currently appointed as an analyst.

### Secrecy

**11. (1)** A person to whom this section applies shall not, directly or indirectly, except where it is necessary to do so for the purposes of this Act or the regulations—

- (a) make a record of, or divulge or communicate to any person, any confidential commercial information in respect of food or information concerning the affairs of another person; or
- (b) produce to a person a document produced to, or otherwise acquired by, the first-mentioned person;

being information or a document acquired or obtained under this Act or the regulations.

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

**(2)** Nothing in this section prohibits a person from disclosing information or producing a document—

- (a) with the prior consent in writing of the Minister, if the Minister is satisfied that such disclosure is in the public interest;
- (b) with the consent of the person who has a proprietary interest in the information or the document; or
- (c) to a court in proceedings arising out of this Act or the regulations.

**(3)** Notwithstanding paragraph (2) (c), a health officer appearing as a witness in any proceedings arising out of this Act or the regulations shall not be compelled to produce a report made or received confidentially in his or her

*Food Act 1992*

official capacity or containing confidential commercial information in respect of food.

(4) In this section—

“confidential commercial information”, in relation to food, means—

- (a) a trade secret relating to food; or
- (b) any other information relating to food that has a commercial value that would be, or could be expected to be, destroyed or diminished if the information were disclosed;

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is, or has been, engaged in the administration or execution of this Act or the regulations;

“produce” includes permit access to.

## **PART III—UNLAWFUL PRACTICES**

### ***Division 1—Substandard food***

#### **Preparation of substandard food**

- 12.** 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, or both.

#### **Sale of substandard food**

- 13.** A person shall not sell substandard food.

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

#### **False representation of compliance with standards**

- 14.** 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, or both.

#### **Sale of falsely described food**

- 15. (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—

*Food Act 1992*

- (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, or both.

**Sale of food packed incorrectly**

**16. (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, or both.

**Labelling requirements**

**17. (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)** Except in relation to prescribed food, subsection (1) does not apply in relation to food that, before or at the time of sale, is packed—

- (a) in the case of food that is prepared and delivered ready for consumption by the purchaser—at the express order of the purchaser; or
- (b) in any other case—in the presence of the purchaser.

*Food Act 1992*

(4) 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, or both.

**Sale not complying with purchaser's demand**

18. (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, or both.

**False advertising of food**

19. (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



*Food Act 1992*

create, in the mind of a reasonable reader, listener or viewer, an untrue or inaccurate impression.

**Misleading presentation**

**20.** 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**

**21.** 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, or both.

***Division 2—Food safety requirements***

**Interpretation**

**22.** For the purposes of this Division—

- (a) in determining whether food is injurious to health, regard shall be had—
  - (i) to the probable effect of that food on the health of the person consuming it; and
  - (ii) to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities; and
- (b) food shall, in the absence of evidence to the contrary, be taken to be unfit for human consumption if, without limiting the generality of that expression—
  - (i) it is damaged, deteriorated or perished;
  - (ii) it contains any foreign substance or matter;
  - (iii) it contains animal or vegetable matter that is decomposed or dirt contaminated;

*Food Act 1992*

- (iv) it contains part of an animal not normally sold for human consumption; or
- (v) it is the product of a diseased animal or of an animal that has died otherwise than by slaughter.

**Rendering food unsafe**

**23. (1)** A person shall not render any food for sale—

- (a) injurious to health;
- (b) unfit for human consumption; or
- (c) so contaminated (whether by extraneous matter or otherwise) that it would not be reasonable to expect it to be used for human consumption in that state.

**(2)** For the purposes of subsection (1), the rendering of food shall, without limiting the generality of that expression, be taken to include—

- (a) adding, or failing to add, a substance, compound or article to the food;
- (b) using, or failing to use, a substance, compound or article as an ingredient in the preparation of the food;
- (c) abstracting a constituent from the food;
- (d) subjecting, or failing to subject, the food to a process or treatment; or
- (e) any other act or omission relevant to the safety of the food.

Penalty: \$10,000 or imprisonment for 1 year, or both.

**Sale of unsafe food**

**24.** A person shall not sell food that is—

- (a) injurious to health;
- (b) unfit for human consumption; or
- (c) so contaminated (whether by extraneous matter or otherwise) that it would not be reasonable to expect it to be used for human consumption in that state.

Penalty: \$10,000 or imprisonment for 1 year, or both.

***Division 3—Miscellaneous***

**Certificate evidence**

*Food Act 1992*

**25.** In any proceeding under this Act or the regulations, a certificate purporting to be signed by the Minister stating—

- (a) that he or she has received information from a specified government agency of the Commonwealth, a State or another Territory in relation to specified food;
- (b) that such information provides reasonable grounds for believing that such food is—
  - (i) injurious to health;
  - (ii) unfit for human consumption; or
  - (iii) so contaminated (whether by extraneous matter or otherwise) that it would not be reasonable to expect it to be used for human consumption in that state; and
- (c) that he or she believes, on the basis of that information, that such food is—
  - (i) injurious to health;
  - (ii) unfit for human consumption; or
  - (iii) so contaminated (whether by extraneous matter or otherwise) that it would not be reasonable to expect it to be used for human consumption in that state;

is evidence of the matters stated and of the facts on which they are based.

**Defences**

**26. (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 12, 13, 16 or 17, subsection 18 (1) or (2) or section 21 that the food in respect of which the prosecution is brought is to be exported to a place outside the Territory and—

*Food Act 1992*

- (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 13, paragraph 14 (b), section 16 or 17, subsection 18 (1) or (2) or section 21 or 24 that the food was not sold for human consumption.
- (4)** In this section—
- “processing” includes manufacture, preparation, treatment and handling.

## PART IV—CODES OF PRACTICE

### Preparation

27. (1) The Minister may, by instrument, approve—

- (a) a code of practice; or
- (b) a variation of an approved code of practice;

dealing with all matters—

- (c) required or permitted by this Act to be so dealt with; or
- (d) necessary or convenient to be so dealt with for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), a code of practice may include requirements, not inconsistent with this Act, relating to matters relevant to the safety of food.

### Disallowance

28. An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### Publication

29. (1) The Minister shall publish in the *Gazette* and in a daily newspaper circulating in the Territory a notice of each approval given under subsection 27 (1)—

- (a) specifying the date on which the approval takes effect;
- (b) specifying the place or places at which copies of the code of practice to which the approval relates may be purchased; and
- (c) containing a statement to the effect that a copy of the code of practice may be inspected during office hours by members of the public at the place or places specified in the notice.

(2) The Minister shall ensure that a copy of the code of practice to which an approval under subsection 27 (1) relates is made available for public inspection during office hours at the place or places specified in the notice under subsection (1).

*Food Act 1992*

**(3)** In this section—

“code of practice” includes any document (or part of a document) the provisions of which are applied by the code.

## **PART V—LICENCES**

### **Requirement to be licensed**

**30. (1)** A person shall not carry on a food business except in accordance with a licence.

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

**(2)** The regulations may—

- (a) exempt a specified person or a person included in a specified class of persons from subsection (1); and
- (b) specify the circumstances, whether generally or in a particular case, in which an exemption applies.

### **Application for licence**

**31.** An application for a licence shall—

- (a) be in a form approved by the Minister;
- (b) be made by or on behalf of the proprietor;
- (c) be executed by the applicant;
- (d) in the case of existing food premises, be accompanied by a sketch plan of the premises showing—
  - (i) the layout of all fixtures, fittings, appliances and any other equipment installed in the premises; and
  - (ii) the use, or proposed use, of each area forming part of the premises;
- (e) in the case of food premises that, at the date of the application, have not been completed or are being altered, be accompanied by a copy of the relevant plans and specifications; and
- (f) be accompanied by the determined fee.

### **Further information on licence application**

**32.** The Minister may, by written notice, require an applicant for a licence to provide, either orally or in writing, such further information relating to the application as is specified in the notice.

### **Grant or refusal**

**33. (1)** Where an application for a licence has been made by a person in accordance with section 31, the Minister shall, subject to section 34 but otherwise as soon as practicable following receipt of the application, by notice in writing given to the applicant—

- (a) grant the licence subject to such conditions (if any) as are specified on the licence; or
- (b) refuse to grant the licence.

**(2)** Without limiting the generality of paragraph (1) (a), a licence may include a condition requiring compliance with an approved code of practice.

**(3)** For the purposes of making a decision under subsection (1), the Minister shall have regard to the following matters:

- (a) the suitability of the food premises for the purposes of the relevant food business;
- (b) the regulations, a standard or an approved code of practice;
- (c) the competency and experience of the proprietor or manager to carry on the relevant food business;
- (d) the desirability of implementing a food safety plan for the purposes of the relevant food business;
- (e) such other matters that, in the interests of food safety, the Minister believes to be relevant to the circumstances of the application.

**(4)** A licence shall be in a form approved by the Minister.

### **Licence not to be granted while premises incomplete**

**34.** A licence shall not be granted in respect of food premises that, at the date of the application, have not been completed or are being altered until the Minister is satisfied that the relevant requirements for the occupation and use of those premises have been duly complied with.

### **Effect of licence**

**35.** Subject to this Act, a licence authorises the licensee to carry on a food business in accordance with the licence on or from the food premises specified on the licence.



### **Inspection of licence**

**36.** The licensee of a food business shall ensure that a copy of the licence granted in respect of that business is available for inspection at the food premises specified on the licence upon request by a health officer at any reasonable time.

Penalty: \$100.

### **Duration**

**37. (1)** A licence, unless sooner surrendered or cancelled, remains in force for the period of 12 months commencing on the date on which it was granted or last renewed.

**(2)** A licence shall not be taken to be in force while it is suspended under section 42 or 43.

### **Renewal**

**38.** The Minister shall, on application by a licensee, and on payment of the determined fee, before the expiration of the term of a licence, renew the licence for a period of 12 months commencing on the day immediately following the day on which, but for its renewal, the licence would have expired.

### **Alteration of food premises**

**39. (1)** A licensee shall not, without the approval of the Minister—

- (a) structurally alter food premises including fixtures or fittings in those premises; or
- (b) alter any food processing appliances installed in food premises.

Penalty: \$5,000.

**(2)** The Minister may, on application by a licensee, approve an alteration of the kind referred to in subsection (1).

**(3)** An application shall—

- (a) be in a form approved by the Minister;
- (b) be executed by the applicant;
- (c) where it is proposed to structurally alter food premises, be accompanied by a copy of the relevant plans and specifications; and
- (d) be accompanied by the determined fee.

*Food Act 1992*

(4) The Minister may, by written notice, require the applicant to provide, either orally or in writing, such further information relating to the application as is specified in the notice.

(5) The Minister shall, if satisfied, having regard to such of the matters referred to in subsection 33 (3) as he or she considers to be relevant to the circumstances of the application, by notice in writing given to the licensee—

- (a) approve the alteration; or
- (b) refuse to approve the alteration.

**Notice of transfer of food business**

40. (1) Where a food business is transferred to a new proprietor, the licensee and the new proprietor shall each give notice of the transfer to the Minister not later than 7 days after the date of the transfer.

(2) Notice given by a person under subsection (1)—

- (a) shall be in writing;
- (b) shall include—
  - (i) the person's name and address for service of documents;
  - (ii) the location of the food business; and
  - (iii) the date of transfer of the business to the new proprietor; and
- (c) in the case of the notice from the licensee, shall be accompanied by the relevant licence.

(3) As soon as practicable after receipt of a notice referred to in subsection (2), the Minister shall, except in the case of a licence that has been suspended, amend the licence and send it to the new proprietor.

(4) A person who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.

**Variation of licences**

41. (1) On application by a licensee, the Minister shall, if satisfied that it is desirable in the interests of food safety, by notice in writing given to the licensee—

- (a) vary the licence accordingly; or
- (b) refuse to vary the licence.

*Food Act 1992*

(2) Where the Minister believes on reasonable grounds that it is desirable to vary a licence in the interests of food safety, the Minister shall give the licensee a written notice—

- (a) specifying the ground upon which the Minister intends to vary the licence;
- (b) stating the facts and circumstances that in the Minister's opinion, constitute that ground; and
- (c) informing the licensee that the licensee may, within a specified period, give a written response to the Minister in relation to the matters stated in the notice.

(3) After the expiration of the period specified in a notice under subsection (2), taking into consideration any response given by the licensee, the Minister may, if satisfied on reasonable grounds that it is desirable to do so in the interests of food safety, vary the licence, by notice in writing given to the licensee, by—

- (a) varying a condition to which it is subject;
- (b) revoking such a condition; or
- (c) imposing a condition on the licence.

(4) The variation of a licence takes effect on—

- (a) the date on which notice of the variation is given to the licensee; or
- (b) if a later date is specified in the notice, on that later date.

(5) In this section—

“licence” includes a licence that is suspended.

### **Suspension or cancellation of licences**

**42. (1)** For the purposes of this section, a licence may be suspended or cancelled on any of the following grounds:

- (a) contravention by the licensee of a condition to which the licence is subject;
- (b) the obtaining of the licence by fraud or misrepresentation;
- (c) the conviction of the licensee of an offence against this Act or the regulations;
- (d) the failure of the licensee to comply with an improvement notice.

*Food Act 1992*

- (2) Where the Minister believes on reasonable grounds that—
- (a) there exists a ground for the suspension or the cancellation of a licence; and
  - (b) it is desirable in the interests of food safety to suspend or cancel the licence;

the Minister shall give written notice to the licensee—

- (c) specifying the ground upon which the Minister intends to suspend or cancel the licence;
- (d) stating the facts and circumstances that in the Minister's opinion, constitute that ground; and
- (e) informing the licensee that the licensee may, within 28 days after the date of the notice, give a written response to the Minister in relation to the matters stated in the notice.

(3) The Minister may, by notice in writing given to the licensee—

- (a) where the licensee gives a written response within 28 days after the date of a notice under subsection (2), after taking that response into consideration; or
- (b) where the licensee does not give a written response before the expiration of 28 days after the date of that notice, after the expiration of that period;

and if satisfied on reasonable grounds of the matters referred to in paragraphs (2) (a) and (b)—

- (c) in the case of a notice of intention to suspend the licence for a specified period—suspend the licence for that period, or for such shorter period as the Minister thinks fit; or
- (d) in the case of a notice of intention to cancel the licence—cancel the licence or suspend it for such period as the Minister thinks fit.

(4) The suspension or cancellation of a licence takes effect on—

- (a) the date on which notice of the suspension or cancellation is given to the licensee; or
- (b) if a later date is specified in the notice, on that later date.

**Emergency suspension of licences**

**43. (1)** For the purposes of this section, a licence may be suspended on any of the following grounds:

- (a) contravention by the licensee of a condition to which the licence is subject;
- (b) the conviction of the licensee of an offence against this Act or the regulations;
- (c) the giving of a prohibition notice.

**(2)** Where the Minister believes on reasonable grounds that—

- (a) there exists a ground for the suspension of a licence; and
- (b) it is necessary to suspend the licence in order to prevent or remove an imminent risk of injury to health, the Minister may, by notice in writing given to the licensee, suspend the licence for a period not exceeding 6 months.

**(3)** The suspension takes effect on the date on which the notice is given to the licensee.

**(4)** The notice of suspension shall—

- (a) specify the ground upon which the licence was suspended;
- (b) specify the period of the suspension; and
- (c) state the facts and circumstances that, in the Minister's opinion, constitute that ground.

#### **Return of licence**

**44. (1)** Within 7 days after the date of effect of the variation, suspension or cancellation of a licence, the person who was licensed shall not, without reasonable excuse, fail to return the licence to the Minister.

Penalty: \$ 500.

**(2)** As soon as practicable after the return of a licence for variation, the Minister shall endorse the variation on the licence and return it to the licensee.

## **PART VI—IMPROVEMENT AND PROHIBITION NOTICES**

### **Interpretation**

**45.** A reference in this Part to “licensee” shall, in relation to a food business in respect of which—

- (a) a licence has not been granted; or
- (b) a licence has ceased to be in force;

be read as a reference to “proprietor” in relation to that food business.

### **Improvement notices**

**46. (1)** Where a health officer believes on reasonable grounds that a person—

- (a) is contravening a provision of this Act, the regulations, or an approved code of practice; or
- (b) is likely to contravene a provision of this Act, the regulations or an approved code of practice;

the health officer may give—

- (c) an improvement notice to the person who is, or whom the health officer reasonably believes to be, in charge of the relevant food business or food premises, as the case requires; and
- (d) if that person is not, to the knowledge of the health officer, the licensee—a copy of the improvement notice to the licensee;

requiring the licensee to rectify the matters or activities occasioning the contravention, or likely contravention.

**(2)** An improvement notice shall—

- (a) specify the contravention that the health officer believes is occurring or is likely to occur and set out the reasons for that belief; and
- (b) specify a period, being a period that is in the health officer’s opinion reasonable, within which the licensee is to rectify the matters or activities to which the notice relates.

**(3)** An improvement notice may specify action that the licensee is to take during the period specified in the notice.

*Food Act 1992*

(4) Before the end of the period specified in an improvement notice, the health officer who issued the notice may, on his or her own motion or on application by the licensee, by notice in writing given to the licensee, extend the period within which the licensee is to take action in accordance with the notice.

(5) An improvement notice continues in force until revoked in accordance with section 48.

**Prohibition notices**

47. (1) Where a health officer believes on reasonable grounds that—

- (a) the manner in which a food business, or any part of that business, is being carried on;
- (b) the use being made of food premises; or
- (c) the state or condition of food premises;

involves, or may involve, the imminent risk of injury to health, the health officer may give—

- (d) a prohibition notice to the person who is, or whom the health officer reasonably believes to be, in charge of the relevant food business or food premises, as the case requires; and
- (e) if that person is not, to the knowledge of the health officer, the licensee—a copy of the prohibition notice to the licensee;

directing, as the case requires, the licensee to ensure that—

- (f) the food business, or any part of that business—
  - (i) is not carried on; or
  - (ii) is not carried on except in accordance with directions specified in the notice; or
- (g) the food premises—
  - (i) are not used for the food business, or for any part of that business; or
  - (ii) are not used for the food business, or for any part of the food business except in accordance with directions specified in the notice.

*Food Act 1992*

(2) Without limiting the generality of subsection (1), a prohibition notice may include directions relating to—

- (a) any part of the food premises where a specified activity is, or is not, to be carried on;
- (b) any substance, compound or article that is, or is not, to be used in connection with a specified activity;
- (c) any practice or procedure that is, or is not, to be followed in connection with a specified activity;
- (d) the recall of any food or appliance that may have been consigned or distributed for sale;
- (e) the impounding or isolation of any food or appliance;
- (f) the destruction or disposal, in a manner specified in the notice, of any food or appliance; or
- (g) the specification of a period, being a period that is, in the health officer's opinion, reasonable within which the licensee is to comply with a direction.

(3) Before the end of any period specified under paragraph (2) (g), the health officer who issued the notice may, on his or her own motion or on application by the licensee, by notice in writing given to the licensee, extend any period within which the licensee is to take action in accordance with the notice.

(4) The licensee of a food business who has been given a prohibition notice shall cause a copy of that notice to be displayed in a prominent place on the food premises specified in the notice.

(5) A licensee who, without reasonable excuse, contravenes subsection (4) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

(6) A prohibition notice continues in force until revoked in accordance with section 48.

### **Revocation of notices**

**48. (1)** A health officer shall, on his or her own motion or on application by the licensee of a food business, revoke an improvement notice or a prohibition notice, if satisfied after carrying out an inspection in relation to the matters in respect of which the relevant notice was issued—



*Food Act 1992*

- (a) in the case of an improvement notice—that the licensee has complied with the notice; or
  - (b) in the case of a prohibition notice—that adequate measures have been taken by the licensee to prevent or remove the relevant risk of injury to health that gave rise to the notice.
- (2) An application by a licensee for the purposes of subsection (1) shall—
- (a) be made in writing;
  - (b) be addressed to the health officer who issued the relevant notice;
  - (c) specify the measures taken by the licensee in compliance with the notice;
  - (d) nominate a date for an inspection to be made in relation to the matters in respect of which the notice was given; and
  - (e) be accompanied by the determined fee.

(3) As soon as practicable after receipt of an application in accordance with subsection (2), a health officer shall, by arrangement with the licensee, carry out an inspection in relation to the matters in respect of which the relevant notice was given and, if satisfied about the matters referred to in paragraph (1) (a) or (b), as the case requires, by notice in writing given to the relevant licensee—

- (a) revoke the relevant notice; or
- (b) refuse to revoke the relevant notice.

**Compliance with notices**

**49.** A licensee to whom—

- (a) an improvement notice; or
- (b) a prohibition notice;

has been given shall not, without reasonable excuse, fail to comply with the requirements of the relevant notice.

Penalty: \$10,000 or imprisonment for 1 year, or both.

## **PART VII—INSPECTION AND ANALYSIS**

### ***Division 1—Preliminary***

#### **Interpretation**

**50. (1)** For the purposes of this Part, a thing is connected with a particular offence if—

- (a) the offence has been committed with respect to it;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or it is intended to be used, for the purpose of committing the offence.

**(2)** A reference in this Part to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing is being or has been committed.

**(3)** Where a health officer enters premises in accordance with this Part, a reference to the occupier of the premises includes a reference to a person the health officer believes on reasonable grounds—

- (a) to be the occupier of those premises; or
- (b) to be in charge of those premises.

### ***Division 2—Health officers' powers***

#### **Entry to premises**

**51. (1)** Where a health officer believes on reasonable grounds that it is necessary to do so for the purposes of this Act, he or she may, with such assistance and by such force as is reasonable, enter prescribed premises—

- (a) other than a dwelling or any part of those premises used for residential purposes—at any reasonable time;
- (b) with the consent of the occupier;
- (c) pursuant to a warrant issued under section 54; or
- (d) if the health officer believes on reasonable grounds that the circumstances are of such seriousness and urgency as to require immediate entry to the premises without the authority of a warrant.

*Food Act 1992*

(2) A health officer who enters premises pursuant to subsection (1) is not entitled to remain on those premises if, on request by the occupier, the health officer does not produce his or her identity card to the occupier.

(3) In this section, a reference to reasonable time in relation to entry to prescribed premises is—

- (a) in the case of food premises—a reference to any hour of the day or night when the relevant food business is being conducted at those premises; or
- (b) in the case of prescribed premises other than food premises—a reference to any time during normal business hours.

(4) In this section—

“prescribed premises” means premises which the health officer believes on reasonable grounds to be—

- (a) food premises; or
- (b) premises that contain records relating to—
  - (i) food for sale;
  - (ii) the manufacture, preparation, processing, treatment or handling of food for sale; or
  - (iii) an appliance.

**Consent to entry**

**52.** (1) Before obtaining the consent of a person for the purposes of paragraph 51 (1) (b), a health officer shall—

- (a) produce his or her identity card; and
- (b) inform that person that he or she may refuse to give consent.

(2) Where a health officer obtains the consent of a person for the purposes of paragraph 51 (1) (b), the health officer shall ask the person to sign a written acknowledgment—

- (a) of the fact that the person has been informed that he or she may refuse to give consent;
- (b) of the fact that the person has voluntarily given consent; and
- (c) of the day on which, and the time at which, that consent was given.

(3) Where it is material in any proceedings for a court to be satisfied of the voluntary consent of a person for the purposes of paragraph 51 (1) (b) and an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such consent.

### **Powers of health officers**

**53.** Subject to this Part, where a health officer enters any premises in accordance with this Part, he or she may—

- (a) inspect, examine, take measurements in relation to, or conduct tests concerning, the premises or any system of work, plant, substance or thing at the premises;
- (b) inspect and test any container, equipment or appliance on the premises that the health officer believes on reasonable grounds to be used for the manufacture, preparation, processing, treatment, handling, sale or disposal of food;
- (c) inspect and test any food for sale or any material or substance that the health officer believes on reasonable grounds to be food for sale and take samples of any such food, material or substance;
- (d) open, or require a person to open, and examine any container or package that the health officer believes on reasonable grounds to contain food for sale;
- (e) take such photographs or make such video, sound recordings or films in connection with an inspection as the health officer believes on reasonable grounds to be necessary for the purposes of this Act;
- (f) seize anything (including records, documents, packaging material, labels or labelling material and material used in connection with advertising) that the health officer believes on reasonable grounds to be connected with an offence against this Act or the regulations;
- (g) require the occupier of the premises to make available to the health officer any record, document, labelling or advertising material relating to food or the sale of food, the manufacture, preparation, processing, treatment or handling of food for sale or to an appliance;
- (h) where information relating to food for sale, the sale of food, the manufacture, preparation, processing, treatment or handling of food for sale or to an appliance is stored on computer or other electronic

*Food Act 1992*

equipment—require the occupier of the premises to produce the information in a visible or audible form;

- (i) inspect, make copies of and take extracts from any record or document or of information referred to in paragraph (h);
- (j) require the occupier of the premises to provide information or answer questions reasonably related to the use of those premises in connection with the manufacture, preparation, processing, treatment, handling, sale or disposal of food;
- (k) require the occupier of the premises to render such assistance to the health officer as is necessary and reasonable to enable the health officer to exercise his or her powers under this section; and
- (m) stop, detain and inspect any vehicle that the health officer believes on reasonable grounds to have in or upon it anything connected with an offence against this Act or the regulations.

### **Search warrants**

**54. (1)** Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be, on any premises to which entry is permitted under section 51, a thing of a particular kind connected with a particular offence against this Act or the regulations and the information sets out those grounds, the magistrate may issue a search warrant authorising a health officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the premises;
- (b) to search those premises for things of that kind; and
- (c) to exercise any of the powers referred to in section 53 in relation to such a thing.

**(2)** A magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

**(3)** A warrant shall—

*Food Act 1992*

- (a) state the purpose for which it is issued;
- (b) specify the nature of the offence in relation to which the entry, search and exercise of the powers under section 53 are authorised;
- (c) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;
- (d) include a description of the kinds of things in relation to which the powers under section 53 may be exercised; and
- (e) specify a day, not being later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

***Division 3—Things seized by health officers***

**Notice of seizure**

**55.** A health officer who seizes anything under paragraph 53 (f) shall, as soon as practicable, give—

- (a) the owner of the thing seized; or
- (b) if the owner is not present or readily available, the person who had possession, custody or control of the thing immediately before its seizure;

a notice in writing specifying—

- (c) the thing seized, including the relevant quantity (if any);
- (d) the date and place of seizure;
- (e) the location of the thing seized;
- (f) the reasons for the seizure;
- (g) the procedure provided for by this Act for obtaining relief against the seizure; and
- (h) the name, address and telephone number of a health officer who may be contacted in relation to the seizure.

**Storage of things seized**

**56. (1)** Anything seized by a health officer in accordance with this Part may, at the option of the health officer, be detained on the premises where it was found and for that purpose it may—

- (a) be placed in a room, compartment, cabinet or an enclosed area;

*Food Act 1992*

- (b) be secured against interference; and
- (c) be identified in a manner that makes it clear that the thing has been seized for the purposes of this Act.

(2) Where, in accordance with subsection (1), a thing has been detained on premises, the health officer responsible shall, as soon as practicable, give the occupier of those premises a notice in writing specifying—

- (a) the thing detained, including the relevant quantity (if any);
- (b) the manner and circumstances in which the thing has been detained;
- (c) the expected period of such detention;
- (d) the liability of the occupier in respect of an offence under subsection 78 (2); and
- (e) the name, address and telephone number of a health officer who may be contacted in relation to the detention.

**Access to seized records**

57. Where a record or document is seized under this Part, the health officer shall permit the person otherwise entitled to possession of it, or his or her agent, to inspect, make copies of or take extracts from the record or document.

**Return of thing seized**

58. (1) If, after a thing has been seized under this Part—

- (a) either—
  - (i) at the expiration of a period of 6 months commencing on the date of the seizure, no proceedings have been commenced in relation to any alleged offence under this Act or the regulations in respect of the thing;
  - (ii) if such proceedings were commenced within that period—the charge has been withdrawn or the proceedings (including any appeal in relation to those proceedings) have otherwise been determined with no conviction being recorded; or
  - (iii) the Minister becomes satisfied that no contravention of this Act or the regulations has been committed in respect of the thing; and
- (b) the thing has not been destroyed or disposed of in a manner that would prevent it being dealt with in accordance with this subsection;

the Minister shall cause the thing to be delivered to—

- (c) the person from whom it was seized; or
- (d) such other person as appears to the Minister to be entitled to it.

(2) Where anything is delivered under subsection (1) after being forfeited to the Territory under section 64, such proprietary and other interests in the thing obtain as existed immediately before such forfeiture.

### **Application for relief against seizure**

**59. (1)** A person claiming to be entitled to anything seized under this Part may—

- (a) in the case of food having a maximum durable shelf-life of 7 days—within 72 hours after the seizure of the food; and
- (b) in any other case—within 10 days after the seizure of the thing;

apply to a court of competent jurisdiction in the Territory for an order disallowing the seizure.

(2) An application under subsection (1) shall be made in accordance with the relevant rules of court and shall not be heard unless the applicant has served a copy of the application on the health officer responsible for the relevant seizure.

### **Appearance to application**

**60.** The health officer responsible for the relevant seizure is entitled to appear as respondent at the hearing of an application made under subsection 59 (1).

### **Order disallowing seizure**

**61.** On the hearing of an application made under subsection 59 (1), the court shall make an order disallowing the relevant seizure—

- (a) if—
  - (i) it is proved by or on behalf of the applicant that the applicant would, but for the seizure, be entitled to the return of the thing seized; and
  - (ii) it is not proved beyond reasonable doubt that an offence was being or had been, at the time of the seizure, committed, being an offence with which the thing is connected; or



- (b) if, in the opinion of the court, there are exceptional circumstances justifying the making of an order disallowing the seizure;

but otherwise the court shall refuse the application.

### **Ancillary orders**

**62. (1)** In the event that the court makes an order disallowing the seizure of a thing, it shall also make 1 or both of the following orders, namely:

- (a) an order directing the respondent to cause the thing to be delivered to the applicant or to such other person as appears to the court to be entitled to it;
- (b) if the thing cannot for any reason be so delivered or the thing has in consequence of the seizure depreciated in value an order directing the Territory to pay to the applicant such amount by way of compensation as the court considers to be just and reasonable.

**(2)** Where the applicant satisfies the court that he or she has sustained financial loss by reason of being deprived of the thing seized, the court may, in making an order under subsection (1), direct the Territory to pay the applicant such amount by way of compensation as the court considers just and reasonable.

**(3)** The award of costs with respect to the hearing of an application lies in the discretion of the court.

**(4)** If the court makes an order for the payment of compensation or awards costs, the order is enforceable as a judgment of the court.

### **Adjournment pending other proceedings**

**63.** If, on the hearing of an application made under subsection 59 (1), it appears to the court that the thing that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence against this Act or the regulations, the court may, on the application of the respondent, or on its own motion, adjourn the hearing until the conclusion of those proceedings.

### **Forfeiture of things seized**

**64.** Where—

- (a) anything seized under this Part has not been dealt with in accordance with subsection 58 (1); and

- (b) an application for disallowance of the seizure under subsection 59 (1)—
  - (i) has not been made within the relevant period allowed; or
  - (ii) has been made within that period, but the application has been refused or has been withdrawn before a decision in respect of the application had been made;

the thing is forfeited to the Territory and may, subject to this Part, be destroyed, sold or otherwise disposed of as the Minister may, generally or in a particular case, direct.

### **Cost of destruction or disposal of things forfeited**

**65. (1)** Where—

- (a) a person is convicted of an offence against this Act or the regulations, in respect of anything forfeited to the Territory under this Division; and
- (b) that person was the owner of the thing immediately before it was forfeited;

any costs incurred by or on behalf of the Territory in connection with the lawful destruction or disposal of the thing is a debt due to the Territory by that person.

**(2)** Where a debt under subsection (1) is due by 2 or more persons, the liability of those persons is joint and several.

**(3)** In any proceedings under subsection (1), a certificate signed by the Minister stating that the amount of any costs and the manner in which they were incurred is evidence of the matters stated.

### **Destruction of noxious material**

**66.** Where a health officer has seized any food under this Part and the health officer believes on reasonable grounds that the food contains animal or vegetable matter that is decomposed or dirt contaminated then, notwithstanding any provision to the contrary in this Part, the health officer may cause the food to be destroyed.

***Division 4—Procedure for taking samples***

**Owner of sample to be informed**

**67.** Where a health officer takes a sample of food under this Part with the intention that it be submitted for analysis, he or she shall, before or as soon as practicable after taking the sample, inform—

- (a) the owner of the food comprised in the sample; or
- (b) if the owner is not present or readily available, the person from whom the sample was taken or the person having charge of the food;

of his or her intention of having the food analysed.

**Payment for sample**

**68. (1)** Where a health officer takes a sample of food under this Part he or she shall pay or tender an amount representing the current market value of the food comprised in the sample.

**(2)** In any proceedings for an offence of selling food in contravention of this Act or the regulations, the taking of a sample of food in accordance with this Part shall, for the purposes of this Act, be taken to be a sale of the food.

**Sampling procedure**

**69. (1)** A health officer shall—

- (a) take samples in accordance with any applicable standard; or
- (b) where there is no applicable standard, take samples in accordance with this section.

**(2)** Where a sample is not taken in accordance with an applicable standard, the health officer shall—

- (a) divide the sample into 3 parts;
- (b) label and seal each part in such a manner as its nature permits;
- (c) deliver 1 part to the owner, agent, servant or person in charge of the food sampled;
- (d) retain 1 part for a future comparison; and
- (e) submit 1 part to an analyst.

**(3)** Where—

*Food Act 1992*

- (a) food is contained in a package; and
- (b) the division of the food into 3 parts would not yield parts sufficient for accurate analysis;

the health officer may take sufficient other packages containing food of that kind and mix the food together.

(4) Food mixed in accordance with subsection (3) shall be taken to be a sample for the purposes of this section.

(5) For the purposes of subsections (2) and (3), where food is in packages, a sample may be constituted by 1 or more packages.

(6) Subject to subsection (2), where a sample is constituted by more than 1 package, a part into which the sample may be divided under subsection (2) may consist of 1 or more packages.

**Samples from vending machines**

**70.** The provisions of this Division do not apply in relation to a sample taken from a food vending machine by means of the ordinary operation of the machine if, at the time that the sample is taken, there is no person who admits to the health officer to being in charge of the machine and the health officer believes on reasonable grounds that it is impracticable to ascertain particulars of the owner or manufacturer of the food.

*Division 5—Analysis of samples*

**Duty of analysts**

**71.** Where a sample of food is submitted to an analyst for analysis under this Part, the analyst shall—

- (a) make an analysis of the food or supervise the analysis of the food by another person acting under his or her direction;
- (b) furnish the person who submitted the food for analysis with a certificate containing the information referred to in subsection 72 (1); and
- (c) where a method of analysis has been prescribed by a standard for the analysis of food of the type submitted to the analyst—duly observe the method of analysis prescribed.

**Certificate evidence**

**72. (1)** Subject to subsection (2), in any proceedings for an offence against this Act or the regulations, a certificate purporting to be signed by an analyst and stating in relation to food taken or seized under this Part—

- (a) that the analyst signing the certificate is duly appointed under this Act;
- (b) when and from whom the food was received;
- (c) which (if any) labels or other means of identifying the food accompanied it when it was received;
- (d) where a method of analysis has been prescribed by a standard for the analysis of food of the type submitted to the analyst—that the analyst has duly observed the method of analysis prescribed in making the analysis; and
- (e) the results of the analysis;

is evidence of the matters stated in the certificate and of the facts on which they are based.

**(2)** Subsection (1) only applies if a copy of the certificate was served on the defendant in the proceedings, or on the defendant's legal representative on the record of those proceedings, not later than 14 days, or such shorter period as the court orders, before the commencement of the proceedings.

**(3)** For the purposes of subsection (1), a certificate that purports to be signed by an analyst shall, unless the contrary is proved, be taken to have been signed by the analyst who purports to have signed it.

**(4)** Subject to subsection (5), where the certificate of an analyst is admitted in evidence in a proceeding, the defendant may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.

**(5)** Subsection (4) does not entitle a person to require the analyst to be called as a witness for the prosecution unless—

- (a) the prosecutor has been given at least 4 days' notice of the person's intention to require the analyst to be called; or
- (b) the court, by order, allows the analyst to be so called.

**Analysis of spare part of sample**

**73. (1)** In any proceedings to which this section applies the court shall, on the application of either party to the proceedings, order the health officer to deliver or send, in such manner as it determines, the part of any sample which has been retained for future comparison pursuant to paragraph 69 (2) (d) to an independent analyst for analysis or to the analyst for the prosecution and to the analyst for the defence for joint analysis.

**(2)** This section applies to any proceedings before a court for an offence against this Act or the regulations in respect of any food a sample of which has been taken by a health officer under this Part where the court is satisfied that the result of the analysis of the part of the sample left with a person referred to in paragraph 69 (2) (c) shows that the food comprised in that part did not contravene the requirements of the Act or the regulations to which the proceedings relate.

**(3)** The analyst to whom a part of the sample is submitted pursuant to an order under subsection (1) shall—

- (a) make an analysis of the food or supervise the analysis of the food by another person acting under his or her direction;
- (b) where a method of analysis has been prescribed by a standard for the analysis of food of the type submitted to the analyst—duly observe the method of analysis prescribed; and
- (c) furnish the court with a certificate stating—
  - (i) where a method of analysis has been prescribed by a standard for the analysis of food of the type submitted to the analyst—that the analyst has duly observed the method of analysis prescribed in making the analysis; and
  - (ii) the results of the analysis.

**(4)** A certificate transmitted to a court under this section is evidence of the matters stated in the certificate and of the facts on which they are based.

**(5)** The costs of carrying out such an analysis shall be in the discretion of the court.

**(6)** If, in a case where an appeal is brought, no order under subsection (1) has been made by the lower court, a reference in this section to a court shall be read as a reference to the appellate court.

(7) In subsection (1)—

“independent analyst” means any analyst who has not previously analysed any other part of the sample to which the proceedings relate.

### **Time limit for certain prosecutions**

**74.** Where a sample of food has been taken under this Part for the purpose of analysis, no prosecution for an offence against this Act or the regulations in respect of the food may be commenced after the expiration of the period of 6 months from the date on which the sample was taken.

### ***Division 6—Offences in relation to investigations***

#### **Obstruction of health officers**

**75. (1)** A person shall not, without reasonable excuse—

- (a) hinder or obstruct a health officer in the exercise of his or her powers, or the performance of his or her duties, for the purposes of this Act or the regulations; or
- (b) contravene a requirement made of him or her by a health officer in the exercise of his or her powers under section 53.

Penalty:

- (a) for contravention of paragraph (a)—\$5,000 or imprisonment for 6 months, or both;
- (b) for contravention of paragraph (b)—\$5,000.

**(2)** The fact that providing information or answering questions pursuant to a requirement under paragraph 53 (j) may tend to incriminate an occupier of premises shall be taken to be a reasonable excuse on the part of that occupier for the purposes of paragraph (1) (b).

#### **False information**

**76.** A person shall not knowingly provide false information to a health officer in relation to an offence against this Act or the regulations.

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

#### **Prohibited use of analysis**

**77.** A person shall not use for trade or advertising purposes the results of an analysis made for the purposes of this Act.

Penalty: \$5,000.

**Interference with things detained**

**78. (1)** Where a health officer has seized a thing under this Part and detained it on premises pursuant to section 56, a person who, without the permission of the health officer, removes, breaks, opens or interferes with the thing is guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or imprisonment for 6 months, or both.

**(2)** Where an offence against subsection (1) has been committed, then whether or not any person has been charged with or convicted of that offence, the occupier of the premises where the offence was committed is guilty of an offence.

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

**(3)** It is a defence to a prosecution for breach of subsection (2) that the defendant—

- (a) had taken all reasonable steps to prevent the breach of subsection (1);  
or
- (b) believed on reasonable grounds that another person had taken, or would take, all reasonable steps to prevent that breach.

**PART VIII—REVIEW OF DECISIONS**

**Review by Administrative Appeals Tribunal**

**79. (1)** An application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister—

- (a) granting a licence subject to conditions under paragraph 33 (1) (a);
- (b) refusing to grant a licence under paragraph 33 (1) (b);
- (c) refusing to approve an alteration to food premises under paragraph 39 (5) (b);
- (d) refusing to vary a licence under paragraph 41 (1) (b);
- (e) varying a licence under subsection 41 (3);
- (f) suspending or cancelling a licence under subsection 42 (3); or
- (g) suspending a licence under paragraph 43 (2) (b).



*Food Act 1992*

**(2)** An application may be made to the Administrative Appeals Tribunal for review of a decision of a health officer—

- (a) giving an improvement notice;
- (b) refusing to extend a period for compliance with an improvement notice under subsection 46 (4);
- (c) giving a prohibition notice;
- (d) refusing to extend a period for compliance with a prohibition notice under subsection 47 (3); or
- (e) refusing to revoke an improvement notice or a prohibition notice under subsection 48 (3).

**(3)** A notice under subsection (1) or (2) shall be in accordance with the requirements of the the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

## **PART IX—MISCELLANEOUS**

### **Evidentiary value of copies of records**

**80.** Where—

- (a) a health officer, in the exercise of his or her powers, or the performance of his or her duties, for the purposes of this Act or the regulations, makes or causes to be made a copy of a record or part of a record; and
- (b) certifies that the copy is a true copy of that record or part;

then, in any proceedings under this Act or the regulations, the copy is admissible in evidence for all purposes for which the record or part could have been so admitted unless the court is satisfied that the certificate of the health officer is not accurate.

### **Conduct of directors, servants and agents**

**81. (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—

*Food Act 1992*

- (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.

### **Fees**

82. The Minister may, by notice in the *Gazette*, determine fees for the purposes of this Act and the regulations.

### **Penalty for companies**

83. 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**

84. (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;

*Food Act 1992*

- (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.

**(3)** Without limiting the generality of subsection (1), the regulations may make provision in relation to matters relevant to the safety of food, including provision—

- (a) requiring precautions, including measures for personal hygiene, to be taken in relation to infectious diseases;
- (b) in relation to training in matters relevant to the safety of food, including provisions—
  - (i) relating to the provision of training programs by the Territory;
  - (ii) relating to the approval of training programs;
  - (iii) relating to the accreditation of persons who conduct training programs; and
  - (iv) requiring persons who are, or intend to become, involved in food businesses, whether as proprietors or employees or otherwise, to undertake training programs;
- (c) in relation to food safety plans for food businesses;
- (d) requiring the keeping of records and the furnishing of returns in relation to matters relevant to the safety of food;
- (e) providing for requirements in relation to the design, siting and construction of food premises; and
- (f) providing for requirements in relation to appliances.

**(4)** The regulations may prescribe penalties not exceeding—

- (a) if the offender is a natural person—\$1,000; or
- (b) if the offender is a body corporate—\$5,000;

for offences against the regulations.

**(5)** The regulations may incorporate (with or without modification) an approved code of practice as in force from time to time.

*Food Act 1992*

**NOTE**

1. The *Food Act 1992* as shown in this reprint comprises Act No. 47, 1992 amended as indicated in the Tables below.

**Table of Acts**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Food Act 1992</i>	47, 1992	1 Sept 1992	Ss. 1 and 2: 1 Sept 1992 Remainder: 1 Mar 1993	—
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Food (Amendment) Act 1993</i>	52, 1993	27 Aug 1993	Ss. 1-3: 27 Aug 1993 Remainder 27 Feb 1994	—
	as amended by 100, 1993	24 Dec 1993	Ss. 1 and 2: 24 Dec 1993 Remainder: 27 Feb 1994	S. 10
<i>Food (Amendment) Act (No. 2) 1993</i>	100, 1993	24 Dec 1993	Ss. 1 and 2: 24 Dec 1993 Remainder: 27 Feb 1994	S. 10
<i>Administrative Appeals (Consequential Amendments) Act 1994</i>	60, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder: 14 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S250)	—
<i>Statutory Offices (Miscellaneous Provisions) Act 1994</i>	97, 1994	15 Dec 1994	Ss. 1 and 2: 15 Dec 1994 Remainder: 15 Dec 1994 (see <i>Gazette</i> 1994, No. S293)	Part III (ss. 4-9)
<i>Statute Law Revision Act 1995</i>	46, 1995	18 Dec 1995	18 Dec 1995	—

**NOTE**—continued**Table of Amendments**

The amendment history of the *Food Act 1992* prior to renumbering by the *Food (Amendment) Act (No. 2) 1993* (No. 100, 1993) appears in Table 1 below.

**Table 1**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 3 .....	rep. No. 44, 1993
S. 4 .....	am. Nos. 52 and 100, 1993
S. 7 .....	am. No. 52, 1993
Part IA (ss.8A-8D) .....	ad. No. 100, 1993
Ss. 8A-8D .....	ad. No. 100, 1993
Heading to Div. 1 of Part II .....	ad. No. 52, 1993
Ss. 9-13 .....	am. No. 100, 1993
S. 14 .....	am. Nos. 52 and 100, 1993
S. 15 .....	am. No. 100, 1993
S. 18 .....	am. No. 100, 1993
Div. 2 of Part II (ss. 18A-18C) .....	ad. No. 52, 1993
Ss. 18A-18C .....	ad. No. 52, 1993
Heading to Div. 3 of Part II .....	ad. No. 52, 1993
S. 18D .....	ad. No. 52, 1993
S. 19 .....	am. No. 52, 1993
Part IIA (ss. 19A-19C) .....	ad. No. 52, 1993
Ss. 19A-19C .....	ad. No. 52, 1993
Part IIB (ss. 19D-19T) .....	ad. No. 52, 1993
Ss. 19D-19J .....	ad. No. 52, 1993
S. 19K .....	ad. No. 52, 1993
	am. No. 100, 1993
Ss. 19L-19T .....	ad. No. 52, 1993
Part IIC (ss. 19U-19Y) .....	ad. No. 52, 1993
S. 19U .....	ad. No. 52, 1993
Ss. 19V-19X .....	ad. No. 52, 1993
	am. No. 100, 1993
S. 19Y .....	ad. No. 52, 1993
Part IICA (ss. 19YA-19YZ, 19YZA-19YZC) .....	ad. No. 100, 1993
Ss. 19YA-19YZ, 19YZA- 19YZC .....	ad. No. 100, 1993
Part IID (s. 19Z) .....	ad. No. 52, 1993
S. 19Z .....	ad. No. 52, 1993
	am. No. 100, 1993
S. 19ZA .....	ad. No. 100, 1993
S. 20A .....	ad. No. 52, 1993
S. 22 .....	am. No. 52, 1993

*Food Act 1992*

**NOTE**—continued

The amendment history of the *Food Act 1992* after renumbering by the *Food (Amendment) Act (No. 2) 1993* appears in Table 2 below.

**Table 2**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 3 .....	am. Nos. 60 and 97, 1994
Ss. 8, 9 .....	rep. No. 97, 1994
S. 34 .....	am. No. 46, 1995
S. 79 .....	am. No. 60, 1994

TABLE SHOWING NEW SECTION AND PART NUMBERS OF THE *FOOD ACT 1992* AFTER  
RENUMBERING BY THE *FOOD (AMENDMENT) ACT (No. 2) 1993* (No. 100, 1993)

**NOTE**—This Table does not form part of the *Food Act 1992* and is printed for convenience of reference only.

Old number	New number	Old number	New number	Old number	New number
Section	Section	18A	22	19R	42
4	3	18B	23	19S	43
5	4	18C	24	19T	44
6	5	18D	25	Part IIC	Part VI
7	6	19	26	Section	Section
8	7	Part IIA	Part IV	19U	45
Part IA	Part II	Section	Section	19V	46
Section	Section	19A	27	19W	47
8A	8	19B	28	19X	48
8B	9	19C	29	19Y	49
8C	10	Part IIB	Part V	Part IICA	Part VII
8D	11	Section	Section	Section	Section
Part II	Part III	19D	30	19YA	50
Section	Section	19E	31	19YB	51
9	12	19F	32	19YC	52
10	13	19G	33	19YD	53
11	14	19H	34	19YE	54
12	15	19J	35	19YF	55
13	16	19K	36	19YG	56
14	17	19L	37	19YH	57
15	18	19M	38	19YI	58
16	19	19N	39	19YJ	59
17	20	19P	40	19YK	60
18	21	19Q	41	19YL	61

TABLE SHOWING NEW SECTION AND PART NUMBERS OF THE *FOOD ACT 1992* AFTER  
 RENUMBERING BY THE *FOOD (AMENDMENT) ACT (No. 2) 1993* (No. 100, 1993)—  
 continued

Old number	New number	Old number	New number	Old number	New number
19YM	62	19YV	71	Section	Section
19YN	63	19YW	72	19Z	79
19YO	64	19YX	73	Part III	Part IX
19YP	65	19YY	74	Section	Section
19YQ	66	19YZ	75	19ZA	80
19YR	67	19YZA	76	20	81
19YS	68	19YZB	77	20A	82
19YT	69	19YZC	78	21	83
19YU	70	Part IID	Part VIII	22	84

© Australian Capital Territory 2014