

2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Health, Housing and Community Services)

## Food Bill 2001

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2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health, Housing and Community Services)

## **Food Bill 2001**

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### **A Bill for**

An Act to regulate the sale of food for human consumption, and for other purposes

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

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1999 236

1

2 **Part 1 Preliminary**

3

4 **1 Name of Act**

5 This Act is the *Food Act 2001*.

6 **2 Commencement**

7 This Act commences on a day fixed by the Minister by notice in the  
8 Gazette.

9 *Note 1* The naming and commencement provisions automatically commence on  
10 the notification day (see *Legislation Act 2001*, s 75).

11 *Note 2* A single day or time may be fixed, or different days or times may be  
12 fixed, for the commencement of different provisions (see *Legislation*  
13 *Act 2001*, s 77 (1)).

14 *Note 3* If a provision has not commenced within 6 months beginning on the  
15 notification day, it automatically commences on the first day after that  
16 period (see *Legislation Act 2001*, s 79).

17 **3 Objects of Act**

18 The objects of this Act include the following:

- 19 (a) to ensure food for sale is both safe and suitable for human  
20 consumption;
- 21 (b) to prevent misleading conduct in relation to the sale of food;
- 22 (c) to provide for the application in the ACT of the food standards  
23 code.

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## 4 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*food*—see section 8 (Meaning of *food*).' means that the expression 'food' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

## 5 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

## 6 Application of Act to primary food production

(1) The following parts do not apply in relation to primary food production:

(a) part 7 (Improvement notices and prohibition orders);

(b) part 8 (Notification and registration of food businesses).

(2) The functions given to authorised officers under part 5 (Inspection and seizure powers) and part 6 (Taking and analysis of food samples) may only be exercised in relation to primary food production—

(a) to allow the investigation and prosecution of offences against this Act; or

(b) in relation to the making or enforcement of emergency orders under part 4 (Emergency powers).

1 (3) In this section:  
2 *offence* includes an offence that there are reasonable grounds for  
3 believing has been, is being, or will be committed.

4 *Note 1* The definition of *food business* excludes primary food production (see  
5 s 10).

6 *Note 2* A reference to an Act includes a reference to statutory instruments made  
7 or in force under the Act, including regulations, the food standards code  
8 and any approved code of practice (see *Legislation Act 2001*, s 104).

9 **7 Application of Act to water suppliers**

10 (1) The following provisions do not apply in relation to the supply of  
11 water for human consumption through a relevant reticulated water  
12 system:

- 13 (a) section 16 (Knowingly handling food in unsafe way);
- 14 (b) section 18 (Knowingly falsely describing food);
- 15 (c) section 22 (1) (which is about handling food in a way that  
16 renders it unsafe etc);
- 17 (d) section 23 (1) (which is about handling food in a way that  
18 renders it unsuitable etc);
- 19 (e) section 24 (Misleading conduct relating to sale of food);
- 20 (f) section 25 (Sale of food not complying with purchaser's  
21 demand);
- 22 (g) section 26 (Sale of unfit equipment or packaging or labelling  
23 material);
- 24 (h) part 7 (Improvement notices and prohibition orders);
- 25 (i) part 8 (Notification and registration of food businesses).

26 (2) Section 27 (Compliance with food standards code), to the extent to  
27 which it requires compliance with the requirements of the food  
28 safety standards, does not apply in relation to the supply of water for  
29 human consumption through a relevant reticulated water system.

1 (3) In this section:

2 *relevant reticulated water system* means—

- 3 (a) a reticulated water system provided by a utility under the  
4 *Utilities Act 2000* that is licensed under that Act for the  
5 distribution of water through a water network; or
- 6 (b) a reticulated water system provided by an entity prescribed  
7 under the regulations for this paragraph; or
- 8 (c) a reticulated water system that provides water to a place  
9 prescribed under the regulations for this paragraph.

## Part 2 Key concepts

### 8 Meaning of *food*

(1) For this Act, *food* includes—

- (a) any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared); or
- (b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing mentioned in paragraph (a); or
- (c) any substance used in preparing a substance or thing mentioned in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing mentioned in that paragraph, including, for example, a processing aid; or
- (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; or
- (e) any substance or thing declared to be a food under a declaration in force under the Commonwealth Act, section 3B and prescribed under the regulations for this paragraph;

whether or not the substance, thing or chewing gum is in a condition fit for human consumption.

(2) However, *food* does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989* (Cwlth).

(3) To remove any doubt, *food* may include live animals and plants.

### 9 Meaning of *sell* etc

(1) For this Act, *sell* includes—

- (a) barter, offer or attempt to sell; or

- 
- 1 (b) receive for sale; or  
2 (c) have in possession for sale; or  
3 (d) display for sale; or  
4 (e) cause or permit to be sold or offered for sale; or  
5 (f) send, forward or deliver for sale; or  
6 (g) dispose of by any method for valuable consideration; or  
7 (h) dispose of to an agent for sale on consignment; or  
8 (i) provide under a contract of service; or  
9 (j) supply food as a meal or part of a meal to an employee, in  
10 accordance with a term of an award governing the employee's  
11 employment or a term of the employee's contract of service,  
12 for consumption by the employee at the employee's place of  
13 work; or  
14 (k) dispose of by way of raffle, lottery or other game of chance; or  
15 (l) offer as a prize or reward; or  
16 (m) give away for the purpose of advertisement or in furtherance of  
17 trade or business; or  
18 (n) supply food under a contract (whether or not the contract is  
19 made with the consumer of the food), together with  
20 accommodation, service or entertainment, in consideration of  
21 an inclusive charge for the food supplied and the  
22 accommodation, service or entertainment; or  
23 (o) supply food (whether or not for consideration) in the course of  
24 providing services to people in—  
25 (i) a prison (including a detention centre under the *Periodic*  
26 *Detention Act 1995* and an institution or shelter under the  
27 *Children and Young People Act 1999*), lockup or remand  
28 centre; or

Section 10

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- 1                   (ii) a hospice, hospital, nursing home or other health facility  
2                   operated by or on behalf of the Territory; or
- 3                   (iii) any other institution (however described) prescribed  
4                   under the regulations for this paragraph; or
- 5                   (p) sell for the purpose of resale.
- 6           (2) For this Act, food or equipment that is displayed for the purpose of  
7           being offered as a prize or reward, or given away for the purpose of  
8           advertisement or in the furtherance of trade or business, is taken to  
9           have been *displayed for sale* by the owner of the food or equipment.

**10    Meaning of food business**

11           For this Act, *food business* is a business, enterprise or activity (other  
12           than a business, enterprise or activity that is primary food  
13           production) that involves—

- 14           (a) the handling of food intended for sale; or  
15           (b) the sale of food;

16           whether or not the business, enterprise or activity is of a  
17           commercial, charitable or community nature or whether it involves  
18           the handling or sale of food on 1 occasion only.

**11    Meaning of primary food production**

20           (1) For this Act, *primary food production* is the growing, raising,  
21           cultivation, picking, harvesting, collection or catching of food, and  
22           includes the following:

23           (a) the transport or delivery of food on, from or between the  
24           premises where it was grown, raised, cultivated, picked,  
25           harvested, collected or caught;

26           (b) the packing, treating (for example, washing) or storing of food  
27           on the premises where it was grown, raised, cultivated, picked,  
28           harvested, collected or caught;



- 1 (c) the storage of food in a silo that is not connected with a food  
2 processing operation and the transport or delivery of food  
3 from, between or to such silos;
- 4 (d) the sale of livestock at saleyards and the transport of livestock  
5 to and from saleyards;
- 6 (e) any other food production activity that is regulated under an  
7 Act prescribed under the regulations for this subsection.
- 8 (2) However, *primary food production* does not include—
- 9 (a) any process involving the substantial transformation of food  
10 (for example, manufacturing or canning), whether or not the  
11 process is carried out on the premises where the food was  
12 grown, cultivated, picked, harvested, collected or caught; or
- 13 (b) the sale or service of food directly to the public; or
- 14 (c) any other food production activity that is prescribed under the  
15 regulations for this subsection.

16 **Example of an activity that may be prescribed for par (c)**

17 A food production activity in relation to which significant and unmanaged food  
18 safety hazards have been identified.

19 **12 Meaning of *unsafe* food**

- 20 (1) For this Act, food is *unsafe* at a particular time if it would be likely  
21 to cause physical harm to a person who might later consume it,  
22 assuming—
- 23 (a) it was, after that particular time and before being consumed by  
24 the person, properly subjected to all processes (if any) that are  
25 relevant to its reasonable intended use; and
- 26 (b) nothing happened to it after that particular time and before  
27 being consumed by the person that would prevent its being  
28 used for its reasonable intended use; and
- 29 (c) it was consumed by the person according to its reasonable  
30 intended use.

Section 13

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1 (2) However, food is not *unsafe* for this Act only because its inherent  
2 nutritional or chemical properties cause, or its inherent nature  
3 causes, adverse reactions only in people with allergies or  
4 sensitivities that are not common to the majority of people.

5 (3) In subsection(1):

6 *processes* include processes involving storage and preparation.

7 **13 Meaning of *unsuitable* food**

8 (1) For this Act, food is *unsuitable* if it is food that—

9 (a) is damaged, deteriorated or perished to an extent that affects its  
10 reasonable intended use; or

11 (b) contains any damaged, deteriorated or perished substance that  
12 affects its reasonable intended use; or

13 (c) is the product of a diseased animal, or an animal that has died  
14 otherwise than by slaughter, and has not been declared under  
15 another Territory law to be safe for human consumption; or

16 (d) contains a biological or chemical agent, or other matter or  
17 substance, that is foreign to the nature of the food.

18 (2) However, food is not *unsuitable* for this Act only because—

19 (a) at any particular time before it is sold for human consumption  
20 it contains an agricultural or veterinary chemical; or

21 (b) when it is sold for human consumption it contains an  
22 agricultural or veterinary chemical in an amount that does not  
23 contravene the food standards code; or

24 (c) it contains a metal or nonmetal contaminant (within the  
25 meaning of the food standards code) in an amount that does not  
26 contravene the permitted level for the contaminant as provided  
27 by the food standards code; or

28 (d) it contains any matter or substance that is permitted by the food  
29 standards code.

- 1       (3) In this section:
- 2           *slaughter*, of an animal, includes killing the animal in the process of
- 3           capturing, taking or harvesting it for the purposes of preparing it for
- 4           use as food.

1  
2 **Part 3** **Offences relating to food**

3 **Division 3.1** **Preliminary**

4 **14 Application of pt 3 to food sold etc outside ACT**

5 For this part, it does not matter that the food concerned was sold or  
6 intended for sale outside the ACT.

7 *Note* For a defence in relation to food intended for export to another country,  
8 see s 29.

9 **15 False descriptions of food**

10 (1) For this part, food that is *falsely described* includes food to which  
11 any 1 or more of the following paragraphs applies:

12 (a) the food is represented as being of a particular nature or  
13 substance for which there is a prescribed standard under the  
14 food standards code and the food does not comply with that  
15 prescribed standard;

16 (b) the food is represented as being of a particular nature or  
17 substance and it contains, or is mixed or diluted with, any  
18 substance in a quantity or proportion that significantly  
19 diminishes its food value or nutritive properties as compared  
20 with food of the represented nature or substance;

21 (c) the food is represented as being of a particular nature or  
22 substance and it contains, or is mixed or diluted with, any  
23 substance of lower commercial value than food of the  
24 represented nature or substance;

25 (d) the food is represented as being of a particular nature or  
26 substance and a constituent of the food has been completely or  
27 partly removed so that its properties are diminished as  
28 compared with food of the represented nature or substance;

29 (e) any word, statement, device or design used in the packaging or  
30 labelling of the food, or in an advertisement for the food,

1 would create a false impression about the nature or substance  
2 of the food, or the commercial value of the food, in the mind of  
3 a reasonable person;

4 (f) the food is not of the nature or substance represented by the  
5 way in which it is packaged, labelled or offered for sale.

6 (2) Without limiting the application of subsection (1) to section 18 (2)  
7 (Knowingly falsely describing food) or section 21 (2) (False  
8 description of food), food is *falsely described* for those subsections  
9 if it is supplied in response to a purchaser's demand or other request  
10 for a particular type of food, or a food that does not contain a  
11 particular ingredient, and the food is not of that type or contains that  
12 ingredient.

### 13 **Division 3.2 Serious offences relating to food**

14 *Note 1* For defences to the offences in this division, see div 3.4.

15 *Note 2* For other provisions about the offences in this division, see div 3.5 and  
16 pt 10.

#### 17 **16 Knowingly handling food in unsafe way**

18 A person must not handle food intended for sale in a way that the  
19 person knows will render, or is likely to render, the food unsafe.

20 Maximum penalty: 1 000 penalty units, imprisonment for 2 years or  
21 both.

#### 22 **17 Knowingly selling unsafe food**

23 A person must not sell food that the person knows is unsafe.

24 Maximum penalty: 1 000 penalty units, imprisonment for 2 years or  
25 both.

1 **18** **Knowingly falsely describing food**

2 (1) A person must not cause food intended for sale to be falsely  
3 described if the person knows that a consumer of the food who  
4 relies on the description will, or is likely to, suffer physical harm.

5 Maximum penalty: 1 000 penalty units, imprisonment for 2 years or  
6 both.

7 *Note* For examples of food that is falsely described, see s 15.

8 (2) A person must not sell food that the person knows is falsely  
9 described and will, or is likely to, cause physical harm to a  
10 consumer of the food who relies on the description.

11 Maximum penalty: 1 000 penalty units, imprisonment for 2 years or  
12 both.

13 **Division 3.3** **Other offences relating to food**

14 *Note 1* For defences to the offences in this division, see div 3.4.

15 *Note 2* For other provisions about the offences in this division, see div 3.5 and  
16 pt 10.

17 **19** **Handling of food in unsafe way**

18 A person must not handle food intended for sale in a way that the  
19 person ought reasonably to know is likely to render the food unsafe.

20 Maximum penalty: 750 penalty units.

21 **20** **Sale of unsafe food**

22 A person must not sell food that the person ought reasonably to  
23 know is unsafe.

24 Maximum penalty: 750 penalty units.

25 **21** **False description of food**

26 (1) A person must not cause food intended for sale to be falsely  
27 described if the person ought reasonably to know that a consumer of

1 the food who relies on the description is likely to suffer physical  
2 harm.

3 Maximum penalty: 750 penalty units.

4 *Note* For examples of food that is falsely described, see s 15.

5 (2) A person must not sell food that the person ought reasonably to  
6 know is falsely described and is likely to cause physical harm to a  
7 consumer of the food who relies on the description.

8 Maximum penalty: 750 penalty units.

## 9 **22 Handling and sale of unsafe food**

10 (1) A person must not handle food intended for sale in a way that will  
11 render, or is likely to render, the food unsafe.

12 Maximum penalty: 500 penalty units.

13 (2) A person must not sell food that is unsafe.

14 Maximum penalty: 500 penalty units.

## 15 **23 Handling and sale of unsuitable food**

16 (1) A person must not handle food intended for sale in a way that will  
17 render, or is likely to render, the food unsuitable.

18 Maximum penalty: 400 penalty units.

19 (2) A person must not sell food that is unsuitable.

20 Maximum penalty: 400 penalty units.

21 (3) For this section, it is immaterial whether the food concerned is safe.

## 22 **24 Misleading conduct relating to sale of food**

23 (1) A person must not, in the course of conducting a food business,  
24 engage in conduct that is misleading or deceptive or is likely to  
25 mislead or deceive in relation to—

26 (a) the advertising, packaging or labelling of food intended for  
27 sale; or

1                      (b) the sale of food.

2                      Maximum penalty: 500 penalty units.

3                      (2) A person must not, for the purpose of selling food or promoting the  
4                      sale of food in the course of conducting a food business, cause the  
5                      food to be advertised, packaged or labelled in a way that falsely  
6                      describes the food.

7                      Maximum penalty: 500 penalty units.

8                      *Note*        For examples of food that is falsely described, see s 15.

9                      (3) A person must not, in the course of conducting a food business, sell  
10                     food that is packaged or labelled in a way that falsely describes the  
11                     food.

12                     Maximum penalty: 500 penalty units.

13                     (4) Subsections (2) and (3) do not limit subsection (1).

14                     **25        Sale of food not complying with purchaser's demand**

15                     (1) A person must not, in the course of conducting a food business, sell  
16                     food if the food is not of the nature or substance demanded by the  
17                     purchaser.

18                     Maximum penalty: 500 penalty units.

19                     (2) For this section, it is immaterial whether the food concerned is safe.

20                     **26        Sale of unfit equipment or packaging or labelling material**

21                     (1) A person must not sell equipment that if used for the purposes for  
22                     which it was designed or intended to be used—

23                     (a) would render, or be likely to render, food unsafe; or



1 (b) would put other equipment, or would be likely to put other  
2 equipment, in such a condition that, if the other equipment  
3 were used for the purposes for which it was designed or  
4 intended to be used, it would render, or be likely to render, food  
5 unsafe.

6 Maximum penalty: 500 penalty units.

7 (2) A person must not sell packaging or labelling material that if used  
8 for the purposes for which it was designed or intended to be used  
9 would render, or be likely to render, food unsafe.

10 Maximum penalty: 500 penalty units.

11 **27 Compliance with food standards code**

12 (1) A person must comply with any requirement imposed on the person  
13 by the food standards code in relation to—

14 (a) the conduct of a food business; or

15 (b) food intended for sale; or

16 (c) food for sale.

17 Maximum penalty: 500 penalty units.

18 (2) A person must not sell food that does not comply with a requirement  
19 of the food standards code that relates to the food.

20 Maximum penalty: 500 penalty units.

21 (3) A person must not sell or advertise food that is packaged or labelled  
22 in a way that contravenes the food standards code.

23 Maximum penalty: 500 penalty units.

24 (4) A person must not sell or advertise for sale food in a way that  
25 contravenes the food standards code.

26 Maximum penalty: 500 penalty units.

1 **Division 3.4**                      **Defences**

2 **28**    **Defence relating to publication of advertisements**

3        (1) In a proceeding for an offence against this part in relation to the  
4            publication of an advertisement, it is a defence if the defendant  
5            proves that the defendant—

6            (a) conducted the business of publishing or arranging for the  
7                    publication of advertisements; and

8            (b) published or arranged for the publication of the advertisement  
9                    in the ordinary course of the business.

10        (2) Subsection (1) does not apply if the defendant—

11            (a) should reasonably have known that the publication of the  
12                    advertisement was an offence; or

13            (b) had previously been told in writing by an authorised officer  
14                    that publication of such an advertisement would be an offence;  
15                    or

16            (c) is the proprietor of a food business or is otherwise engaged in  
17                    the conduct of a food business for which the advertisement was  
18                    published.

19 **29**    **Defence in relation to food for export**

20        (1) In a proceeding for an offence against this part involving a  
21            contravention of a provision of the food standards code in relation to  
22            food, it is a defence if the defendant proves that—

23            (a) the food is to be exported to another country; and

24            (b) the food complies with the laws (the foreign laws) in force at  
25                    the time of the offence in the place to which the food is to be  
26                    exported; and

27            (c) the foreign laws deal with the same subject matter as the  
28                    provision of the food standards code.

- 1 (2) This section does not apply to food that was originally intended for  
2 export but was sold in the ACT.

3 **30 Defence of appropriate diligence**

- 4 (1) In a proceeding for an offence against this part, it is a defence if the  
5 defendant proves that the defendant took all reasonable precautions  
6 and exercised all appropriate diligence to prevent the commission of  
7 the offence by the defendant or by another person under the  
8 defendant's control.
- 9 (2) Without limiting how the defendant may satisfy subsection (1), the  
10 defendant satisfies the subsection if the defendant proves—
- 11 (a) that the commission of the offence was caused by—
- 12 (i) an act or omission of another person; or
- 13 (ii) reliance on information supplied by another person; and
- 14 (b) that—
- 15 (i) the defendant carried out all checks of the food concerned  
16 as were reasonable in all the circumstances; or
- 17 (ii) it was reasonable in all the circumstances to rely on  
18 checks carried out by the person who supplied the food  
19 concerned to the defendant; and
- 20 (c) that the defendant did not import the food into the ACT from  
21 another country; and
- 22 (d) for an offence involving the sale of food—
- 23 (i) that the defendant sold the food in the same condition as  
24 the defendant purchased it; or
- 25 (ii) that the defendant sold the food in a different condition to  
26 that in which the defendant purchased it, but that the  
27 difference did not result in a contravention of this Act;  
28 and

- 1 (e) that the defendant did not know and had no reason to suspect at  
2 the time of commission of the offence that the defendant's act  
3 or omission was an offence against this part.

4 *Note* A reference to an Act includes a reference to statutory instruments made  
5 or in force under the Act, including regulations, the food standards code  
6 and any approved code of practice (see *Legislation Act 2001*, s 104).

- 7 (3) In subsection (2) (a):

8 *another person* does not include a person who was—

- 9 (a) an employee or agent of the defendant; or  
10 (b) if the defendant is a corporation—an executive officer,  
11 employee or agent of the defendant.

- 12 (4) Without limiting how the defendant may satisfy subsection (1) or  
13 (2) (b) (i), the defendant satisfies the provision if the defendant  
14 proves—

15 (a) for an offence relating to a food business for which a food  
16 safety program is required to be prepared under the  
17 regulations—that the defendant complied with a food safety  
18 program for the food business that complies with the  
19 requirements of the regulations; or

20 (b) in any other case—that the defendant complied with a scheme  
21 (for example, a quality assurance program or an industry code  
22 of practice) that was—

23 (i) designed to manage food safety hazards and based on  
24 Australian national or international standards, codes or  
25 guidelines designed for that purpose; and

26 (ii) documented in some way.

27 **31 Defence in relation to handling food**

- 28 (1) This section applies to a proceeding for an offence against—  
29 (a) section 16 (Knowingly handling food in unsafe way); or  
30 (b) section 19 (Handling of food in unsafe way); or

1 (c) section 22 (1) (which is about handling food in a way that  
2 renders it unsafe etc);

3 (d) section 23 (1) (which is about handling food in a way that  
4 renders it unsuitable etc);

5 (2) It is a defence if the defendant proves that the defendant caused the  
6 food to which the offence relates to be destroyed or otherwise  
7 disposed of immediately after the food was handled in the way that  
8 rendered it, or was likely to render it, unsafe or unsuitable.

9 **32 Defence in relation to sale of unfit equipment or**  
10 **packaging or labelling material**

11 In a proceeding for an offence against section 26 (1) or (2) (Sale of  
12 unfit equipment or packaging or labelling material), it is a defence if  
13 the defendant proves that the defendant reasonably believed that the  
14 equipment or material concerned was not intended for use in  
15 relation to the handling of food.

16 **Division 3.5 Other matters**

17 **33 Defence of mistaken and reasonable belief not available**

18 In a proceeding for an offence against division 3.3 (Other offences  
19 relating to food), it is not a defence that the defendant had a  
20 mistaken but reasonable belief about the facts that constituted the  
21 offence.

22 **34 Onus on defendant to prove certain statements about**  
23 **food**

24 (1) This section applies to a proceeding for an offence against this part  
25 in which it is alleged that a statement on a package of food, or in an  
26 advertisement about food, that relates to the origin or composition of  
27 the food, or its therapeutic or nutritive properties, caused the food to  
28 be falsely described.

29 (2) If the defendant was responsible for making the statement, the onus  
30 of proving the correctness of the statement is on the defendant.

1 **35 Alternative verdicts for handling food in unsafe way**

2 (1) This section applies to a defendant charged with an offence against  
3 section 16 (Knowingly handling food in unsafe way).

4 (2) If the trier of fact is not satisfied that the defendant committed the  
5 offence but is satisfied that the defendant committed a lesser food  
6 handling offence, the trier of fact may find the defendant not guilty  
7 of the offence charged but guilty of the lesser food handling offence.

8 (3) In this section:

9 *lesser food handling offence* means an offence against—

10 (a) section 19 (Handling of food in unsafe way); or

11 (b) section 22 (1) (which is about handling food in a way that  
12 renders it unsafe etc).

13 **36 Alternative verdicts for selling unsafe food**

14 (1) This section applies to a defendant charged with an offence against  
15 section 17 (Knowingly selling unsafe food).

16 (2) If the trier of fact is not satisfied that the defendant committed the  
17 offence but is satisfied that the defendant committed a lesser food  
18 selling offence, the trier of fact may find the defendant not guilty of  
19 the offence charged but guilty of the lesser food selling offence.

20 (3) In this section:

21 *lesser food selling offence* means an offence against—

22 (a) section 20 (Sale of unsafe food); or

23 (b) section 22 (2) (which is about the sale of unsafe food etc).

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## Part 4                      Emergency powers

### 37      Definitions for pt 4

In this part:

*dispose*, of food, includes impound, isolate or destroy the food.

*recall order* means an emergency order requiring the recall or disposal, or both, of any food.

### 38      Making of emergency orders

The Minister may, in writing, make an order (an *emergency order*) if the Minister believes, on reasonable grounds, that the making of the order is necessary to—

- (a) prevent or reduce the possibility of a serious danger to public health; or
- (b) mitigate the adverse consequences of a serious danger to public health.

### 39      Nature of emergency orders

An emergency order may do any 1 or more of the following:

- (a) require the publication of warnings, in a form approved by the Minister, that a food is unsafe;
- (b) prohibit the growing, raising, cultivation, picking, harvesting, collection or catching, from an area, of a food or other primary produce intended to be used for human consumption;
- (c) prohibit a food from being advertised or sold;
- (d) direct that a food consigned or distributed for sale or sold be recalled and state how, and the period within which, the recall is to be conducted;

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- 1 (e) direct that a food or other primary produce intended to be used  
2 for human consumption be disposed of and state how the  
3 disposal is to be done;
- 4 (f) prohibit absolutely the carrying on of an activity in relation to a  
5 food, or permit the carrying on of the activity in accordance  
6 with conditions stated in the order;
- 7 (g) without limiting paragraph (f), impose conditions relating to  
8 the taking and analysis of samples of the food or of water, soil  
9 or anything else that is part of the environment in which the  
10 activity is carried on in relation to the food;
- 11 (h) state methods of analysis (not inconsistent with any methods  
12 prescribed by the food standards code) of any samples required  
13 to be taken in accordance with the order.

14 *Note 1* An order may be made in relation to a particular type of food (see  
15 *Legislation Act 2001, s 48*).

16 *Note 2* The power to make an instrument includes the power to amend or repeal  
17 the instrument (see *Legislation Act 2001, s 46*).

#### 18 **40 Special provisions relating to recall orders**

- 19 (1) A recall order may require a person bound by the order to disclose  
20 to the public (or a stated part of the public), in a stated way, any 1 or  
21 more of the following:
- 22 (a) the food to be recalled or disposed of;
- 23 (b) the reasons why the food is considered to be unsafe;
- 24 (c) the circumstances in which consumption of the food is unsafe;
- 25 (d) procedures for disposing of the food.
- 26 (2) A person who is required by a recall order to conduct a recall of  
27 food must give written notice to the chief health officer of the  
28 completion of the recall as soon as practicable after its completion.
- 29 (3) A person bound by a recall order is liable for any cost incurred by or  
30 on behalf of the Territory in relation to the recall order and the cost  
31 is taken to be a debt owing to the Territory.



- 1 (4) In a proceeding for the recovery of the debt, a certificate signed by  
2 the chief health officer stating the amount of the costs, and how they  
3 were incurred, is evidence of the matters stated in the certificate.

4 **41 How orders are made**

- 5 (1) An emergency order may be addressed to—  
6 (a) the person or people intended to be bound by it; or  
7 (b) several people, a class of people, or all people.
- 8 (2) A copy of an emergency order mentioned in subsection (1) (a) must  
9 be served on the person or people intended to be bound by it.
- 10 (3) Notice of an emergency order mentioned in subsection (1) (b) must  
11 be published as soon as practicable after the order is made in a  
12 newspaper that, in the Minister's opinion, will be most likely to  
13 bring the order to the attention of the people to be bound by it.
- 14 (4) The notice must set out the terms of the order and the people to be  
15 bound by it.
- 16 (5) An emergency order, when it takes effect, is binding on the person  
17 or people to whom it is addressed.
- 18 (6) An emergency order that is served on a person takes effect when it  
19 is served on the person.
- 20 (7) An emergency order that is notified under subsection (3) takes effect  
21 at the beginning of the 1st day when the order is notified under that  
22 subsection.
- 23 (8) An order expires at the end of 90 days after the day when it takes  
24 effect unless it is sooner revoked.
- 25 (9) Subsection (8) does not prevent a further order being made in the  
26 same terms as an order that has expired.

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1 **42 Operation of emergency orders**

2 (1) A person bound by an emergency order may apply to the Supreme  
3 Court for an order staying or otherwise affecting the operation of the  
4 order.

5 (2) The Supreme Court may make an order staying or otherwise  
6 affecting the operation of an emergency order only if satisfied that  
7 the making of the order will not—

8 (a) create or increase the possibility of a serious danger to public  
9 health; or

10 (b) aggravate the adverse consequences of a serious danger to  
11 public health.

12 (3) In deciding whether to make an order under this section, the  
13 Supreme Court must have regard to section 44 (Compensation for  
14 emergency order).

15 **43 Failure to comply with emergency order**

16 (1) A person must not, without reasonable excuse—

17 (a) conduct an activity in contravention of a prohibition imposed  
18 on the person by an emergency order; or

19 (b) fail to comply with a direction given by an emergency order; or

20 (c) fail to comply with a condition stated in an emergency order.

21 Maximum penalty: 500 penalty units.

22 (2) In this section:

23 *emergency order* includes an emergency order as affected by an  
24 order of the Supreme Court under section 42 (Operation of  
25 emergency orders).

26 **44 Compensation for emergency order**

27 (1) This section applies if—

28 (a) a person was bound by an emergency order; and

- 1 (b) the person suffers loss or damage because of the making of the  
2 order; and
- 3 (c) the person considers that there were insufficient grounds for  
4 the making of the order.
- 5 (2) The person may apply in writing, with reasons for the application, to  
6 the Minister for compensation.
- 7 (3) If there were insufficient grounds for the making of the order, the  
8 Territory must pay reasonable compensation to the person.
- 9 (4) However, compensation is not payable to the person—
- 10 (a) in relation to any loss or damage suffered by the person  
11 because of an act or omission of the person; or
- 12 (b) if the person caused or contributed to the danger to public  
13 health because of which the emergency order was made.
- 14 (5) The Minister must—
- 15 (a) decide whether to pay any compensation to the person and, if  
16 so, the amount of the compensation; and
- 17 (b) give the person written notice of the Minister's decision.
- 18 (6) If the Minister has not decided the application within 28 days after  
19 the day the Minister received the application, the Minister is taken  
20 to have refused to pay any compensation.

1

2 **Part 5** **Inspection and seizure powers**

3 **Division 5.1** **General**

4 **45** **Definitions for pt 5**

5 In this part:

6 *connected*—a thing is *connected* with an offence if—

- 7 (a) the offence has been committed in relation to it; or  
8 (b) it will provide evidence of the commission of the offence; or  
9 (c) it was used, is being used, or is intended to be used, to commit  
10 the offence.

11 *occupier*, of premises, includes—

- 12 (a) a person believed, on reasonable grounds, to be an occupier of  
13 the premises; and  
14 (b) a person apparently in charge of the premises.

15 *Note* The dictionary defines *premises* as including land and a vehicle.

16 *offence* includes an offence that there are reasonable grounds for  
17 believing has been, is being, or will be committed.

18 *place of seizure*—see section 52 (6) (a) (Power to seize things).

19 **Division 5.2** **Powers of authorised officers**  
20 **generally**

21 **46** **Power to enter premises**

22 (1) For this Act, an authorised officer may—

- 23 (a) at any reasonable time, enter premises that the authorised  
24 officer believes, on reasonable grounds, are—

- 1 (i) premises used in relation to the handling of food intended  
2 for sale or the sale of food; or
- 3 (ii) premises where there are documents relating to the  
4 handling of food intended for sale, the sale of food or  
5 equipment; or
- 6 (b) at any reasonable time, enter premises that the public is entitled  
7 to use or that are open to the public (whether or not on  
8 payment of money); or
- 9 (c) at any time, enter premises with the occupier's consent; or
- 10 (d) enter premises in accordance with a warrant under this part; or
- 11 (e) at any time, enter premises if the authorised officer believes, on  
12 reasonable grounds, that the circumstances are of such  
13 seriousness and urgency as to require immediate entry to the  
14 premises without the authority of a warrant.

15 *Note 1* The dictionary defines *premises* as including land and a vehicle.

16 *Note 2* Fees may be determined under s 150 (Determination of fees) for an  
17 inspection of premises under this section.

18 (2) However, subsection (1) (a) does not authorise entry into any part of  
19 premises that is being used solely for residential purposes except if  
20 that part of the premises is being used for—

21 (a) the preparation or service of meals provided with paid  
22 accommodation; or

23 (b) the preparation of food intended for sale or the sale of food.

24 **Example of par (b)**

25 A food catering service conducted from a house.

26 (3) For subsection (1), an authorised officer may stop and detain a  
27 vehicle that the officer believes, on reasonable grounds, is—

28 (a) a food transport vehicle; or

29 (b) a vehicle where there are documents relating to the handling of  
30 food intended for sale, the sale of food or equipment.

- 1 (4) For subsection (3), the authorised officer—
- 2 (a) may exercise the authorised officer's powers in relation to the
- 3 vehicle in a place to which the public has access to; and
- 4 (b) must not detain the vehicle for longer than is reasonably
- 5 necessary to exercise the authorised officer's powers under this
- 6 part.
- 7 (5) An authorised officer may, without the occupier's consent, enter the
- 8 land around premises to ask for consent to enter the premises.
- 9 (6) To remove any doubt, an authorised officer may enter premises
- 10 under subsection (1) without payment of any entry fee or other
- 11 charge.
- 12 (7) For subsection (1) (e), the authorised officer may enter the premises
- 13 with any necessary assistance and force.
- 14 (8) In this section:
- 15 *at any reasonable time* means at any time—
- 16 (a) for subsection (1) (a) (i)—during normal business hours or any
- 17 other time when the premises are being used in relation to the
- 18 handling of food intended for sale or the sale of food; or
- 19 (b) for subsection (1) (a) (ii)—during normal business hours; or
- 20 (c) for subsection (1) (b)—at any time that the public is entitled to
- 21 use the premises, or that the premises are open to or used by
- 22 the public, (whether or not on payment of money).

23 **47 Production of identity card**

24 An authorised officer must not remain on premises entered under

25 this part if the authorised officer does not produce his or her identity

26 card for inspection when asked by the occupier.

1   **48   Consent to entry**

2   (1) When seeking the consent of an occupier for entering premises  
3   under section 46 (1) (c) (Power to enter premises), an authorised  
4   officer must—

5       (a) produce his or her identity card; and

6       (b) tell the occupier—

7           (i) the purpose of the entry; and

8           (ii) that anything found and seized under this part may be  
9           used in evidence in court; and

10          (iii) that consent may be refused.

11   (2) If the occupier consents, the authorised officer must ask the occupier  
12   to sign a written acknowledgment (an *acknowledgment of*  
13   *consent*)—

14       (a) that the occupier was told—

15           (i) the purpose of the entry; and

16           (ii) that anything found and seized under this part may be  
17           used in evidence in court; and

18           (iii) that consent may be refused; and

19       (b) that the occupier consented to the entry; and

20       (c) stating the time, and date, when consent was given.

21   (3) If the occupier signs an acknowledgment of consent, the authorised  
22   officer must immediately give a copy to the occupier.

23   (4) A court must find that an occupier of premises did not consent to an  
24   entry to the premises by an authorised officer under this part if—

25       (a) the question whether the occupier consented to the entry arises  
26       in a proceeding in the court; and

27       (b) an acknowledgment of consent for the entry is not produced in  
28       evidence for the entry; and

1 (c) it is not proved that the occupier consented to the entry.

2 **49 Warrants**

3 (1) An authorised officer may apply to a magistrate for a warrant to  
4 enter premises.

5 (2) The application must be sworn and state the grounds on which the  
6 warrant is sought.

7 (3) The magistrate may refuse to consider the application until the  
8 authorised officer gives the magistrate all the information the  
9 magistrate requires about the application in the way the magistrate  
10 requires.

11 (4) The magistrate may issue a warrant only if satisfied there are  
12 reasonable grounds for suspecting—

13 (a) there is a particular thing or activity connected with an offence  
14 against this Act; and

15 (b) the thing or activity is at the premises, or may be at the  
16 premises within the next 14 days.

17 (5) The warrant must state—

18 (a) that an authorised officer may, with any necessary assistance  
19 and force, enter the premises and exercise the authorised  
20 officer's powers under this part; and

21 (b) the offence for which the warrant is sought; and

22 (c) the things that may be seized under the warrant; and

23 (d) the hours when the premises may be entered; and

24 (e) the date, within 14 days after the warrant's issue, the warrant  
25 ends.

26 **50 Warrants—application made other than in person**

27 (1) An authorised officer may apply for a warrant by phone, fax, radio  
28 or other form of communication if the authorised officer considers it  
29 necessary because of—



- 1 (a) urgent circumstances; or  
2 (b) other special circumstances.
- 3 (2) Before applying for the warrant, the authorised officer must prepare  
4 an application stating the grounds on which the warrant is sought.
- 5 (3) The authorised officer may apply for the warrant before the  
6 application is sworn.
- 7 (4) After issuing the warrant, the magistrate must immediately fax a  
8 copy to the authorised officer if it is practicable to do so.
- 9 (5) If it is not practicable to fax a copy to the authorised officer—  
10 (a) the magistrate must—  
11 (i) tell the authorised officer what the terms of the warrant  
12 are; and  
13 (ii) tell the authorised officer the date and time the warrant  
14 was issued; and  
15 (b) the authorised officer must complete a form of warrant  
16 (*warrant form*) and write on it—  
17 (i) the magistrate's name; and  
18 (ii) the date and time the magistrate issued the warrant; and  
19 (iii) the warrant's terms.
- 20 (6) The faxed copy of the warrant, or the warrant form properly  
21 completed by the authorised officer, authorises the entry and the  
22 exercise of the authorised officer's powers under this part.
- 23 (7) The authorised officer must, at the first reasonable opportunity, send  
24 to the magistrate—  
25 (a) the sworn application; and  
26 (b) if the authorised officer completed a warrant form—the  
27 completed warrant form.
-

- 1 (8) On receiving the documents, the magistrate must attach them to the  
2 warrant.
- 3 (9) A court must find that a power exercised by an authorised officer  
4 was not authorised by a warrant under this section if—
- 5 (a) the question arises in a proceeding before the court whether the  
6 exercise of power was authorised by a warrant; and
- 7 (b) the warrant is not produced in evidence; and
- 8 (c) it is not proved that the exercise of power was authorised by a  
9 warrant under this section.

10 **51 General powers of authorised officers**

- 11 (1) An authorised officer who enters premises (including a vehicle)  
12 under this part may, for this Act, do any 1 or more of the following  
13 in relation to the premises or anything on the premises:
- 14 (a) examine any food sold or intended for sale or any equipment;
- 15 (b) examine and copy, or take extracts from, any documents  
16 relating to food intended for sale, the sale of food or  
17 equipment;
- 18 (c) examine and copy, or take extracts from, any packaging,  
19 labelling or advertising material;
- 20 (d) examine any system of work in or on the premises;
- 21 (e) examine anything else in or on the premises;
- 22 (f) open (or require to be opened) any container or package that  
23 the authorised officer believes, on reasonable grounds—
- 24 (i) contains any food sold or intended for sale or any  
25 equipment; or
- 26 (ii) is used in relation to the transport of food;
- 27 (g) open or operate (or require to be opened or operated) any  
28 equipment;

- 1 (h) subject to part 6 (Taking and analysis of food samples), take  
2 for analysis samples of any food sold or intended for sale;
- 3 (i) take for analysis samples of water, soil or anything else that is  
4 part of the environment in which food is handled to find out  
5 whether that environment poses a risk to the safety of the food  
6 for human consumption;
- 7 (j) take for analysis samples of or from anything else in or on the  
8 premises;
- 9 (k) conduct any other examination to find out whether this Act  
10 (including the food standards code) is being complied with;
- 11 (l) take measurements, conduct tests and make sketches, drawings  
12 or any other kind of record (including photographs, films, or  
13 audio, video or other recordings);
- 14 (m) under section 52 (Power to seize things), seize a thing in or on  
15 the premises;
- 16 (n) require the occupier, or a person on the premises, to provide  
17 information, answer questions, or produce documents or  
18 anything else, reasonably needed for the authorised officer's  
19 functions under this Act;
- 20 (o) require the occupier, or a person on the premises, to give the  
21 authorised officer reasonable assistance to exercise a power  
22 under this part.

23 *Note 1* The dictionary defines *examine* as including inspect, weigh, count, test  
24 or measure.

25 *Note 2* A reference to an Act includes a reference to statutory instruments made  
26 or in force under the Act, including regulations, the food standards code  
27 and any approved code of practice (see *Legislation Act 2001*, s 104).

28 (2) A person must not, without reasonable excuse, contravene a  
29 requirement under subsection (1) (n) or (o).

30 Maximum penalty (subsection (2)): 50 penalty units.

31 (3) An authorised officer may exercise all or any of the powers  
32 mentioned in subsection (1) (a) to (o) in relation to food in a public

1 place that the officer suspects, on reasonable grounds, is food sold  
2 or intended for sale (whether or not the food was sold or intended  
3 for sale in the public place).

4 (4) This Act applies in relation to the exercise of a power under  
5 subsection (3) as if—

6 (a) the public place were premises entered by the authorised  
7 officer under this part; and

8 (b) the proprietor of the food business concerned were the  
9 occupier of the premises; and

10 (c) all other necessary changes were made.

11 (5) Without limiting subsection (4), if a person is required to do  
12 something by an authorised officer under subsection (3), the person  
13 is not obliged to comply with the requirement if the authorised  
14 officer does not produce his or her identity card for inspection when  
15 asked by the person.

## 16 **52 Power to seize things**

17 (1) An authorised officer who enters premises under this part with the  
18 occupier's consent may seize a thing in or on the premises if—

19 (a) the authorised officer is satisfied, on reasonable grounds, that  
20 the thing is connected with an offence against this Act; and

21 (b) seizure of the thing is consistent with the purpose of the entry  
22 as told to the occupier when seeking the occupier's consent.

23 (2) An authorised officer who enters premises under a warrant issued  
24 under this part may seize anything in or on the premises that the  
25 authorised officer is authorised to seize under the warrant.

26 (3) An authorised officer who enters premises under this part (whether  
27 with the occupier's consent, under a warrant or otherwise) may seize  
28 anything in or on the premises if satisfied, on reasonable grounds,  
29 that—

30 (a) the thing is connected with an offence against this Act; and

- 1 (b) the seizure is necessary to prevent the thing from being—  
2 (i) concealed, lost or destroyed; or  
3 (ii) used to commit, continue or repeat the offence.
- 4 (4) Also, an authorised officer who enters premises under this part  
5 (whether with the occupier's consent, under a warrant or otherwise)  
6 may seize any food in or on the premises if satisfied, on reasonable  
7 grounds, that the food—  
8 (a) is unsafe or unsuitable; or  
9 (b) consists partly or completely of decomposed, filthy, putrid or  
10 spoiled matter; or  
11 (c) otherwise poses an immediate risk to health or property.
- 12 (5) The powers of an authorised officer under subsection (3) or (4) are  
13 additional to any powers of the authorised officer under  
14 subsection (1) or (2) or any other Territory law.
- 15 (6) Having seized a thing, an authorised officer may—  
16 (a) remove the thing from the premises where it was seized (the  
17 *place of seizure*) to another place; or  
18 (b) leave the thing at the place of seizure but restrict access to it; or  
19 (c) for food mentioned in subsection (4)—destroy or otherwise  
20 dispose of the food under section 53 (5) (Power to destroy  
21 decomposed food etc).
- 22 **Example of how access may be restricted**  
23 The authorised officer may—  
24 (a) place the seized thing in a room or other enclosed area, compartment  
25 or cabinet at the place of seizure; and  
26 (b) fasten and seal the door or opening providing access to the room, area,  
27 compartment or cabinet; and  
28 (c) mark the door or opening in a way that indicates that access to it has  
29 been restricted under this Act.

1 (7) A person must not, without an authorised officer's approval,  
2 interfere with a seized thing, or anything containing a seized thing,  
3 to which access has been restricted under subsection (5).

4 Maximum penalty (subsection (7)): 50 penalty units, imprisonment  
5 for 6 months or both.

6 *Note* An authorised officer may seize a thing in a public place under this  
7 section and this part applies to the thing seized, see s 51 (3) to (5).

8 **53 Power to destroy decomposed food etc**

9 (1) This section applies to food inspected or seized under this part by an  
10 authorised officer if the authorised officer is satisfied, on reasonable  
11 grounds, that the food—

12 (a) is unsafe or unsuitable; or

13 (b) consists partly or completely of decomposed, filthy, putrid or  
14 spoiled matter; or

15 (c) otherwise poses an immediate risk to health or property.

16 (2) The authorised officer may direct the proprietor of the food business  
17 concerned to destroy or otherwise dispose of the food.

18 (3) The direction may state any 1 or more of the following:

19 (a) how the food must be destroyed or otherwise disposed of;

20 (b) how the food must be kept until it is destroyed or otherwise  
21 disposed of;

22 (c) the period within which the food must be destroyed or  
23 otherwise disposed of.

24 (4) The proprietor of the food business must not, without reasonable  
25 excuse, contravene a direction given to the proprietor under  
26 subsection (2).

27 Maximum penalty: 50 penalty units.

28 (5) Alternatively, if the food has been seized under this part, the  
29 authorised officer may destroy or otherwise dispose of the food.

- 1 (6) Costs incurred by or on behalf of the Territory in relation to the  
2 disposal of food under subsection (5) are a debt owing to the  
3 Territory by the proprietor of the food business.

4 **54 Power to require name and address**

- 5 (1) An authorised officer may require a person to state the person's  
6 name and home address if the authorised officer—  
7 (a) finds a person committing an offence against this Act; or  
8 (b) has reasonable grounds for believing that a person has just  
9 committed an offence against this Act.
- 10 (2) If the authorised officer requires the person to state the person's  
11 name and home address, the authorised officer must—  
12 (a) tell the person the reasons for the requirement; and  
13 (b) as soon as practicable, record those reasons.
- 14 (3) A person must not, without reasonable excuse, fail to comply with a  
15 requirement under subsection (1).  
16 Maximum penalty: 5 penalty units.
- 17 (4) However, a person is not obliged to comply with a requirement  
18 under subsection (1) if the authorised officer does not produce his or  
19 her identity card for inspection when asked by the person.

20 **Division 5.3 Return and forfeiture of things**  
21 **seized**

22 **55 Receipt for things seized**

- 23 (1) As soon as practicable after a thing is seized by an authorised officer  
24 under this part, the authorised officer must give a receipt for it to the  
25 person from whom it was seized.
- 26 (2) If, for any reason, it is not practicable to comply with subsection (1),  
27 the authorised officer must leave the receipt, secured conspicuously,  
28 at the place of seizure.

- 1 (3) A receipt under this section must include the following:
- 2 (a) a description of the thing seized;
- 3 (b) an explanation why the thing was seized;
- 4 (c) an explanation of the person's right to apply to a court under
- 5 section 58 (Application for order disallowing seizure) for an
- 6 order disallowing the seizure;
- 7 (d) if the thing is removed from the premises where it is seized—
- 8 where the thing is to be taken to;
- 9 (e) the authorised officer's name, business address and telephone
- 10 number.

11 **56 Access to things seized**

- 12 (1) This section applies to a document or anything else seized under this
- 13 part (other than to food mentioned in section 52 (4) (which is about
- 14 the seizure of contaminated or putrid food etc)).
- 15 (2) If asked by a person who would be entitled to inspect the thing if it
- 16 were not seized under this part, an authorised officer must allow the
- 17 person, at any reasonable time—
- 18 (a) for a document—to inspect it, take extracts from it or make
- 19 copies of it; and
- 20 (b) for anything else—inspect it.

21 **57 Return of things seized**

- 22 (1) A thing seized under this part must be returned to its owner, or
- 23 reasonable compensation must be paid to the owner by the Territory
- 24 for the loss of the thing, if—
- 25 (a) an infringement notice for an offence relating to the thing is
- 26 not served on its owner within 6 months after the day of the
- 27 seizure and either—
- 28 (i) a prosecution for an offence relating to the thing is not
- 29 begun within the 6 month period; or



- 1 (ii) a prosecution for an offence relating to the thing is begun  
2 within the 6 month period and the court does not find the  
3 offence proved; or
- 4 (b) an infringement notice for an offence relating to the thing is  
5 served on its owner within 6 months after the day of the  
6 seizure, the infringement notice is withdrawn and either—
- 7 (i) a prosecution for an offence relating to the thing is not  
8 begun within 6 months after the day of the seizure; or
- 9 (ii) a prosecution for an offence relating to the thing is begun  
10 within 6 months after the day of the seizure and the court  
11 does not find the offence proved; or
- 12 (c) an infringement notice for an offence relating to the thing is  
13 served on its owner within 6 months after the day of the  
14 seizure, liability for the offence is disputed in accordance with  
15 section 122 (Disputing liability for infringement notice  
16 offence) and either—
- 17 (i) the chief health officer does not lay an information in the  
18 Magistrates Court against the person for the offence  
19 within 60 days after being given notice under section 122  
20 that liability is disputed; or
- 21 (ii) the Magistrates Court does not find the offence proved;  
22 or
- 23 (d) before the thing is forfeited to the Territory under section 61  
24 (Forfeiture of seized things), the chief health officer—
- 25 (i) becomes satisfied that there has been no offence against  
26 this Act with which the thing was connected; or
- 27 (ii) decides not to prosecute the offence.
- 28 (2) However, this section does not apply—
- 29 (a) to food mentioned in section 52 (4) (which is about the seizure  
30 of contaminated or putrid food etc); or
-

- 1                      (b) if the chief health officer believes, on reasonable grounds, that  
2                                the only practical use of the thing in relation to a food business  
3                                would be an offence under this Act.

4        **58    Application for order disallowing seizure**

- 5                      (1) A person claiming to be entitled to anything seized under this part  
6                                (other than to food mentioned in section 52 (4) (which is about the  
7                                seizure of contaminated or putrid food etc)) may apply to the  
8                                Magistrates Court within 10 days after the day of the seizure for an  
9                                order disallowing the seizure.
- 10                     (2) An application under subsection (1) may be heard only if the  
11                                applicant has served a copy of the application on the chief health  
12                                officer.
- 13                     (3) The chief health officer is entitled to appear as respondent at the  
14                                hearing of an application.

15        **59    Order for return of seized thing**

- 16                     (1) This section applies if a person claiming to be entitled to anything  
17                                seized under this part applies to the Magistrates Court under  
18                                section 58 for an order disallowing the seizure.
- 19                     (2) The Magistrates Court must make an order disallowing the seizure  
20                                if—
- 21                                (a) it is proved that the applicant would, apart from the seizure, be  
22                                        entitled to the return of the seized thing; and
- 23                                (b) it is not proved there is an offence against this Act with which  
24                                        the thing is connected.
- 25                     (3) The Magistrates Court may also make an order disallowing the  
26                                seizure if satisfied there are exceptional circumstances justifying the  
27                                making of the order.
- 28                     (4) If the Magistrates Court makes an order disallowing the seizure, the  
29                                court may make any 1 or more of the following ancillary orders:

- 1 (a) an order directing the chief health officer to return the thing to  
2 the applicant or to someone else that appears to be entitled to  
3 it;
- 4 (b) if the thing cannot be returned or has depreciated in value  
5 because of the seizure—an order directing the Territory to pay  
6 reasonable compensation;
- 7 (c) an order about the payment of costs in relation to the  
8 application.
- 9 (5) The awarding of costs is at the discretion of the Magistrates Court.
- 10 (6) If the Magistrates Court makes an order for the payment of  
11 compensation or for costs, the order is enforceable as a judgment of  
12 the court.

13 **60 Adjournment pending hearing of other proceedings**

- 14 (1) This section applies to the hearing of an application under section 58  
15 (Application for order disallowing seizure).
- 16 (2) If it appears to the Magistrates Court that the seized thing is required  
17 to be produced in evidence in a pending proceeding in relation to an  
18 offence against a Territory law, the court may, on the application of  
19 the chief health officer or its own initiative, adjourn the hearing until  
20 the conclusion of that proceeding.

21 **61 Forfeiture of seized things**

- 22 (1) This section applies if—
- 23 (a) anything seized under this part has not been destroyed or  
24 otherwise disposed of under section 53 (Power to destroy  
25 decomposed food etc) or returned under section 57 (Return of  
26 things seized); and
- 27 (b) an application for disallowance of the seizure under section 58  
28 (Application for order disallowing seizure)—
- 29 (i) has not been made within 10 days after the day of the  
30 seizure; or

1 (ii) has been made within that period, but the application has  
2 been refused or has been withdrawn before a decision in  
3 relation to the application had been made.

4 (2) If this section applies to the seized thing—

5 (a) it is forfeited to the Territory; and

6 (b) it may be sold, destroyed or otherwise disposed of as the chief  
7 health officer directs.

## 8 **62 Return of forfeited things**

9 (1) This section applies to a thing forfeited under section 61 that has not  
10 been disposed of in a way that would prevent its return.

11 (2) If the chief health officer becomes satisfied that there has been no  
12 offence against this Act with which the thing was connected, the  
13 chief health officer must, as soon as practicable, return the thing to  
14 the person from whom it was seized or someone else who appears to  
15 the chief health officer to be entitled to it.

16 (3) On its return, any proprietary and other interests in the thing that  
17 existed immediately before its forfeiture are restored.

## 18 **63 Cost of disposal of things forfeited**

19 (1) This section applies if—

20 (a) a person is convicted, or found guilty, of an offence against  
21 this Act in relation to a thing forfeited to the Territory under  
22 this part; and

23 (b) the thing was connected with an offence against this Act; and

24 (c) the person was the owner of the thing immediately before its  
25 forfeiture.

26 (2) If this section applies, costs incurred by or on behalf of the Territory  
27 in relation to the lawful disposal of the thing (including storage  
28 costs) are a debt owing to the Territory by the person.

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1     **Division 5.4                   Miscellaneous**

2     **64     Selfincrimination**

3         (1) A person is not excused from providing information or producing a  
4             document when required to do so under this part on the ground that  
5             the information or document may tend to incriminate the person.

6         (2) However—

7             (a) providing the information or producing the document; or

8             (b) any other information, document or thing obtained as a direct  
9                 or indirect consequence of providing the information or  
10                 producing the document;

11             is not admissible in evidence against the person in a criminal  
12             proceeding.

13         (3) Subsection (2) does not apply to a proceeding for—

14             (a) an offence against section 66 (Providing false or misleading  
15                 information) or section 67 (Providing false or misleading  
16                 documents); or

17             (b) any other offence in relation to the falsity or misleading nature  
18                 of the information or document; or

19             (c) an offence against the *Crimes Act 1900*, part 8 (Aiding and  
20                 abetting, accessories, attempts, incitement and conspiracy) that  
21                 relates to an offence mentioned in paragraph (a) or (b).

22     **65     Legal professional privilege**

23             A person does not have to provide information, produce a  
24             document, or answer a question, in response to a requirement under  
25             this part if the person is entitled to claim, and does claim, legal  
26             professional privilege in relation to the requirement.

1    **66    Providing false or misleading information**

2            A person must not, in purported compliance with a requirement  
3            under this part, knowingly provide information that is false or  
4            misleading in a material particular.

5            Maximum penalty: 50 penalty units, imprisonment for 6 months or  
6            both.

7    **67    Providing false or misleading documents**

8            A person must not, in purported compliance with a requirement  
9            under this part, produce a document that the person knows is false or  
10           misleading in a material particular.

11           Maximum penalty: 50 penalty units, imprisonment for 6 months or  
12           both.

13   **68    Hindering or obstructing authorised officer**

14           A person must not, without reasonable excuse, hinder or obstruct an  
15           authorised officer in the exercise of a function under this Act.

16           Maximum penalty: 50 penalty units, imprisonment for 6 months or  
17           both.

18   **69    Pretending to be an authorised officer**

19           A person must not pretend to be an authorised officer.

20           Maximum penalty: 100 penalty units, imprisonment for 1 year or  
21           both.

22   **70    Damage etc to be minimised**

23           (1) In the exercise, or purported exercise, of a function under this part,  
24           an authorised officer must take all reasonable steps to ensure that the  
25           authorised officer, and any person assisting the authorised officer,  
26           causes as little inconvenience, detriment and damage as is  
27           practicable.

- 1 (2) If an authorised officer, or a person assisting an authorised officer,  
2 damages anything in the exercise or purported exercise of a function  
3 under this part, the authorised officer must give written notice of the  
4 particulars of the damage to the person whom the authorised officer  
5 believes, on reasonable grounds, is the owner of the thing.
- 6 (3) If the damage happens on premises entered under this part in the  
7 absence of the occupier, the notice may be given by securing it in a  
8 conspicuous place on the premises.

9 **71 Compensation to be paid in certain circumstances**

- 10 (1) A person may claim compensation from the Territory if the person  
11 suffers loss or expense because of the exercise, or purported  
12 exercise, of a function under this part by an authorised officer or a  
13 person assisting an authorised officer.
- 14 (2) Compensation may be claimed and ordered in a proceeding for—
- 15 (a) compensation brought in a court of competent jurisdiction; or
- 16 (b) an order under section 58 (Application for order disallowing  
17 seizure); or
- 18 (c) an offence against this Act brought against the person making  
19 the claim for compensation.
- 20 (3) A court may order the payment of reasonable compensation for the  
21 loss or expense only if it is satisfied it is just to make the order in the  
22 circumstances of the particular case.
- 23 (4) The regulations may prescribe matters that may, must or must not be  
24 taken into account by the court in considering whether it is just to  
25 make the order.

1  
2 **Part 6** **Taking and analysis of food**  
3 **samples**  
4

5 **72 Samples for routine monitoring of Act**

6 This part does not prevent an authorised officer from buying a  
7 sample of food for analysis for the routine monitoring of compliance  
8 with this Act without complying with the requirements of this part.

9 *Note* For the admissibility of the analysis of a sample of food taken by an  
10 authorised officer, see s 135.

11 **73 Other samples—proprietor to be told sample to be**  
12 **analysed**

- 13 (1) This section applies if an authorised officer proposes to take, or  
14 takes, a sample of food from a food business for analysis.
- 15 (2) Before or as soon as practicable after taking the sample, the  
16 authorised officer must tell the proprietor of the food business or, if  
17 the proprietor is not present or readily available, the person from  
18 whom the sample was obtained or who was in charge of the food  
19 from which the sample was taken, of the authorised officer's  
20 intention to have the sample analysed.
- 21 (3) However, this section does not apply if the authorised officer  
22 obtains the sample from a vending machine and the authorised  
23 officer cannot identify anyone who appears to be in charge of the  
24 machine at the time the sample is obtained.

25 **74 Payment for samples**

- 26 (1) This section applies if an authorised officer takes a sample of food  
27 from a food business for analysis.
- 28 (2) The authorised officer must pay to the person from whom the  
29 sample is taken, or tender payment to that person of—



- 1 (a) the amount prescribed under the regulations as the amount  
2 payable for the sample; or  
3 (b) if no amount is prescribed—the current market value of the  
4 sample.
- 5 (3) However, this section does not apply if the authorised officer  
6 obtains the sample from a vending machine by paying for it.

7 **75 Samples from packaged food**

- 8 (1) This section applies to food that is contained in a closed package  
9 intended for retail sale.
- 10 (2) An authorised officer who takes a sample of the food for analysis  
11 must take the entire package unless the package contains  
12 2 or more smaller packages of the same food.

13 **76 Procedures for dividing food samples**

- 14 (1) This section applies to a sample of food taken by an authorised  
15 officer for analysis except to the extent that the food standards code  
16 otherwise provides.
- 17 (2) An authorised officer who takes a sample of food for analysis must,  
18 unless subsection (3) or (4) apply in relation to the sample—
- 19 (a) divide the sample into 3 separate parts, and mark and seal or  
20 fasten each part in a way that its nature allows; and
- 21 (b) leave 1 part with the person told under section 73 (2) (Other  
22 samples—proprietor to be told sample to be analysed) of the  
23 authorised officer's intention to have the sample analysed; and
- 24 (c) keep 1 of the remaining parts for analysis; and
- 25 (d) keep the remaining part for future comparison with the other  
26 parts of the sample.
- 27 (3) If a sample of food taken by an authorised officer is in the form of  
28 separate or severable objects, the authorised officer—
- 29 (a) may take a number of the objects; and

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- 1 (b) divide them into 3 parts each consisting of 1 or more of the  
2 objects, or of the severable parts of the objects, and mark and  
3 seal or fasten each part in a way that its nature allows; and
- 4 (c) deal with the sample in accordance with subsection (2) (b) to  
5 (d).
- 6 (4) The authorised officer may comply with subsection (5) if the  
7 division of a sample of food into 3 separate parts would, in the  
8 authorised officer's opinion—
- 9 (a) so affect or impair the composition or quality of the sample as  
10 to make the separate parts unsuitable for accurate analysis; or
- 11 (b) result in the separate parts being of an insufficient size for  
12 accurate analysis; or
- 13 (c) otherwise make the sample unsuitable for analysis (including a  
14 method of analysis prescribed under the regulations in relation  
15 to the food from which the sample was taken).
- 16 (5) If subsection (4) applies in relation to a sample of food, the  
17 authorised officer may take as many samples as the authorised  
18 officer considers necessary to allow an accurate analysis to be made  
19 and may deal with the sample or samples in any way that is  
20 appropriate in the circumstances.

**21 77 Analysis to comply with food standards code**

22 A person who carries out an analysis of a sample of food for this  
23 Act must comply with any requirements of the food standards code  
24 relating to the carrying out of analyses.

25 *Note 1* It is presumed that each part of a sample of food divided for the purpose  
26 of analysis for this Act is of uniform composition with every other part  
27 of the sample, see s 132 (d).

28 *Note 2* A court may order the analysis of a sample of food under s 137.

1 **78 Certificates of analysis by authorised analysts**

2 (1) The analysis of a sample of food for the chief health officer must be  
3 carried out by an authorised analyst or under the supervision of an  
4 authorised analyst.

5 (2) The authorised analyst must give to the chief health officer a  
6 certificate of analysis that—

7 (a) is signed and dated by the analyst; and

8 (b) contains a written report of the analysis that sets out the  
9 findings; and

10 (c) states the requirements (if any) of the food standards code  
11 relating to the carrying out of the analysis and certifies that the  
12 analysis was carried out in accordance with those  
13 requirements.

14 *Note 1* If a form is approved under s 151 (Approved forms) for the certificate,  
15 the form must be used.

16 *Note 2* For the evidentiary status of a certificate under this section, see s 134.

1

2 **Part 7** **Improvement notices and**  
3 **prohibition orders**  
4

5 **79 Service of improvement notices**

6 An authorised officer may serve an improvement notice on the  
7 proprietor of a food business if the authorised officer believes, on  
8 reasonable grounds, that—

- 9 (a) premises or equipment used by the food business in relation to  
10 the handling of food intended for sale or the sale of food is in  
11 an unclean or insanitary condition or is otherwise unfit for the  
12 purpose for which it is designed or intended to be used; or
- 13 (b) this Act (including the food standards code) has been, is being  
14 or will be contravened by the food business in relation to the  
15 handling of food intended for sale or the sale of food; or
- 16 (c) a relevant food safety program prepared under the regulations  
17 is not being carried out adequately by the food business in  
18 relation to premises or equipment used in relation to the  
19 handling of food intended for sale or the sale of food.

20 **Examples of par (b)**

- 21 1 The food business's premises or equipment do not comply with the food  
22 safety standards.
- 23 2 The food standards code is being contravened on premises used by the food  
24 business in relation to the handling of food intended for sale or the sale of  
25 food.

26 *Note 1* The dictionary defines *premises* as including land and a vehicle.

27 *Note 2* For how documents may be served on a person, see *Legislation Act*  
28 *2001*, pt 18.5 (Service of documents).

29 *Note 3* A reference to an Act includes a reference to statutory instruments made  
30 or in force under the Act, including regulations, the food standards code  
31 and any approved code of practice (see *Legislation Act 2001*, s 104).

1 **80 Contents of improvement notices**

- 2 (1) An improvement notice may direct the proprietor of the food  
3 business on whom the notice is served to do any 1 or more of the  
4 following within the period for compliance:
- 5 (a) put particular premises or equipment into a clean and sanitary  
6 condition, or repair particular premises or equipment, to the  
7 satisfaction of an authorised officer;
- 8 (b) replace particular equipment or a vehicle;
- 9 (c) prepare a food safety program if a food safety program is  
10 required under the regulations;
- 11 (d) amend a food safety program required under the regulations to  
12 comply with the regulations;
- 13 (e) in relation to the handling of food intended for sale or the sale  
14 of food—take particular measures to carry out a relevant food  
15 safety program required to be prepared under the regulations;
- 16 (f) in relation to the handling of food intended for sale or the sale  
17 of food—take particular measures to carry out the requirements  
18 of the food safety standards (including in relation to the  
19 handling of food in a particular way or for a particular  
20 purpose);
- 21 (g) destroy or otherwise dispose of particular food;
- 22 (h) take other action to ensure that the food business complies with  
23 this Act (including the food standards code).

24 **Example of par (h)**

25 Labelling on food intended for sale must be changed to comply with the food  
26 standards code.

27 *Note* See also s 84 for the scope of an improvement notice, including the  
28 directions that may be given about the destruction of food.

29 (2) Also, the improvement notice—

- 30 (a) must state that it is an improvement notice under this Act; and  
31 (b) must state the period for compliance; and

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- 1 (c) must state the provision of this Act (including any relevant  
2 provision of the food standards code) to which it relates; and
- 3 (d) must state the authorised officer's belief on which service of  
4 the notice was based and a brief explanation for it; and
- 5 (e) may state particular action that may be taken to ensure  
6 compliance with any provision of this Act (including the food  
7 standards code) to which it relates.
- 8 (3) Before the end of the period for compliance stated in the  
9 improvement notice, an authorised officer may, on his or her own  
10 initiative or if asked by the proprietor of the food business, extend  
11 the period (the *extended period*) within which the proprietor of the  
12 food business must comply with the notice.
- 13 (4) In this section:
- 14 *period for compliance* means the period beginning on the service of  
15 the notice to the end of—
- 16 (a) 24 hours or, if a longer period is stated in the notice, that  
17 period; or
- 18 (b) if the period applying under paragraph (a) is extended—the  
19 extended period.

**81 Compliance with improvement notices**

- 20
- 21 (1) If an improvement notice is complied with, an authorised officer  
22 must note the date of compliance on a copy of the notice (the  
23 *compliance copy*) and, as soon as practicable, give a copy of the  
24 compliance copy to the proprietor of the food business in relation to  
25 which the improvement notice was served.
- 26 (2) An improvement notice ceases to apply to the food business in  
27 relation to which it was served if an authorised officer notes the date  
28 of compliance with the notice by the food business on a copy of the  
29 notice.

1 **82 Service of prohibition orders**

2 An authorised officer may serve a prohibition order on the  
3 proprietor of a food business if the authorised officer believes, on  
4 reasonable grounds—

5 (a) that any of the circumstances mentioned in section 79 (a), (b)  
6 or (c) (Service of improvement notices) apply in relation to the  
7 food business; and

8 (b) that—

9 (i) the proprietor of the food business has not complied with  
10 an improvement notice in relation to the circumstances  
11 within the period for compliance for the notice under  
12 section 80 (Contents of improvement notices); or

13 (ii) service of the order is necessary to prevent or mitigate a  
14 serious danger to public health.

15 **83 Contents of prohibition orders**

16 (1) A prohibition order may direct the proprietor of the food business on  
17 whom the order is served not to do any 1 or more of the following  
18 until the proprietor is given a clearance certificate for the order:

19 (a) use particular premises or equipment in relation to the handling  
20 or otherwise of food intended for sale or the sale of food;

21 (b) handle food intended for sale in a particular way or for a  
22 particular purpose;

23 (c) do anything else in relation to food intended for sale or the sale  
24 of food.

25 (2) The prohibition order may direct the proprietor of the food business  
26 concerned to destroy or otherwise dispose of particular food.

27 *Note* See also s 84 for the scope of an prohibition order, including the  
28 directions that may be given about the destruction of food.

29 (3) Also, the prohibition order—

30 (a) must state that it is a prohibition order under this Act; and

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- 1 (b) must state the provision of this Act (including any relevant  
2 provision of the food standards code) to which it relates; and
- 3 (c) must state the authorised officer's belief on which service of  
4 the notice was based and a brief explanation for it; and
- 5 (d) may state particular action that may be taken to ensure  
6 compliance with any provision of this Act (including the food  
7 standards code) to which it relates; and
- 8 (e) must include a statement to the effect that the proprietor of the  
9 food business may ask for a reinspection of the things in  
10 relation to which the prohibition order was served if the  
11 proprietor considers that the food business complies with this  
12 Act.

**84 Scope of improvement notices and prohibition orders**

- 13 **84 Scope of improvement notices and prohibition orders**
- 14 (1) An improvement notice or prohibition order may be made in  
15 relation to any 1 or more of the following:
- 16 (a) any or all premises, or any part of any premises, used by the  
17 food business concerned in relation to the handling or  
18 otherwise of food intended for sale or the sale of food;
- 19 (b) any or all equipment or vehicles used by the food business in  
20 relation to the handling or otherwise of food intended for sale  
21 or the sale of food;
- 22 (c) the handling of food intended for sale by the food business in a  
23 particular way or for a particular purpose;
- 24 (d) any or all food intended for sale or sold.
- 25 *Note* The dictionary defines *premises* as including land and a vehicle.
- 26 (2) A direction under section 80 (1) (g) (Contents of improvement  
27 notices) or section 83 (2) (Contents of prohibition orders) may state  
28 any 1 or more of the following:
- 29 (a) how the food must be destroyed or otherwise disposed of;



- 1 (b) how the food be kept until it is destroyed or otherwise disposed  
2 of;
- 3 (c) the period within which the food must be destroyed or  
4 otherwise disposed of.

5 **85 Request for reinspection**

- 6 (1) This section applies to the proprietor of a food business on whom a  
7 prohibition order has been served if the proprietor considers that the  
8 food business complies with this Act.
- 9 (2) The proprietor may, in writing, ask the chief health officer to  
10 arrange for an authorised officer to reinspect the things in relation to  
11 which the prohibition order was served.
- 12 (3) If the request relates to a vehicle or equipment, the vehicle or  
13 equipment must be made available for reinspection where it was  
14 originally inspected or at another place agreed to by an authorised  
15 officer.
- 16 (4) If, through no fault of the proprietor, an authorised officer does not  
17 make the reinspection within the relevant period, a clearance  
18 certificate for the prohibition order is taken to have been given to  
19 the proprietor.
- 20 (5) Subsection (4) does not prevent an improvement notice or another  
21 prohibition order being served on the proprietor in relation to the  
22 same premises, equipment or anything else.
- 23 (6) In this section:
- 24 *relevant period* means 48 hours from the receipt by the chief health  
25 officer of the request for reinspection.

26 **86 Clearance certificates**

- 27 (1) This section applies if an authorised officer reinspects the things in  
28 relation to which a prohibition order was served on the proprietor of  
29 a food business.

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- 1 (2) The authorised officer must issue a clearance certificate for the  
2 prohibition order if the authorised officer finds that—  
3 (a) the reinspected things are no longer a serious danger to public  
4 health; and  
5 (b) the proprietor has complied with the prohibition order and any  
6 improvement notices served on the proprietor in relation to the  
7 food business.

8 **87 Contravention of improvement notices and prohibition**  
9 **orders**

10 The proprietor of a food business must not contravene an  
11 improvement notice or a prohibition order served on the proprietor.

12 Maximum penalty: 100 penalty units.

13 **88 Compensation for prohibition order**

- 14 (1) This section applies if—  
15 (a) a person was bound by a prohibition order; and  
16 (b) the person suffers loss or expense because of the making of the  
17 order; and  
18 (c) the person considers that there were insufficient grounds for  
19 the making of the order.  
20 (2) The person may apply in writing, with reasons for the application, to  
21 the Minister for compensation.  
22 (3) If there were insufficient grounds for the making of the order, the  
23 Territory must pay reasonable compensation to the person.  
24 (4) However, compensation is not payable to the person—  
25 (a) in relation to any loss or expense suffered by the person  
26 because of an act or omission of the person; or  
27 (b) if the person caused or contributed to the making of the  
28 prohibition order.

- 1 (5) The Minister must—
- 2 (a) decide whether to pay any compensation to the person and, if
- 3 so, the amount of the compensation; and
- 4 (b) give the person written notice of the Minister's decision.
- 5 (6) If the Minister has not decided the application within 28 days after
- 6 the day the Minister received the application, the Minister is taken
- 7 to have refused to pay any compensation.

1

2 **Part 8** **Notification and registration of**  
3 **food businesses**  
4

5 *Note 1* A food business is taken to be registered for a period of 3 months after  
6 the commencement of pt 12 of this Act if, immediately before the  
7 commencement, the proprietor of the food business held a licence under  
8 the repealed *Food Act 1992*, pt 5 (see s 157).

9 *Note 2* Section 90 does not apply to a food business of a kind that was  
10 prescribed under the repealed *Food Regulations 1994*, reg 4 until the  
11 end of the 3 month period beginning on the commencement of pt 12 of  
12 this Act, see s 158.

13 **89 Food businesses exempt from registration**

14 A food business that is prescribed under the regulations for this  
15 section is exempt from registration under section 91 (Food  
16 businesses to be registered).

17 **90 Notification of conduct of exempt food businesses**

- 18 (1) A person must not conduct a food business that is prescribed under  
19 the regulations for section 89 unless the person has given written  
20 notice to the chief health officer of the notifiable information before  
21 beginning to conduct the business.

22 Maximum penalty: 50 penalty units.

23 *Note 1* A fee may be determined under s 150 (Determination of fees) for giving  
24 notice under this section.

25 *Note 2* If a form is approved under s 151 (Approved forms) for giving notice  
26 under this section, the form must be used.

- 27 (2) In this section:

28 ***notifiable information*** means the information required under the  
29 food safety standards to be notified to the appropriate enforcement  
30 agency before the business is conducted.

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1 **91 Food businesses to be registered**

2 (1) A person must not conduct a food business unless the food business  
3 is registered under this part.

4 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
5 both.

6 (2) This section does not apply to a food business that is prescribed  
7 under the regulations for section 89 (Food businesses exempt from  
8 registration).

9 **92 Registration of food businesses**

10 (1) A person may apply to the chief health officer for the registration of  
11 a food business conducted by the person.

12 *Note 1* A fee may be determined under s 150 (Determination of fees) for an  
13 application for registration under this section.

14 *Note 2* If a form is approved under s 151 (Approved forms) for an application,  
15 the form must be used.

16 (2) The chief health officer may require the person to give the chief  
17 health officer any information that the chief health officer  
18 reasonably requires to decide the application (including, for  
19 example, the design and fit-out specifications of the premises  
20 proposed to be used in relation to the handling of food intended for  
21 sale or the sale of food).

22 (3) The chief health officer may register or refuse to register the food  
23 business.

24 (4) In deciding whether to register the food business, the chief health  
25 officer may have regard to—

26 (a) whether the proposed premises are fit for their intended use;  
27 and

28 (b) any contraventions of this Act by the person; and

29 (c) any other matter relevant to the handling of food intended for  
30 sale or the sale of food.

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1        *Note*     If an employee contravenes a provision of this Act, the employer is  
2                   taken to have contravened that provision, see s 127.

3        (5) For subsection (4) (a), premises are not fit for their intended use if a  
4                   certificate of occupancy or certificate of regularisation under the  
5                   *Building Act 1972* has not been issued for the premises or the part of  
6                   the premises proposed to be used in relation to the handling of food  
7                   intended for sale or the sale of food.

8        (6) The registration of a food business is for 1 year beginning on the  
9                   day the chief health officer registers the food business.

**10    93    Renewal of registration**

11        (1) This section does not apply if—

12                   (a) the registration of a food business is suspended under this part;  
13                   or

14                   (b) the chief health officer has decided to cancel the registration of  
15                   a food business under section 101 (3) (Procedure for taking  
16                   action in relation to registration).

17        (2) The chief health officer must renew the registration of a food  
18                   business if, before the expiry of the registration, the proprietor of the  
19                   food business gives the chief health officer a properly completed  
20                   application form for the renewal of the registration.

21        *Note*     A fee may be determined under s 150 (Determination of fees) for an  
22                   application for registration under this section.

23        (3) The renewal of the registration is for 1 year beginning immediately  
24                   after the expiry of the registration being renewed.

**25    94    Issue or renewal of registration subject to conditions**

26        (1) The registration of a food business may be given or renewed subject  
27                   to a condition imposed by the chief health officer.

28        (2) The registration of a food business may be amended by the chief  
29                   health officer to impose a condition to which the registration is to be  
30                   subject or to amend or revoke a condition to which the registration  
31                   is already subject.

- 1 (3) A condition mentioned in subsection (1) or (2) may be imposed,  
2 amended or revoked by the chief health officer—  
3 (a) on the chief health officer's own initiative or on the application  
4 of the applicant for, or the holder of, the registration; and  
5 (b) for a stated period or indefinitely.

6 **95 Registered food businesses—procedure for imposition**  
7 **etc of conditions on chief health officer's initiative**

- 8 (1) This section applies if the chief health officer proposes, on the chief  
9 health officer's own initiative, to take action under section 94 (2) to  
10 amend the registration of a food business to impose, amend or  
11 revoke a condition (the *proposed action*).  
12 (2) The chief health officer must give the proprietor of the food  
13 business a written notice stating—  
14 (a) the proposed action; and  
15 (b) if the proposed action is to impose a condition to which the  
16 registration is to be subject—the proposed condition; and  
17 (c) if the proposed action is to amend a condition to which the  
18 registration is subject—the proposed condition as amended;  
19 and  
20 (d) if the proposed action is to impose or amend a condition—the  
21 grounds for the proposed action; and  
22 (e) if appropriate, any action that must be taken by the proprietor  
23 of the food business to avoid or reverse the proposed action;  
24 and  
25 (f) the date when the proposed imposition, amendment or  
26 revocation of the condition takes effect (the *date of effect*); and  
27 (g) that the proposed action takes effect on the date of effect unless  
28 the notice is revoked by the chief health officer before that  
29 date; and

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- 1 (h) whether and, if so, by when the proprietor is required to return  
2 the certificate of registration to the chief health officer if the  
3 proposed action takes effect.
- 4 (3) The notice may, but need not, provide an opportunity for the  
5 proprietor of the food business to make representations about why  
6 the proposed action should not be taken.
- 7 (4) The date of effect must not be earlier than 14 days after the notice is  
8 given to the proprietor.
- 9 (5) This section does not affect the taking of action under section 101  
10 (Procedure for taking action in relation to registration).

**11 96 Certificate of registration**

- 12 (1) If the chief health officer registers, or renews the registration, of a  
13 food business, the chief health officer must give the proprietor of the  
14 food business a certificate of registration for the food business.
- 15 (2) The certificate of registration must show—
- 16 (a) the name of the proprietor of the food business; and
- 17 (b) the trading name of the food business; and
- 18 (c) the type of the food business (as decided by the chief health  
19 officer) to which the registration relates; and
- 20 (d) the address of the premises at or from which the food business  
21 is mainly conducted; and
- 22 (e) the registration number allocated to the business; and
- 23 (f) the conditions (if any) to which the registration is subject; and
- 24 (g) when the registration expires; and
- 25 (h) any other information that the chief health officer considers  
26 appropriate.



1 **97 Change in details of registration or operation of food**  
2 **business**

- 3 (1) This section applies if—
- 4 (a) particulars set out in an application for registration or renewal  
5 of registration of a food business, or the particulars shown in a  
6 certificate of registration, become (or are about to become)  
7 inaccurate or inapplicable because of a change in  
8 circumstances; or
- 9 (b) the operation of a food business is changed in a way that may  
10 have an adverse effect on the safety of food intended for sale or  
11 the sale of food.

12 **Examples of changes in circumstances**

- 13 1 A change in the proprietor of the food business.  
14 2 For a food business that is not operated from a vehicle—a change in the  
15 location of the premises from which the food business is conducted.  
16 3 A change in the kind of food business conducted by the food business.  
17 4 A structural change in the premises or a change in the fixtures and fittings for  
18 the premises.

- 19 (2) The proprietor of the food business must give the chief health  
20 officer written notice of the change as soon as practicable (but no  
21 later than 7 days) after the day the change happens and, if the  
22 change affects particulars shown on the certificate of registration,  
23 return the certificate to the chief health officer with the notice.

24 **Maximum penalty: 50 penalty units.**

25 *Note 1* A fee may be determined under s 150 (Determination of fees) for giving  
26 notice under this section.

27 *Note 2* If a form is approved under s 151 (Approved forms) for giving notice  
28 under this section, the form must be used.

- 29 (3) If the change relates to the registration of the food business, the  
30 chief health officer may amend or refuse to amend the registration  
31 of the food business.
- 32 (4) The chief health officer may require the proprietor to give the chief  
33 health officer any information that the chief health officer

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1 reasonably requires to decide whether to amend the registration of  
2 the food business.

3 (5) In deciding whether to amend the registration of the food business,  
4 the chief health officer may have regard to—

5 (a) whether, because of the change of circumstances, the premises  
6 are, or will be, fit for their intended use; and

7 (b) whether the change of circumstances will have an adverse  
8 effect on the safety of food intended for sale or the sale of  
9 food; and

10 (c) for a change in the proprietor of a food business—any  
11 contraventions of this Act by the new proprietor of the food  
12 business; and

13 (d) any other matter relevant to the handling of food intended for  
14 sale or the sale of food.

15 (6) For subsection (5) (a), premises are not fit for their intended use if a  
16 certificate of occupancy or certificate of regularisation under the  
17 *Building Act 1972* has not been issued for the premises or the part of  
18 the premises proposed to be used in relation to the handling of food  
19 intended for sale or the sale of food.

20 (7) If the chief health officer amends the registration of a food business  
21 in a way that changes the particulars shown in the certificate of  
22 registration and the certificate is returned to the chief health officer,  
23 the chief health officer must amend the certificate or issue another  
24 certificate for the remainder of the period of the certificate that it  
25 replaces.

## 26 **98 Replacement of certificates of registration**

27 (1) The chief health officer may issue a replacement certificate of  
28 registration of a food business to the proprietor of the business if  
29 satisfied that the certificate has been lost, stolen or destroyed.

30 (2) A certificate of registration issued under this section must be issued  
31 for the remainder of the period of the certificate that it replaces.

1 **99 Food business to be conducted in accordance with**  
2 **conditions of registration**

3 The proprietor of a registered food business must not, without  
4 reasonable excuse, conduct the food business in contravention of a  
5 condition to which the registration is subject.

6 Maximum penalty: 50 penalty units.

7 *Note* If an employee contravenes a provision of this Act, the employer is  
8 taken to have contravened that provision, see s 127.

9 **100 Action that may be taken in relation to registration of**  
10 **food businesses**

11 The chief health officer may take the following action under  
12 section 101 in relation to the registration of a food business if there  
13 has been a breach of this Act in the conduct of the food business:

- 14 (a) cancel the registration;  
15 (b) suspend the registration for a period of not longer than 1 year;  
16 (c) impose a condition on, or amend a condition of, the  
17 registration.

18 *Note* A reference to an Act includes a reference to statutory instruments made  
19 or in force under the Act, including regulations, the food standards code  
20 and any approved code of practice (see *Legislation Act 2001*, s 104).

21 **101 Procedure for taking action in relation to registration**

22 (1) If the chief health officer proposes to take action under this section  
23 in relation to the registration of a food business, the chief health  
24 officer must give the proprietor of the business a notice (a  
25 *disciplinary notice*) that—

- 26 (a) states the proposed action, including any proposed suspension  
27 period or condition or a condition as proposed to be varied; and  
28 (b) states the grounds for the proposed action; and  
29 (c) tells the proprietor that the proprietor may, within 14 days  
30 beginning the day after receiving the notice, give a written

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- 1           response to the chief health officer about the matters in the  
2           notice.
- 3       (2) In deciding whether to suspend or cancel the registration, the chief  
4       health officer must consider any response given to the chief health  
5       officer in accordance with subsection (1) (c).
- 6       (3) If the chief health officer is satisfied that grounds for taking action  
7       under this section have been established, the chief health officer  
8       may—
- 9           (a) if the proposed action was to cancel the registration—cancel  
10          the registration, suspend the registration for a period of not  
11          longer than 1 year or impose a condition on, or amend a  
12          condition of, the registration; or
- 13          (b) if the proposed action included suspending the registration for  
14          a stated period—either suspend the registration for a period of  
15          not longer than that period or impose a condition on, or amend  
16          a condition of, the registration; or
- 17          (c) if the proposed action included imposing a condition on, or  
18          amending a condition of, the registration—impose a condition  
19          on, or amend a condition of, the registration that is no more  
20          onerous than the proposed condition or a condition as proposed  
21          to be varied.
- 22       (4) The chief health officer must give the proprietor of the food  
23       business written notice of the chief health officer's decision.
- 24       (5) The suspension or cancellation of the registration of a food business  
25       takes effect on the day when notice of the suspension or cancellation  
26       is given to the proprietor of the food business or, if the notice states  
27       a later date of effect, that date.
- 28       (6) The renewal or amendment of the registration of a food business  
29       under section 93 (Renewal of registration) or section 97 (Change in  
30       details of registration or operation of food business) does not  
31       prejudice or otherwise affect any action being taken, or proposed  
32       action, in relation to the registration of the food business under this  
33       section.

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**1 102 Immediate suspension of registration**

- 2 (1) This section applies if the chief health officer—
- 3 (a) has decided to give, or has given, a disciplinary notice to the
- 4 proprietor of a registered food business; and
- 5 (b) believes, on reasonable grounds, that it is in the public interest
- 6 that the person's registration be suspended as soon as
- 7 practicable before a decision is made to take action under
- 8 section 101 (3) (Procedure for taking action in relation to
- 9 registration).
- 10 (2) In forming the belief, the chief health officer must consider—
- 11 (a) the circumstances leading to the decision to issue the
- 12 disciplinary notice; and
- 13 (b) the grounds for proposing to take the action to be stated, or
- 14 stated, in the disciplinary notice.
- 15 (3) If this section applies, the chief health officer may give the person a
- 16 notice (an *immediate suspension notice*) suspending the person's
- 17 registration.
- 18 (4) If an immediate suspension notice is given to the person, the
- 19 person's registration is suspended on the receipt of the notice by the
- 20 person.
- 21 (5) The immediate suspension notice expires when the person is told
- 22 under section 101 (4) (Procedure for taking action in relation to
- 23 registration) of the decision made on the disciplinary notice.

**24 103 Return of certificate of registration**

- 25 (1) If registration of a food business is suspended or cancelled, the
- 26 proprietor of the food business must not fail, without reasonable
- 27 excuse, to return the certificate of registration of the business to the
- 28 chief health officer as soon as practicable (but within 7 days) after
- 29 the suspension or cancellation takes effect.

30 Maximum penalty: 5 penalty units.

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- 1 (2) If the registration of a food business is suspended and the  
2 registration has not ended when the suspension ends, the chief  
3 health officer must return the certificate of registration if the  
4 proprietor of the food business asks for its return.

**5 104 Surrender of registration**

6 The proprietor of a registered food business may, at any time,  
7 surrender the registration by returning the certificate of registration  
8 to the chief health officer with a written statement that the  
9 registration is surrendered.

**10 105 Registers of food businesses**

- 11 (1) The chief health officer must keep registers (a *food business*  
12 *register*) of—
- 13 (a) food businesses that have given notifications under section 90  
14 (Notification of conduct of exempt food businesses); and
- 15 (b) food businesses that have been registered under section 92  
16 (Registration of food businesses) or whose registration has  
17 been renewed under section 93 (Renewal of registration).
- 18 (2) The register mentioned in subsection (1) (a) must include—
- 19 (a) the name of the proprietor of the food business to which a  
20 notification under section 90 relates; and
- 21 (b) the trading name of the food business; and
- 22 (c) the type of food business (as decided by the chief health  
23 officer) to which the registration relates; and
- 24 (d) the address of the premises at or from which the food business  
25 is conducted.
- 26 (3) The register mentioned in subsection (1) (b) must include the  
27 information mentioned in section 96 (2) (Certificate of registration).
- 28 (4) A food business register may contain any other information that the  
29 chief health officer considers appropriate.

1 (5) A food business register may be kept in the form of, or as part of,  
2 1 or more computer databases or in any other form that the chief  
3 health officer considers appropriate.

4 (6) The chief health officer may correct any mistake, error or omission  
5 in a food business register subject to the requirements (if any) of the  
6 regulations.

7 **106 Publication and inspection of food business registers**

8 (1) The chief health officer must make arrangements for people to  
9 inspect a food business register and buy a copy of part or all of it.

10 *Note* A fee may be determined under s 150 (Determination of fees) for an  
11 inspection or purchase under this section.

12 (2) The chief health officer may publish all or part of a food business  
13 register in any way that the chief health officer thinks appropriate.

1  
2 **Part 9** **Infringement notices for**  
3 **certain offences**

4 **Division 9.1** **Preliminary**

5 **107** **Definitions for pt 9**

6 In this part:

7 *date of service*, of an infringement notice or reminder notice that has  
8 been, or is to be, served on a person, means the date the notice is  
9 served on the person.

10 *infringement notice* means a notice under section 110 (Service of  
11 infringement notices).

12 *infringement notice offence* means an offence against this Act  
13 declared under the regulations to be an offence to which this part  
14 applies.

15 *infringement notice penalty*, for a person for an infringement notice  
16 offence, means—

- 17 (a) the amount prescribed under the regulations as the penalty  
18 payable by the person for the offence under an infringement  
19 notice for the offence; or  
20 (b) if a reminder notice has also been served on the person for the  
21 offence—the total of the amount mentioned in paragraph (a)  
22 and the amount prescribed under the regulations as the amount  
23 payable by the person for the cost of serving the reminder  
24 notice.

25 *reminder notice* means a notice under section 119 (Reminder  
26 notices).



1 **108 Purpose and effect of pt 9**

2 (1) The purpose of this part is to create a system of infringement notices  
3 for certain offences against this Act as an alternative to prosecution.

4 *Note* A reference to an Act includes a reference to statutory instruments made  
5 or in force under the Act, including regulations, the food standards code  
6 and any approved code of practice (see *Legislation Act 2001*, s 104).

7 (2) This part does not—

8 (a) require an infringement or reminder notice to be served on a  
9 person; or

10 (b) affect the liability of a person to be prosecuted for an offence  
11 if—

12 (i) an infringement or reminder notice is not served on the  
13 person for the offence; or

14 (ii) the person does not comply with an infringement or  
15 reminder notice served on the person for the offence; or

16 (iii) an infringement notice served on the person for the  
17 offence is withdrawn; or

18 (c) prevent the service of 2 or more infringement notices on a  
19 person for an offence; or

20 (d) limit or otherwise affect the penalty that may be imposed by a  
21 court on a person for an offence.

22 **109 Regulations about infringement notice offences**

23 (1) The regulations may prescribe an offence against this Act, other  
24 than an offence for which a penalty of imprisonment may be  
25 imposed, for the definition of infringement notice offence in  
26 section 107 (Definitions for pt 9) by—

27 (a) stating the offence; or

28 (b) referring to the provision creating the offence.

29 (2) Subsection (1) does not limit the ways that the regulations may  
30 prescribe an offence for that definition.

- 1 (3) The regulations may, for the definition of infringement notice  
2 penalty in section 107, prescribe—
- 3 (a) an amount as the penalty payable by anyone for an offence if it  
4 is dealt with under this part; or
- 5 (b) different amounts as the penalties payable for different  
6 offences if they are dealt with under this part; or
- 7 (c) different amounts as the penalties payable for the same kind of  
8 offence committed by different people or in different  
9 circumstances if the offence is dealt with under this part.
- 10 (4) However, an infringement notice penalty prescribed for a person for  
11 an offence must not exceed the maximum fine that could be  
12 imposed by a court on the person for the offence.
- 13 (5) Subsection (3) does not limit the ways that the regulations may  
14 prescribe an amount for that definition.

## 15 Division 9.2 Infringement and reminder notices

### 16 110 Service of infringement notices

17 If an authorised officer believes, on reasonable grounds, that a  
18 person has committed an infringement notice offence, the authorised  
19 officer may serve a notice (an *infringement notice*) on the person  
20 for the offence.

### 21 111 Contents of infringement notices

- 22 (1) An infringement notice served on a person by an authorised officer  
23 for an infringement notice offence must—
- 24 (a) be identified by a unique number; and
- 25 (b) state the date of service of the notice; and
- 26 (c) state—
- 27 (i) the full name, or surname and initials, and address of the  
28 person on whom the notice is served; or

- 1 (ii) the particulars that are, under the regulations, identifying  
2 particulars for the person; and
- 3 (d) give brief details of the offence, including the provision  
4 contravened by the person, and—
- 5 (i) if the offence took place over a period—the period, or  
6 approximate period, when the offence was committed; or
- 7 (ii) in any other case—the place where the offence was  
8 committed and the date and approximate time of the  
9 offence; and
- 10 (e) state the infringement notice penalty payable by the person for  
11 the offence; and
- 12 (f) contain the information required by section 112; and
- 13 (g) identify the authorised officer in accordance with the  
14 regulations; and
- 15 (h) include any other information required under the regulations  
16 and any additional information that the chief health officer  
17 considers appropriate.
- 18 (2) The regulations may provide that subsection (1) (c) does not apply  
19 to an infringement notice.

20 **112 Additional information in infringement notices**

- 21 (1) The infringement notice must also tell the person on whom it is  
22 served that—
- 23 (a) the person may pay the infringement notice penalty for the  
24 offence or dispute liability for the offence within 28 days after  
25 the day when the notice is served on the person (the *date of*  
26 *service* of the notice); and
- 27 (b) the person may apply to the chief health officer for additional  
28 time in which to pay the penalty or dispute liability for the  
29 offence; and

- 1 (c) the notice may be withdrawn before or after the penalty is paid;  
2 and
- 3 (d) if the person pays the penalty within the 28 days (or any  
4 additional time allowed by the chief health officer), then,  
5 unless the infringement notice is withdrawn and any penalty  
6 refunded—
- 7 (i) any liability of the person for the offence is discharged;  
8 and
- 9 (ii) the person will not be prosecuted in court for the offence;  
10 and
- 11 (iii) the person will not be taken to have been convicted of the  
12 offence; and
- 13 (e) if the person wishes to dispute liability for the offence, the  
14 issue may be referred to the Magistrates Court; and
- 15 (f) if the Magistrates Court finds against the person or the person  
16 is prosecuted in court for the offence, the person may be  
17 convicted of the offence and ordered to pay a penalty and  
18 costs, and be subject to other court orders; and
- 19 (g) if the person does not pay the infringement notice penalty, or  
20 disputes liability for the offence, within the 28 days (or any  
21 additional time allowed by the chief health officer), a reminder  
22 notice may be served on the person for the offence or the  
23 person may be prosecuted in court for the offence; and
- 24 (h) if a reminder notice is served on the person, the infringement  
25 notice penalty is increased by the amount payable by the  
26 person for the cost of serving the reminder notice.
- 27 (2) In addition, the infringement notice must—
- 28 (a) explain how the person may pay the infringement notice  
29 penalty or dispute liability for the offence; and

- 1 (b) explain how the person may apply for additional time to pay  
2 the infringement notice penalty or dispute liability for the  
3 offence.

4 **113 Time for payment of infringement notice penalty**

5 The infringement notice penalty payable by a person under an  
6 infringement notice or reminder notice is payable—

- 7 (a) within 28 days after the date of service of the notice; or  
8 (b) if the person applies to the chief health officer within the  
9 28 days for additional time to pay and the additional time is  
10 allowed—within the additional time allowed by the chief  
11 health officer; or  
12 (c) if the person applies to the chief health officer within the  
13 28 days for additional time to pay and the application is  
14 refused—within 7 days after the day the person is told of the  
15 refusal or 28 days after the date of service of the notice,  
16 whichever is later.

17 **114 Extension of time to pay penalty**

- 18 (1) The person on whom an infringement notice or reminder notice is  
19 served may apply, in writing, to the chief health officer, within  
20 28 days after the date of service of the notice, for a stated additional  
21 time (of not longer than 6 months) in which to pay the infringement  
22 notice penalty.  
23 (2) The chief health officer must—  
24 (a) allow or refuse to allow the additional time; and  
25 (b) tell the person in writing of the decision and, if the decision is a  
26 refusal, the reasons for it.

27 **115 Effect of payment of infringement notice penalty**

28 This section applies if—

- 1            (a) an infringement notice has been served on a person for an  
2            infringement notice offence; and
- 3            (b) the person pays the infringement notice penalty for the offence  
4            in accordance with this part; and
- 5            (c) when the payment is made, the infringement notice had not  
6            been withdrawn and an information had not been laid in the  
7            Magistrates Court against the person for the offence.

8            *Note*    Section 117 (Withdrawal of infringement notice) provides for the  
9            withdrawal at any time of an infringement notice that has been served  
10           on a person. If s 115 applied to the infringement notice offence, it  
11           ceases to apply, and is taken never to have applied, on the withdrawal of  
12           the notice (see s 117 (4)).

13           (2) If this section applies—

- 14           (a) any liability of the person for the offence is discharged; and
- 15           (b) the person must not be prosecuted in a court for the offence;  
16           and
- 17           (c) the person is not taken to have been convicted of the offence.

18           (3) If 2 or more infringement notices were served on the person for the  
19           offence, then, unless all the infringement notices have been  
20           withdrawn, subsection (2) applies to the person in relation to the  
21           offence if the person pays, in accordance with this part, the  
22           infringement notice penalty in relation to any of the notices  
23           (together with any costs and disbursements payable under this part  
24           in relation to the notice).

## 25           **116    Application for withdrawal of infringement notice**

26           (1) The person on whom an infringement notice for an infringement  
27           notice offence is served may apply to the chief health officer, in  
28           writing, for the withdrawal of the notice within 28 days after the day  
29           when the infringement notice, or a reminder notice for the offence,  
30           is served on the person (or any additional time allowed by the chief  
31           health officer).

32           (2) The chief health officer must—

- 1 (a) withdraw the notice or refuse to withdraw the notice; and  
2 (b) tell the person in writing of the decision and, if the decision is a  
3 refusal, the reasons for it.

4 **117 Withdrawal of infringement notice**

- 5 (1) This section applies to an infringement notice that has been served  
6 on a person for an infringement notice offence.
- 7 (2) The chief health officer may, by notice served on the person,  
8 withdraw the infringement notice, whether or not—
- 9 (a) the person has made an application for the withdrawal of the  
10 infringement notice; or
- 11 (b) the infringement notice penalty (or part of it) has been paid for  
12 the offence; or
- 13 (c) the person has disputed liability for the infringement notice  
14 offence.
- 15 (3) The notice must—
- 16 (a) include the number of the infringement notice and the date of  
17 service of the infringement notice; and
- 18 (b) tell the person that the infringement notice is withdrawn and, in  
19 general terms, about subsection(4).
- 20 (4) On service of the notice—
- 21 (a) this part ceases to apply to the infringement notice; and
- 22 (b) if the infringement notice penalty (or part of it) has been  
23 paid—the amount paid must be repaid by the chief health  
24 officer; and
- 25 (c) if section 115 (Effect of payment of infringement notice  
26 penalty) applies to the offence—the section ceases to apply,  
27 and is taken never to have applied, to the offence; and

- 1            (d) a proceeding for the offence may be taken in a court against  
2            anyone (including the person) as if the infringement notice had  
3            not been served on the person.

4            **118 Guidelines about withdrawal of infringement notices**

- 5            (1) The Minister may, in writing, issue guidelines about the exercise of  
6            the chief health officer's functions under section 116 (Application  
7            for withdrawal of infringement notice), section 117 (Withdrawal of  
8            infringement notice) or section 123 (Extension of time to dispute  
9            liability) in relation to an offence.
- 10           (2) The chief health officer must comply with the guidelines.
- 11           (3) Guidelines are a disallowable instrument.

12           *Note*     A disallowable instrument must be notified, and presented to the  
13           Legislative Assembly, under the *Legislation Act 2001*.

14           **119 Reminder notices**

15           An authorised officer may serve a notice (a *reminder notice*) on a  
16           person if—

- 17           (a) an infringement notice has been served on the person for an  
18           infringement notice offence; and
- 19           (b) the infringement notice has not been withdrawn; and
- 20           (c) the infringement notice penalty has not been paid to the chief  
21           health officer within the time for payment under this part; and
- 22           (d) written notice disputing liability has not been given to the chief  
23           health officer in accordance with this part; and
- 24           (e) a reminder notice has not previously been served on the person  
25           for the offence.

26           **120 Contents of reminder notices**

27           A reminder notice served on a person by an authorised officer for an  
28           infringement notice offence must—

- 29           (a) be identified by a unique number; and



- 1 (b) include the following information:
- 2 (i) the provision contravened by the person;
- 3 (ii) the number of the infringement notice served on the  
4 person for the offence;
- 5 (iii) the date of service of the infringement notice; and
- 6 (c) state the date of service of the reminder notice; and
- 7 (d) state the infringement notice penalty that is now payable by the  
8 person for the offence; and
- 9 (e) contain the information required by section 121; and
- 10 (f) identify the authorised officer in accordance with the  
11 regulations; and
- 12 (g) include any other information required under the regulations  
13 and any additional information that the chief health officer  
14 considers appropriate.

15 **121 Additional information in reminder notices**

- 16 (1) The reminder notice must also tell the person on whom it is served  
17 that—
- 18 (a) the infringement notice penalty for the offence has not been  
19 paid; and
- 20 (b) the infringement notice has not been withdrawn; and
- 21 (c) written notice disputing liability has not been received by the  
22 chief health officer from the person for the offence; and
- 23 (d) the infringement notice penalty for the offence has been  
24 increased by the amount payable by the person for the cost of  
25 serving the reminder notice; and
- 26 (e) the person may pay the infringement notice penalty that is now  
27 payable by the person for the offence or dispute liability for the  
28 offence within 28 days after the day when the reminder notice  
29 is served on the person (the *date of service* of the notice); and

- 1 (f) the person may apply to the chief health officer for additional  
2 time in which to pay the penalty or dispute liability for the  
3 offence; and
- 4 (g) the infringement notice may be withdrawn before or after the  
5 penalty is paid; and
- 6 (h) if the person pays the penalty within the 28 days (or any  
7 additional time allowed by the chief health officer), then,  
8 unless the infringement notice is withdrawn and any penalty  
9 refunded—
- 10 (i) any liability of the person for the offence is discharged;  
11 and
- 12 (ii) the person will not be prosecuted in court for the offence;  
13 and
- 14 (iii) the person will not be taken to have been convicted of the  
15 offence; and
- 16 (i) if the person wishes to dispute liability for the offence, the  
17 issue may be referred to the Magistrates Court; and
- 18 (j) if the Magistrates Court finds against the person or the person  
19 is prosecuted in court for the offence, the person may be  
20 convicted of the offence and ordered to pay a penalty and  
21 costs, and be subject to other court orders; and
- 22 (k) if the person does not pay the infringement notice penalty, or  
23 dispute liability for the offence, within the 28 days (or any  
24 additional time allowed by the chief health officer), the person  
25 may be prosecuted in court for the offence.
- 26 (2) In addition, the reminder notice must—
- 27 (a) explain how the person may pay the infringement notice  
28 penalty or dispute liability for the offence; and
- 29 (b) explain how the person may apply for additional time to pay  
30 the infringement notice penalty or dispute liability for the  
31 offence.

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**Division 9.3                      Disputing liability**

**122    Disputing liability for infringement notice offence**

- (1) A person on whom an infringement notice or reminder notice has been served for an infringement notice offence may dispute liability for the offence by written notice given to the chief health officer.
- (2) The notice must set out the grounds on which the person relies.
- (3) The notice must be given to the chief health officer—
- (a) within 28 days after the date of service of the infringement notice or reminder notice; or
  - (b) if the person applies to the chief health officer within the 28 days for additional time to dispute liability for the offence and the additional time is allowed—within the additional time allowed by the chief health officer; or
  - (c) if the person applies to the chief health officer within the 28 days for additional time to dispute liability for the offence and the application is refused—within 7 days after the day the person is told of the refusal or 28 days after the date of service of the infringement notice or reminder notice, whichever is later.

**123    Extension of time to dispute liability**

- (1) The person on whom an infringement notice or reminder notice is served may apply, in writing, to the chief health officer, within 28 days after the date of service of the notice, for a stated additional time in which to dispute liability for the offence.
- (2) The chief health officer must—
- (a) allow or refuse to allow the additional time; and
  - (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

1    **124 Procedure if liability disputed**

- 2        (1) This section applies if a person disputes liability for an infringement  
3        notice offence by giving the chief health officer a notice in  
4        accordance with section 122 (Disputing liability for infringement  
5        notice offence).
- 6        (2) The chief health officer may lay an information in the Magistrates  
7        Court against the person for the offence within 60 days after being  
8        given the notice.
- 9        (3) The chief health officer must discontinue a proceeding brought  
10       against the person for the offence if, before the hearing of the  
11       proceeding, the person pays the total of—
- 12            (a) the infringement notice penalty; and
- 13            (b) the costs (if any) prescribed under the regulations for  
14            beginning the proceeding; and
- 15            (c) the disbursements (if any) incurred by the chief health officer  
16            up to the day payment is made.
- 17        (4) If subsection (3) applies, section 115 (Effect of payment of  
18        infringement notice penalty) also applies to the person in relation to  
19        the offence, even though the person paid the infringement notice  
20        penalty for the offence after an information had been laid in the  
21        Magistrates Court against the person for the offence.
- 22        (5) If the chief health officer does not lay an information in the  
23        Magistrates Court against the person for the offence within 60 days  
24        after being given the notice, the chief health officer must—
- 25            (a) tell the person, in writing, that no further action will be taken  
26            against the person for the offence; and
- 27            (b) take no further action against the person for the offence.

1 **Division 9.4** **Miscellaneous**

2 **125 Evidentiary certificates**

- 3 (1) This section applies to a proceeding for an infringement notice  
4 offence.
- 5 (2) A certificate that appears to be signed by or on behalf of the chief  
6 health officer, and states any matter relevant to anything done or not  
7 done under this part in relation to the offence, is evidence of the  
8 matter.
- 9 (3) Without limiting subsection(2), a certificate given under that  
10 subsection may state any of the following:
- 11 (a) a stated infringement notice or reminder notice was served by a  
12 stated authorised officer in a stated way on a stated person on a  
13 stated date for a stated infringement notice offence;
- 14 (b) the chief health officer did not allow additional time, or  
15 allowed stated additional time, for payment of the infringement  
16 notice penalty or to dispute liability for the offence;
- 17 (c) the infringement notice penalty was not paid within the time in  
18 which it was required to be paid under this part;
- 19 (d) the infringement notice has not been withdrawn or was  
20 withdrawn on a stated date;
- 21 (e) a stated address was, on a stated date, the latest business, home  
22 or email address, or fax number, of a stated person recorded in  
23 a register or other record kept by the chief health officer;
- 24 (f) an infringement notice penalty has not been paid by, or a  
25 penalty has not been imposed on, a stated person or anyone for  
26 the offence.
- 27 (4) A court must accept a certificate given under this section as proof of  
28 the matters stated in it if there is no evidence to the contrary.

1  
2 **Part 10** **Procedural and evidentiary**  
3 **provisions**  
4

5 *Note* A reference to an Act includes a reference to statutory instruments made  
6 or in force under the Act, including regulations, the food standards code  
7 and any approved code of practice (see *Legislation Act 2001*, s 104).

8 **126 Liability of employees and agents**

9 (1) It is not a defence in a proceeding for an offence against this Act  
10 that the defendant was, at the time of the commission of the offence,  
11 an employee or agent of someone else.

12 (2) However, it is a defence if the defendant proves that the defendant  
13 was under the personal supervision of the proprietor of the food  
14 business, or the owner or person in charge of the premises, in  
15 relation to which the offence was committed, or of someone else  
16 representing the proprietor, owner or person in charge.

17 **127 Acts and omissions of representatives**

18 (1) In this section:

19 *representative*, of a person, means—

20 (a) if the person is an individual—an employee or agent of the  
21 person; or

22 (b) if the person is a corporation—an employee, agent or executive  
23 officer of the person.

24 *state of mind*, of a person, includes—

25 (a) the person's knowledge, intention, opinion, belief or purpose;  
26 and

27 (b) the person's reasons for the intention, opinion, belief or  
28 purpose.

29 (2) An act done or omitted to be done on behalf of a person by a  
30 representative of the person is also taken to have been done or

1 omitted to be done by the person if the representative was acting  
2 within the scope of the representative's actual or apparent authority.

3 (3) However, subsection (2) does not apply if the person establishes that  
4 reasonable precautions were taken and appropriate diligence was  
5 exercised to avoid the act or omission.

6 *Note* A defence of reasonable precautions and appropriate diligence is also  
7 provided for offences against pt 3 by s 30.

8 (4) If it is relevant to prove a person's state of mind about an act or  
9 omission, it is enough to show—

10 (a) the act was done or omission was made by a representative of  
11 the person within the scope of the representative's actual or  
12 apparent authority; and

13 (b) the representative had the state of mind.

14 (5) An individual who is convicted of an offence cannot be punished by  
15 imprisonment for the offence if the individual would not have been  
16 convicted of the offence without subsection (2) or (4).

## 17 **128 Offences by corporations**

18 (1) If a corporation contravenes, whether by an act or omission, a  
19 provision of this Act, each person who is an executive officer of the  
20 corporation is taken to have contravened the provision if the person  
21 knowingly authorised or allowed the contravention.

22 (2) For subsection (1), an executive officer of the corporation may be  
23 prosecuted for, and convicted of, the offence whether or not the  
24 corporation has been prosecuted for, or convicted of, the offence.

25 (3) This section does not affect any liability imposed on a corporation  
26 for an offence committed by the corporation against this Act.

## 27 **129 Right of defendant to have third person before court**

28 (1) A defendant charged with an offence against this Act who alleges  
29 that the contravention constituting the offence was caused by the act  
30 or omission of someone else (the *other person*) may, in accordance

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- 1 with subsection (2), have the other person brought before the court  
2 hearing the charge.
- 3 (2) The defendant must—
- 4 (a) give the informant (the *original informant*) and the court  
5 written notice at least 7 days before the return date of the  
6 summons (the *original summons*) issued to the defendant of  
7 the defendant's intention to have the other person brought  
8 before the court; and
- 9 (b) include in the notice particulars of the defendant's claim that  
10 the contravention was caused by the act or omission of the  
11 other person and that the defendant took all reasonable  
12 precautions and exercised all appropriate diligence to prevent  
13 the commission of the offence by the other person; and
- 14 (c) lay an information against the other person for an offence  
15 against this Act.
- 16 (3) The court must—
- 17 (a) issue a summons directed to the other person requiring the  
18 other person to appear before the court on the date and at the  
19 time and place stated in the summons (the *other summons*);  
20 and
- 21 (b) order that a copy of the information laid against the defendant  
22 be served on the other person.
- 23 (4) If the date stated in the later summons is not the return date for the  
24 original summons, the court must—
- 25 (a) adjourn the hearing of the charge against the defendant to the  
26 return date of the later summons; or
- 27 (b) adjourn the hearing of the charges against both the defendant  
28 and the other person to a later date and notify the parties  
29 accordingly.
- 30 (5) On the hearing of the charges, the original informant and the other  
31 person—



- 1 (a) if the defendant gives evidence—may cross-examine the  
2 defendant; and
- 3 (b) may cross-examine any witness called by the defendant; and
- 4 (c) may call evidence in rebuttal.
- 5 (6) The court—
- 6 (a) may convict only the other person if the contravention of the  
7 Act is proved and the defendant satisfies the court that the  
8 contravention was caused by the act or omission of the other  
9 person; and
- 10 (b) must dismiss the charge against the defendant if, in addition to  
11 satisfying the court that the contravention was caused by the  
12 act or omission of the other person, the defendant satisfies the  
13 court that the defendant took all reasonable precautions and  
14 exercised all appropriate diligence to prevent the commission  
15 of the offence by the other person.
- 16 (7) This section does not prevent the court from—
- 17 (a) convicting either the defendant or the other person or both; or
- 18 (b) ordering that the proceeding against the other person be heard  
19 separately if the court considers that it is necessary in the  
20 interests of justice to do so.
- 21 (8) If the other person is not found guilty of an offence against this Act,  
22 the court must order the defendant to pay the costs of the other  
23 person or, if the court thinks that it would be unjust to make such an  
24 order, the court may order the defendant to pay such part of the  
25 costs of the other person as the court considers appropriate.
- 26 **130 Alternative defendants**
- 27 (1) This section applies if the chief health officer is of the opinion that  
28 an offence against this Act has been committed in relation to which  
29 a person (the *defendant*) may be charged and the chief health officer  
30 is satisfied, on reasonable grounds, that—

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- 1 (a) the offence was caused by the act or omission of someone else  
2 (the *alternative defendant*); and
- 3 (b) the defendant could successfully defend a proceeding using  
4 section 129 (Right of defendant to have third person before  
5 court).
- 6 (2) The chief health officer may arrange for a proceeding to be begun  
7 against the alternative defendant for the offence without a  
8 proceeding first being begun against the defendant.
- 9 (3) In a proceeding in accordance with this section, the alternative  
10 defendant may be charged with the offence with which the  
11 defendant might have been charged and, on proof that the offence  
12 was caused by the act or omission of the alternative defendant, the  
13 alternative defendant may be convicted of the offence.
- 14 (4) If the alternative defendant is acquitted, the defendant may be  
15 prosecuted for, and convicted of, the offence.

16 **131 Renewal or amendment of registration not to affect**  
17 **prosecution**

18 The renewal or amendment of the registration of a food business  
19 under section 93 (Renewal of registration) or section 97 (Change in  
20 details of registration or operation of food business) does not  
21 prejudice or otherwise affect any action being taken, or proposed  
22 action, in relation to the registration of the food business under this  
23 section.

24 **132 Presumptions**

25 In a proceeding for an offence against this Act, it is presumed until  
26 the contrary is proved, on the balance of probabilities, that—

- 27 (a) a substance or thing capable of being used as food that was  
28 transported, prepared for sale, intended for sale or sold was  
29 transported, prepared for sale, intended for sale or sold for  
30 human consumption; and

- 1 (b) a substance or thing capable of being used as food that was  
2 stored on food premises was intended for sale or sold for  
3 human consumption; and
- 4 (c) a substance or thing capable of being used as food is not for  
5 human consumption if it is prominently marked as not being  
6 for human consumption, or with words to that effect; and
- 7 (d) food that is part of a batch, lot or consignment of food of the  
8 same kind or description is representative of all of the food in  
9 the batch, lot or consignment; and
- 10 (e) each part of a sample of food divided for the purpose of  
11 analysis for this Act is of uniform composition with every  
12 other part of the sample; and
- 13 (f) a person who sold food in the conduct of a food business and  
14 was not the proprietor of the food business sold the food as the  
15 employee of the proprietor; and
- 16 (g) a person who appears from any statement on a package  
17 containing food for sale to have prepared, manufactured,  
18 packed or imported the food is the preparer, manufacturer,  
19 packager or importer of the food, as appropriate; and
- 20 (h) food that has been sold to a consumer has been sold at some  
21 time by anyone who respectively prepared, manufactured,  
22 packed or imported the food.

23 **133 Certificate evidence etc**

- 24 (1) This section applies in relation to a proceeding for an offence  
25 against this Act.
- 26 (2) A document that appears to be a copy of a registration, approval,  
27 order, notice or authority under this Act is evidence of the  
28 registration, approval, order, notice or authority.
- 29 (3) A certificate that appears to be signed by or on behalf of the chief  
30 health officer, and that states any of the following matters, is  
31 evidence:

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- 1 (a) that there was, or was not, in force a registration, approval,  
2 order, notice or authority in relation to a stated person or  
3 persons;
- 4 (b) that a registration, approval, order, notice or authority was or  
5 was not subject to stated conditions;
- 6 (c) of the receipt or otherwise of a notice, application or payment;
- 7 (d) that an amount of fees or another amount is payable under this  
8 Act by a stated person.
- 9 (4) A certificate that appears to be signed by or on behalf of the chief  
10 health officer, and states any matter prescribed under the regulations  
11 for this section, is evidence of the matter.
- 12 (5) A certificate mentioned in subsection (3) or (4) may state a matter  
13 by reference to a date or period.
- 14 (6) A court must accept a certificate or other document mentioned in  
15 this section as proof of the matters stated in it if there is no evidence  
16 to the contrary.
- 17 (7) In this section:
- 18 *authority* includes an appointment as an authorised analyst or  
19 authorised officer or a clearance certificate.
- 20 *notice* includes an improvement notice.
- 21 *order* means an emergency order (including a recall order) or a  
22 prohibition order.
- 23 *registration* means registration as a food business.

**134 Evidence of analysts**

- 24  
25 (1) A certificate of the results of an analysis is admissible in a  
26 proceeding for an offence against this Act, and is evidence of the  
27 facts stated in it, if a copy of the certificate is served by the party  
28 who obtained the analysis on the other party to the proceeding at  
29 least 14 days before the hearing.

- 1 (2) However, a court may order, at the request of a party to the  
2 proceedings or on its own initiative, that the period mentioned in  
3 subsection (1) be reduced to the period stated in the court's order.
- 4 (3) An analyst who carried out an analysis in relation to which a  
5 certificate is produced as evidence in a proceeding for an offence  
6 against this Act need not be called as a witness in the proceedings  
7 by the party producing the certificate unless the court hearing the  
8 proceedings orders, at the request of a party to the proceedings or on  
9 its own initiative, that the analyst be called as a witness.

10 **135 Admissibility of analysis of food sample taken by**  
11 **authorised officer**

12 The analysis of a sample of food taken by an authorised officer from  
13 a food business is admissible in evidence in a proceeding for an  
14 offence against this Act only if—

- 15 (a) the sample was taken as required by section 73 (Other  
16 samples—proprietor to be told sample to be analysed),  
17 section 74 (Payment for samples) and section 75 (Samples  
18 from packaged food); and
- 19 (b) the sample has been dealt with as required by section 76  
20 (Procedures for dividing samples).

21 **136 No defence to claim deterioration of sample**

22 It is not a defence in a proceeding for an offence against this Act for  
23 a defendant to claim that any part of a sample kept for future  
24 comparison with a sample that has been analysed has, from natural  
25 causes, deteriorated, perished or undergone any material change in  
26 its constitution.

27 **137 Power of court to order further analysis**

- 28 (1) This section applies if the court before which a person is being  
29 prosecuted for an offence against this Act is satisfied that there is a  
30 disagreement between the evidence of the analysts for the parties to  
31 the proceeding.

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- 1 (2) The court may order that the part or parts of a sample kept under  
2 section 76 (Procedures for dividing food samples) be sent by the  
3 chief health officer to an independent analyst.
- 4 (3) For subsection (2), the order may require the sample to be sent to a  
5 particular analyst or to an analyst agreed to by the parties.
- 6 (4) An analyst who is sent a part or parts of a sample for analysis under  
7 this section is to make an analysis for the information of the court.
- 8 (5) Subject to section 139 (Court may order costs and expenses), the  
9 cost of an analysis under this section is payable by the Territory.

**10 138 Disclosure by witnesses**

- 11 (1) In a proceeding for an offence against this Act, a witness for the  
12 prosecution is not compelled to disclose the fact that the witness  
13 received information, the nature of the information received or the  
14 name of the person from whom the information was received.
- 15 (2) An authorised officer appearing as a witness in a proceeding is not  
16 compelled to produce any document containing any confidential  
17 matter made or received in the authorised officer's capacity as an  
18 authorised officer.
- 19 (3) Despite subsections (1) and (2), a court hearing a proceeding for an  
20 offence against this Act may order the disclosure of a matter or the  
21 production of a document mentioned in subsection (1) or (2) if the  
22 court considers that it is necessary in the interests of justice.

**23 139 Court may order costs and expenses**

24 Without affecting any other power of a court to award costs, a court  
25 that hears a proceeding for an offence against this Act may make  
26 any order it considers appropriate in relation to costs and expenses  
27 in relation to the examination, seizure, detention, storage, analysis  
28 (including further analysis), destruction or other disposition of  
29 anything the subject of the proceeding.

1 **140 Court may order forfeiture**

2 A court that convicts a person, or finds a person guilty, of an offence  
3 against this Act may order the forfeiture to the Territory of anything  
4 that was used in the commission of the offence.

5 **141 Court may order corrective advertising**

6 A court that convicts a person, or finds a person guilty, of an offence  
7 against part 3 (Offences relating to food) may make an order  
8 requiring the person to disclose to a class of people, or all people, in  
9 a stated way, stated information, or information of a stated kind, that  
10 the person possesses or to which the person has access.

11 **Example of kind of order that court may make**

12 An advertisement in a stated form at the person's expense.

1  
2 **Part 11** **Miscellaneous**  
3

4 **142 Joint liability for amounts payable to the Territory**

5 If an amount payable to the Territory under this Act is owed by 2 or  
6 more people, their liability for the debt is joint and several.

7 **143 Bribery**

8 A person must not give, procure, offer or promise any bribe,  
9 recompense or reward to influence any person in the exercise of a  
10 function under this Act.

11 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
12 both.

13 **144 Protection from liability**

14 (1) In this section:

15 *official* means—

- 16 (a) the Minister; or  
17 (b) the chief health officer; or  
18 (c) an authorised officer; or  
19 (d) anyone else exercising functions under this Act.

20 (2) An official does not incur civil or criminal liability for an act or  
21 omission done honestly and without negligence for this Act.

22 (3) A civil liability that would, apart from this section, attach to an  
23 official attaches instead to the Territory.

24 **145 Secrecy**

25 (1) In this section:

26 *court* includes any tribunal or other entity having power to require  
27 the production of documents or the answering of questions.



1 ***person to whom this section applies*** means a person who is or has  
2 been—

3 (a) an authorised officer; or

4 (b) anyone else who has exercised a function under this Act.

5 ***produce*** includes permit access to.

6 ***protected information*** means information obtained under this Act in  
7 relation to manufacturing secrets or commercial secrets or working  
8 processes.

9 (2) A person to whom this section applies must not—

10 (a) make a record of protected information; or

11 (b) directly or indirectly, divulge or communicate to a person  
12 protected information about someone else;

13 unless the record is made, or the information divulged or  
14 communicated, in relation to the exercise of a function, as a person  
15 to whom this section applies, under this Act or another Act.

16 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
17 both.

18 (3) Subsection (2) does not prevent a person to whom this section  
19 applies from divulging or communicating protected information—

20 (a) with the consent of the person from whom the information was  
21 obtained; or

22 (b) to a person administering or enforcing a law of another  
23 jurisdiction that corresponds to this Act or another law  
24 prescribed under the regulations for this paragraph; or

25 (c) to the food authority; or

26 (d) to a law enforcement authority.

27 (4) A person to whom this section applies is not required—

28 (a) to divulge or communicate protected information to a court; or

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- 1 (b) to produce a document containing protected information to a  
2 court;  
3 unless it is necessary to do so for this Act or another Act.

4 **146 Publication of details of food businesses related to**  
5 **offences**

- 6 (1) In this section:  
7 *representative of the person* means—  
8 (a) if the person is an individual—an employee or agent of the  
9 person; or  
10 (b) if the person is a corporation—an employee, agent or executive  
11 officer of the person.
- 12 (2) This section applies to a person if the person, or a representative of  
13 the person, is convicted, or found guilty, of an offence against this  
14 Act in relation to the handling of food intended for sale or the sale  
15 of food.
- 16 (3) The chief health officer may publish a notice under this section in a  
17 newspaper circulating in the ACT.
- 18 (4) The notice may contain—  
19 (a) the person's name; and  
20 (b) the business name under which the person conducts the food  
21 business in relation to which the offence was committed; and  
22 (c) the address of the food business concerned; and  
23 (d) a description of the offence, the decision of the court and the  
24 penalty imposed on the person or a representative of the person  
25 (including the forfeiture of anything under this Act); and  
26 (e) any other information in relation to the safety of the food  
27 concerned that the chief health officer considers is appropriate.
- 28 (5) The notice must be published within 21 days after—

- 1 (a) the time for making an appeal against the conviction, or  
2 finding of guilt, ends without an application for an appeal  
3 being made; or
- 4 (b) if an appeal is made against the conviction or finding of guilt—  
5 the defendant's conviction, or the finding of guilt, is confirmed  
6 on appeal, and the time for making any further appeal in  
7 relation to the conviction ends without an application for an  
8 appeal being made; or
- 9 (c) if on appeal a court directs that the defendant be retried and the  
10 defendant is convicted, or found guilty, of an offence against  
11 this Act—paragraph (a) or (b) applies to that conviction or  
12 finding of guilt.
- 13 (6) No liability is incurred by a person for publishing honestly—  
14 (a) a notice under this section; or  
15 (b) a fair report or summary of such a notice.

16 **147 Decisions reviewable by administrative appeals tribunal**

17 A person may apply to the administrative appeals tribunal for  
18 review of a decision mentioned in schedule 1.

19 **148 Notification of reviewable decisions**

- 20 (1) A person who makes a decision mentioned in schedule 1 must give  
21 written notice of the decision to the person mentioned in that  
22 schedule, column 4.
- 23 (2) The notice must be in accordance with the requirements of the code  
24 of practice in force under the *Administrative Appeals Tribunal Act*  
25 *1989*, section 25B (1).

26 **149 Codes of practice**

- 27 (1) The Minister may, in writing, approve codes of practice setting out  
28 minimum standards or guidelines for this Act.

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- 1 (2) An approved code of practice may apply, adopt or incorporate a law  
2 or instrument, or a provision of a law or instrument, as in force from  
3 time to time.

4 *Note 1* A statutory instrument may also apply, adopt or incorporate (with or  
5 without change) a law or instrument (or a provision of a law or  
6 instrument) as in force at a particular time (see *Legislation Act 2001*,  
7 s 47 (1)).

8 *Note 2* If a statutory instrument applies, adopts or incorporates a law or  
9 instrument (or a provision of a law or instrument), the law, instrument  
10 or provision may be taken to be a notifiable instrument that must be  
11 notified under the *Legislation Act 2001* (see s 47 (2)-(6)).

- 12 (3) An approval of a code of practice is a disallowable instrument.

13 *Note* A disallowable instrument must be notified and presented to the  
14 Legislative Assembly, under the *Legislation Act 2001*.

- 15 (4) A person must not, without reasonable excuse, fail to comply with a  
16 code of practice in relation to the handling of food intended for sale,  
17 the sale of food or equipment.

18 Maximum penalty: 50 penalty units.

- 19 (5) In this section:

20 *law* includes a law of another jurisdiction.

## 21 150 Determination of fees

- 22 (1) The Minister may, in writing, determine fees for this Act.

23 *Note* The *Legislation Act 2001* contains provisions about the making of  
24 determinations and regulations relating to fees (see pt 6.3).

- 25 (2) A determination is a disallowable instrument.

26 *Note* A disallowable instrument must be notified, and presented to the  
27 Legislative Assembly, under the *Legislation Act 2001*.

## 28 151 Approved forms

- 29 (1) The Minister may, in writing, approve forms for this Act.

1 (2) If the Minister approves a form for a particular purpose, the  
2 approved form must be used for that purpose.

3 (3) An approved form is a notifiable instrument.

4 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## 5 **152 Regulation-making power**

6 (1) The Executive may make regulations for this Act.

7 *Note* Regulations must be notified, and presented to the Legislative  
8 Assembly, under the *Legislation Act 2001*.

9 (2) The regulations may make provision in relation to—

10 (a) the preparation, carrying out, maintenance and monitoring of  
11 food safety programs for food businesses to ensure that the  
12 provisions of this Act (including the food standards code) are  
13 complied with; and

14 (b) the notification by food businesses of information relating to  
15 the conduct of those food businesses.

16 (3) The regulations may—

17 (a) apply, adopt or incorporate the food standards code (but only  
18 in whole) without change and as in force from time to time;  
19 and

20 (b) apply, adopt or incorporate a law or instrument, or a provision  
21 of a law or instrument, as in force from time to time.

22 *Note 1* A statutory instrument may also apply, adopt or incorporate (with or  
23 without change) a law or instrument (or a provision of a law or  
24 instrument) as in force at a particular time (see *Legislation Act 2001*,  
25 s 47 (1)).

26 *Note 2* If a statutory instrument applies, adopts or incorporates a law or  
27 instrument (or a provision of a law or instrument), the law, instrument  
28 or provision may be taken to be a notifiable instrument that must be  
29 notified under the *Legislation Act 2001* (see s 47 (2)-(6)).

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1 (4) The regulations may prescribe offences for contraventions of the  
2 regulations and prescribe maximum penalties of not more than  
3 20 penalty units for offences against the regulations.

4 (5) In this section:

5 *law* includes a law of another jurisdiction.

6 **153 Temporary emergency regulations**

7 (1) Despite section 152 (3) (a), regulations may be made under this  
8 section that contain provisions that are in addition to, or in  
9 substitution for, 1 or more of the provisions of the food standards  
10 code as those provisions of the code apply in the ACT.

11 (2) A regulation mentioned in subsection (1) may be made only if the  
12 Minister has certified that such a regulation is necessary as it relates  
13 to an issue of public health and safety.

14 (3) A provision of a regulation mentioned in subsection (1) does not  
15 continue in force—

16 (a) except as provided by paragraph (b)—for longer than  
17 1 year; or

18 (b) if the provision is the same in substance as a provision of a  
19 regulation that was previously in force under this Act—for a  
20 period that, when added to the period for which that previous  
21 provision was in force, is longer than 1 year.

1

2 **Part 12 Transitional provisions**

3 **Division 12.1 General**

4 **154 Definitions for pt 12**

5 In this part:

6 *commencement* means the commencement of this part.

7 *former Food Act* means the *Food Act 1992*.

8 **155 Transitional regulations**

9 (1) The regulations may prescribe savings or transitional matters  
10 necessary or convenient to be prescribed because of the enactment  
11 of this Act.

12 (2) Without limiting the scope of subsection (1), the regulations may  
13 prescribe matters necessary or convenient to be prescribed for  
14 carrying out or giving effect to the provisions of this Act instead of  
15 the provisions of the former Food Act or the *Meat Act 1931*.

16 (3) Regulations made for this section must not be taken to be  
17 inconsistent with this Act as far as they can operate concurrently  
18 with this Act.

19 (4) This section is additional to, and does not limit, section 156.

20 **156 Modification of pt 12's operation**

21 The regulations may modify the operation of this part to make  
22 provision in relation to any matter that, in the Executive's opinion,  
23 is not, or is not adequately, dealt with in this part.

1 **Division 12.2 Existing food businesses**

2 **157 Proprietor of food businesses licensed under former**  
3 **Food Act**

- 4 (1) This section applies to a food business if, immediately before the  
5 commencement, the proprietor of the food business held a licence  
6 under the former Food Act, part 5.
- 7 (2) The food business is taken to be registered until the end of the  
8 3 month period beginning on the commencement of this division.
- 9 (3) The registration is taken to be subject to any conditions of the  
10 licence that were, immediately before the commencement, in force  
11 under the former Food Act, section 33 (1) (a).
- 12 (4) To remove doubt, this section does not apply to a licence that was,  
13 immediately before the commencement, suspended under the former  
14 Food Act, section 42 (3) (c) or section 43 (2) (b).

15 *Note* A licence suspended under the former Food Act, s 42 or s 43 is taken  
16 not to be in force while it is suspended, see the former Food Act,  
17 s 37 (2).

18 **158 Food businesses exempt from registration under former**  
19 **Food Act**

20 Section 90 (Notification of conduct of exempt food businesses) does  
21 not apply to a food business prescribed under the former Food  
22 Regulations, regulation 4 (Exemptions from licensing requirements)  
23 until the end of the 3 month period beginning on the commencement  
24 of this division.

25 **159 Expiry of div 12.2**

26 This division, and the notes after the heading to part 8 (Notification  
27 and registration of food businesses), expire 3 months after the  
28 commencement of this division.



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1 **Division 12.3 Other transitional matters**

2 **160 Applications for licences**

- 3 (1) An application under the former Food Act, section 31 that had not  
4 been finally dealt with before the commencement is taken, after the  
5 commencement, to be an application for registration under  
6 section 92 (1) (Registration of food businesses).
- 7 (2) A requirement under the former Food Act, section 32 that had not  
8 been complied with immediately before the commencement is  
9 taken, after the commencement, to be a requirement under  
10 section 92 (2).

11 **161 Applications for renewal of licences**

12 An application under the former Food Act, section 38 that had not  
13 been finally dealt with before the commencement is taken, after the  
14 commencement, to be an application for registration under  
15 section 93 (2) (Renewal of registration).

16 **162 Applications for approval for alteration of food premises**

- 17 (1) An application under the former Food Act, section 39 that had not  
18 been finally dealt with before the commencement is taken, after the  
19 commencement, to be a notification under section 97 (Change in  
20 details of registration or operation of food business).
- 21 (2) A requirement under the former Food Act, section 39 (4) that had  
22 not been complied with immediately before the commencement is  
23 taken, after the commencement, to be a requirement under  
24 section 97 (4).

25 **163 Applications for variation of licences**

- 26 (1) An application under the former Food Act, section 41 (1) that had  
27 not been finally dealt with before the commencement is taken, after  
28 the commencement, to be a notification under section 97 (Change in  
29 details of registration or operation of food business).

- 1 (2) A notice under the former Food Act, section 41 (2) that had not been  
2 finally dealt with before the commencement is taken, after the  
3 commencement, to be a notice under section 95 (2) (Registered food  
4 businesses—procedure for imposition etc of conditions on chief  
5 health officer's initiative).

6 **164 Action to suspend or cancel licences**

- 7 A notice under the former Food Act, section 42 (2) that had not been  
8 finally dealt with before the commencement is taken, after the  
9 commencement, to be a disciplinary notice under section 101  
10 (Procedure for taking action in relation to registration).

11 **165 Improvement notices**

- 12 (1) An improvement notice under the former Food Act, section 46 that  
13 was in force immediately before the commencement is taken, after  
14 the commencement, to be an improvement notice served under  
15 section 79 (Service of improvement notices).
- 16 (2) The period for rectification stated in the notice, or that period as  
17 extended, is taken to be the period for compliance under section 80  
18 (Contents of improvement notices).

19 **166 Prohibition notices**

- 20 (1) A prohibition notice under the former Food Act, section 47 that was  
21 in force immediately before the commencement is taken, after the  
22 commencement, to be a prohibition order served under section 82  
23 (Service of prohibition orders).
- 24 (2) For this Act, the period for rectification stated in the prohibition  
25 notice, or that period as extended, does not apply after the  
26 commencement.

27 *Note* A prohibition order under this Act operates until a clearance certificate  
28 is given, or taken to have been given, under s 85.

- 29 (3) An application by the licensee of a food business under the former  
30 Food Act, section 48 (1) that had not been finally dealt with before

1 the commencement is taken, after the commencement, to be a  
2 request under section 85 (Request for reinspection).

3 **167 Search warrants**

4 A search warrant issued under the former Food Act that had not  
5 been executed immediately before the commencement is taken, after  
6 the commencement, to be a search warrant under this Act.

7 **168 Things seized**

8 (1) A thing seized under the former Food Act that had not been finally  
9 dealt with immediately before the commencement is taken, after the  
10 commencement, to be a thing seized under this Act.

11 (2) An application under the former Food Act, section 59 that had not  
12 been finally dealt with immediately before the commencement is  
13 taken, after the commencement, to be an application under  
14 section 58 (Application for order disallowing seizure).

15 (3) For subsection (2), if the application under the former Food Act,  
16 section 59 was made to a court other than the Magistrates Court,  
17 section 58, section 59 (Order for return of seized thing) and  
18 section 60 (Adjournment pending hearing of other proceedings)  
19 apply as if the references to the Magistrates Court are references to  
20 the other court.

21 **169 Food samples**

22 A sample of food taken in accordance with the former Food Act,  
23 division 7.4 is taken, after the commencement, to be a sample of  
24 food taken by an authorised officer in accordance with the  
25 corresponding provision of this Act.

26 **170 Analysis of food samples**

27 (1) A certificate under the former Food Act, section 72 is taken to be a  
28 certificate under section 78 (Certificates of analysis by authorised  
29 analysts).

- 1 (2) An order under the former Food Act, section 73 (1) that had not  
2 been finally dealt with before the commencement is taken, after the  
3 commencement, to be an order under section 137 (2) (Power of  
4 court to order further analysis).

5 **171 Review of decisions under former Food Act**

- 6 (1) Section 147 (Decisions reviewable by the administrative appeals  
7 tribunal) and section 148 (Notification of reviewable decisions)  
8 apply to a decision mentioned in the Former Food Act,  
9 section 79 (1) as if the decision were made under the corresponding  
10 provision of this Act.

- 11 (2) Sections 147 and 148 apply to a decision under the former Food  
12 Act, section 48 (3) to refuse to revoke a prohibition notice as if it  
13 were a decision under section 86 (Clearance certificates) to refuse to  
14 issue a clearance certificate.

15 **172 Chief health officer may give effect to decisions of  
16 Minister etc**

- 17 (1) The chief health officer may take any action the chief health officer  
18 considers necessary or desirable to give effect to decisions made by  
19 the Minister before the commencement if, under the corresponding  
20 provisions of this Act, the decision may be made by the chief health  
21 officer.

- 22 (2) Without limiting subsection (1), the chief health officer may treat  
23 any decision made by the Minister before the commencement to  
24 which this section applies as if it were a decision made by the chief  
25 health officer under the corresponding provision of this Act.

- 26 (3) This section is additional to any other provision of this Act.

27 **173 Directions under Food Regulations**

- 28 (1) A direction under the *Food Regulations 1994*, regulation 8 (2) that  
29 was in force immediately before the commencement is taken, after  
30 the commencement, to be a direction under the *Public Health Act  
31 1997*, section 113 (1) (c) (Public health directions—issue).

1 (2) A direction under the *Food Regulations 1994*, regulation 9 (1) (b)  
2 that was in force immediately before the commencement is taken,  
3 after the commencement, to be a direction under the *Public Health*  
4 *Act 1997*, section 113 (1) (b).

5 (3) A direction under the *Food Regulations 1994*, regulation 22 (1) that  
6 was in force immediately before the commencement is taken, after  
7 the commencement, to be an improvement notice under section 79  
8 (Service of improvement notices).

9 **Division 12.4 Expiry**

10 **174 Expiry of pt 12**

11 This part expires 1 year after it commences.

1

2 **Part 13** **Repeals and miscellaneous**  
3 **amendments**  
4

5 **175 Repeal of laws**

6 The following laws are repealed:

7 (a) the *Food Act 1992* No 47;

8 (b) the *Meat Act 1931* No 13;

9 (c) the *Food Regulations 1994* SL No 4;

10 (d) the *Meat Regulations*, made 28 July 1931.

11 **176 Amendment of Acts—sch 2**

12 The Acts mentioned in schedule 2 are amended as set out in that  
13 schedule.

## Schedule 1      Decisions reviewable by administrative appeals tribunal

(see s 147 and s 148)

column 1 item	column 2 provision	column 3 decision	column 4 person to be notified of decision
1	44 (5)	Minister—refuse to pay compensation, or amount of compensation paid, for emergency order	applicant for compensation
2	86	authorised officer—refuse to issue clearance certificate	proprietor of food business
3	88 (5)	Minister—refuse to pay compensation, or amount of compensation paid, for prohibition order	applicant for compensation
4	92 (3)	chief health officer—register/refuse to register food business	applicant for registration
5	93 (2)	chief health officer—renew/refuse to renew registration of food business	proprietor of food business

**Schedule 1**      Decisions reviewable by administrative appeals tribunal

<b>column 1</b> <b>Item</b>	<b>column 2</b> <b>provision</b>	<b>column 3</b> <b>decision</b>	<b>column 4</b> <b>person to be notified of decision</b>
6	94 (1)	chief health officer—register/renew registration of food business subject to condition	applicant for registration or renewal of registration
7	94 (2)	chief health officer—amend registration of food business to impose condition or amend/revoke existing condition	proprietor of registered food business
8	97 (3)	chief health officer—refuse to amend registration of food business	applicant for amendment of registration
9	101 (3)	chief health officer—suspend/cancel registration of food business/length of suspension of registration of food business/impose condition or amend existing condition	proprietor of registered food business
10	102	chief health officer—suspend registration of food business	proprietor of registered food business



1 **Schedule 2**                    **Miscellaneous provisions**  
2 (see s 176)

3 **Part 2.1**                    **Animal Diseases Act 1993**

4 **[2.1] Section 38**

5 *substitute*

6 **38**                    **Tags to remain with carcasses**

7                    (1) This section applies to a tag removed from a carcass before the final  
8 inspection of the carcass on the slaughter floor of an abattoir by a  
9 person prescribed under the regulations for this section.

10                    (2) The person in charge of the abattoir must keep the tag with the  
11 carcass until after the final inspection of the carcass.

12                    Penalty: 10 penalty units.

13 **Part 2.2**                    **Hawkers Act 1936**

14 **[2.2] Section 4 (1), definition of *food***

15 *substitute*

16 *food* means food within the meaning of the *Food Act 2001*, section 8  
17 (Meaning of *food*), other than fresh fruit or fresh vegetables.

18 **[2.3] Section 8A**

19 *substitute*

20 **8A**                    **Additional requirements for applications for sale of food**  
21 **from vehicles**

22                    (1) This section applies to an application for a hawker's licence to use a  
23 vehicle for the sale of food or food and other goods.

Amendment [2.4]

1 (2) The application must be accompanied by a copy of a food business  
2 registration certificate for the vehicle or evidence, satisfactory to the  
3 registrar, that the vehicle is exempt from registration under the *Food*  
4 *Act 2001*, section 89 (Food businesses exempt from registration).

5 (3) In this section:

6 *food business registration certificate* means a certificate of  
7 registration under the *Food Act 2001* or a law of another jurisdiction  
8 that corresponds to that Act.

9 **[2.4] Section 12A (2)**

10 *substitute*

11 (2) If the application relates to the use of a vehicle for the sale of food  
12 or food and other goods, the applicant must give the registrar a copy  
13 of a food business registration certificate for the vehicle or evidence,  
14 satisfactory to the registrar, that the vehicle is exempt from  
15 registration under the *Food Act 2001*, section 89 (Food businesses  
16 exempt from registration).

17 (2A) In this section:

18 *food business registration certificate* means a certificate of  
19 registration under the *Food Act 2001* or a law of another jurisdiction  
20 that corresponds to that Act.

21 **Part 2.3 Public Health Act 1997**

22 **[2.5] Title**

23 *substitute*

24 An Act relating to public health, and for related purposes

1 **[2.6] Section 6**

2 *substitute*

3 **6 Construction consistent with certain other laws**

4 (1) This Act must be construed and administered in a way that is  
5 consistent with a health law or an environment law unless the  
6 contrary intention appears from this Act or that law.

7 (2) This Act must be taken to be consistent with a health law or an  
8 environment law to the extent that it is capable of operating  
9 concurrently with that law.

10 (3) Without limiting subsection (2)—

11 (a) a function under the *Food Act 2001* may be exercised  
12 independently of, in conjunction with, or instead of, a function  
13 under this Act; and

14 (b) a function under this Act may be exercised independently of, in  
15 conjunction with, or instead of, a function under the *Food Act*  
16 *2001*; and

17 **Examples of s (3)**

18 1 The issue of an abatement notice under this Act in relation to unfit food  
19 premises instead of an improvement notice under the *Food Act 2001*.

20 2 For food handled by a person with a highly contagious serious disease, a  
21 public health emergency could be declared under this Act and directions  
22 given to isolate affected people and require them to undergo a medical  
23 examination and the food could be recalled under the *Food Act 2001*, pt 4  
24 (Emergency powers).

25 (4) In this section:

26 *environment law* means a law of the Territory that has as 1 of its  
27 objects or purposes the protection of the environment.

28 *health law* means a law of the Territory that has as 1 of its objects or  
29 purposes the protection of public health or the *Food Act 2001*.

1    **[2.7] Section 9**

2        *substitute*

3    **9      Functions of chief health officer**

4        (1) The functions of the chief health officer are as follows:

5            (a) to develop and implement strategies to promote and protect  
6            public health;

7            (b) to ensure that this Act and the *Food Act 2001* are complied  
8            with;

9            (c) to advise the Minister about proposed legislative or  
10            administrative changes related to public health and the safety  
11            and suitability of food for human consumption;

12            (d) to carry out any other functions decided, in writing, by the  
13            Minister for this Act or the *Food Act 2001*.

14        (2) The chief health officer may also exercise any other function given  
15        to the chief health officer by another Territory law.

16    **[2.8] Section 11**

17        *substitute*

18    **11     Delegation by chief health officer**

19        The chief health officer may delegate a function under this Act or  
20        the *Food Act 2001* to a person.

21        *Note*      For the making of delegations and the exercise of a delegated power,  
22        see *Legislation Act 2001*, pt 18.4 (Delegations).

1 **[2.9] Section 12, heading**

2 *substitute*

3 **12 Appointment of public health officers**

4 **[2.10] New section 12A**

5 *insert*

6 **12A Functions of public health officers**

7 (1) The chief health officer may, in writing, authorise a public health  
8 officer to be an authorised officer for this Act or a provision of this  
9 Act.

10 (2) The chief health officer may, in writing, authorise a public health  
11 officer to be an authorised officer for the *Food Act 2001* or a  
12 provision of that Act.

13 (3) A public health officer may also exercise any other function given to  
14 a public health officer by this Act or another Territory law.

15 **[2.11] Section 13, heading**

16 *substitute*

17 **13 Appointment of authorised medical officers**

18 **[2.12] Sections 14 and 15**

19 *substitute*

20 **14 Functions of authorised medical officers**

21 (1) The chief health officer may, in writing, authorise an authorised  
22 medical officer to be an authorised officer for this Act or a provision  
23 of this Act.

24 (2) An authorised medical officer may also exercise any other function  
25 given by this Act or another Territory law.

1    **15    Appointment of analysts**

- 2        (1) There may be 1 or more analysts for this Act.
- 3        (2) The chief executive must create and maintain 1 or more offices in  
4        the public service the duties of which include performing the  
5        functions of an analyst.
- 6        (3) The following people are analysts:
- 7            (a) a public servant for the time being performing the duties of the  
8            public service office mentioned in subsection (2);
- 9            (b) any other person appointed in writing by the chief executive  
10           for the purpose.
- 11        (4) A person may be appointed under this section as an analyst only if  
12        the chief executive has certified in writing that the person has  
13        satisfactorily completed adequate training to exercise the functions  
14        of an analyst under this Act or an authorised analyst under the *Food*  
15        *Act 2001*.

16    **15A   Functions of analysts**

- 17        (1) The chief health officer may, in writing, authorise an analyst  
18        appointed under section 15, or a person mentioned in the *Drugs of*  
19        *Dependence Act 1989*, section 183 (Analysts) or section 183A  
20        (Government analyst), to be an analyst for this Act or a provision of  
21        this Act.
- 22        (2) The chief health officer may, in writing, authorise an analyst  
23        appointed under section 15, or a person mentioned in the *Drugs of*  
24        *Dependence Act 1989*, section 183 or 183A, to be an authorised  
25        analyst for the *Food Act 2001* or a provision of that Act.
- 26        (3) An analyst appointed under section 15 may also exercise any other  
27        function given to an analyst by this Act or another Territory law.

28    **15B   Appointed analysts—appointment subject to conditions**

- 29        (1) The appointment of a person as an analyst under section 15 (3) (b)  
30        may be—

- 1 (a) made subject to conditions; or  
2 (b) amended by the chief executive to impose a condition to which  
3 the appointment is to be subject or to amend or revoke a  
4 condition to which the appointment is already subject.
- 5 (2) A condition may be imposed, amended or revoked by the chief  
6 executive—
- 7 (a) on the chief executive's own initiative or on the application of  
8 the person; and  
9 (b) for a stated period or indefinitely.

10 **15C Appointed analysts—procedure for imposition etc of**  
11 **conditions on chief executive's initiative**

- 12 (1) If the chief executive proposes, on the chief executive's own  
13 initiative, to take action under section 15B (1) (b) (Appointed  
14 analysts—appointment subject to conditions) to amend the person's  
15 appointment to impose, amend or revoke a condition (the *proposed*  
16 *action*), the chief executive must give the person a written notice  
17 stating—
- 18 (a) the proposed action; and  
19 (b) if the proposed action is to impose a condition to which the  
20 appointment is to be subject—the proposed condition; and  
21 (c) if the proposed action is to amend a condition to which the  
22 appointment is subject—the proposed condition as amended;  
23 and  
24 (d) if the proposed action is to impose or amend a condition, the  
25 grounds for the proposed action; and  
26 (e) if appropriate, any action that must be taken by the person to  
27 avoid or reverse the proposed action; and  
28 (f) the date when the proposed imposition, amendment or  
29 revocation of the condition takes effect (the *date of effect*); and

- 1 (g) that the proposed action takes effect on the date of effect unless  
2 the notice is revoked by the chief executive before that date.
- 3 (2) The notice may, but need not, provide an opportunity for the person  
4 to make representations about why the proposed action should not  
5 be taken.
- 6 (3) The date of effect must not be earlier than 14 days after the notice is  
7 given to the person.

8 **15D Appointed analysts—suspension or cancellation of**  
9 **appointment**

- 10 (1) This section applies to a person appointed as an analyst under  
11 section 15 (3) (b) (Analysts).
- 12 (2) The chief executive may suspend the person's appointment for no  
13 longer than 1 year, or cancel the person's appointment, (the  
14 *proposed action*) if satisfied, on reasonable grounds, that—
- 15 (a) the person has breached a condition of the person's  
16 appointment; or
- 17 (b) the person has otherwise breached this Act, the *Food Act 2001*  
18 or another Territory law under which the person exercises a  
19 function; or
- 20 (c) the person is not a suitable person to hold the appointment  
21 because of misbehaviour or physical or mental incapacity.

22 Note The person's appointment also ends if the person resigns (see  
23 *Legislation Act 2001*, s 210).

- 24 (3) Before suspending or cancelling the appointment, the chief  
25 executive must give the person a written notice—
- 26 (a) stating the grounds on which the chief executive proposes to  
27 take the proposed action; and
- 28 (b) stating the facts that, in the chief executive's opinion, establish  
29 the grounds; and
- 30 (c) stating the proposed action; and



- 1 (d) telling the person that the person may, within 14 days  
2 beginning the day after receiving the notice, give a written  
3 response to the chief executive about the matters in the notice.
- 4 (4) In deciding whether to suspend or cancel the appointment the chief  
5 executive must consider any response given to the chief executive  
6 under subsection (3 (d)).
- 7 (5) If the chief executive is satisfied that grounds for taking action  
8 under this section have been established, the chief executive may—
- 9 (a) if the proposed action was to cancel the appointment—either  
10 cancel the appointment or suspend the appointment for a  
11 period of not longer than 1 year; or
- 12 (b) if the proposed action was to suspend the appointment for a  
13 stated period—suspend the appointment for a period of not  
14 longer than that period.
- 15 (6) The chief executive must give the person written notice of the chief  
16 executive's decision.
- 17 (7) The chief executive's decision takes effect on the day that notice of  
18 the chief executive's decision is given to the person or, if the notice  
19 states a later date of effect, that date.

20 **[2.13] Section 17**

21 *substitute*

22 **17 Protection from liability**

- 23 (1) In this section:

24 *official* means—

- 25 (a) the Minister; or  
26 (b) the chief health officer; or  
27 (c) an authorised officer; or  
28 (d) anyone else exercising functions under this Act.

1      (2) An official does not incur civil or criminal liability for an act or  
2      omission done honestly and without negligence for this Act.

3      (3) A civil liability that would, apart from this section, attach to an  
4      official attaches instead to the Territory.

5      **[2.14] Section 130**

6      *omit everything before paragraph (a), substitute*

7      **130 Decisions reviewable by administrative appeals tribunal**

8      (1) A person appointed as an analyst under section 15 (3) (b)  
9      (Appointment of analysts) may apply to the administrative appeals  
10     tribunal for review of any of the following decisions made by the  
11     chief executive in relation to the appointment:

12     (a) the conditions imposed on the appointment under  
13     section 15B (1) (a) (Appointed analysts—appointment subject  
14     to conditions);

15     (b) the amendment of the appointment under section 15B (1) (b) to  
16     impose a condition, or to amend or revoke a condition, to  
17     which the appointment is subject;

18     (c) the suspension or cancellation of the appointment under  
19     section 15D (Appointed analysts—suspension or cancellation  
20     of appointment).

21     (2) A person may apply to the administrative appeals tribunal for  
22     review of any of the following decisions made by the Minister:

23     **[2.15] Section 131**

24     *omit everything before paragraph (1) (a), substitute*

25     **131 Notification of reviewable decisions**

26     (1) A person who makes a decision mentioned in section 130 (1) must  
27     give notice of the decision to the analyst in relation to whom the  
28     decision is made.

1 (2) A person who makes a decision mentioned in section 130 (2) must  
2 give notice of the decision to—

3 **[2.16] Section 131 (1)**

4 *omit*

5 130

6 *substitute*

7 130 (2)

8 **[2.17] Section 131 (2)**

9 *substitute*

10 (2) A notice under subsection (1) or (2) must be in accordance with the  
11 requirements of the code of practice in force under the  
12 *Administrative Appeals Tribunal Act 1989*, section 25B (1).

1  
2 **Dictionary**

3 (see s 4)

4 **advertisement** means—

- 5 (a) any words, whether written or spoken; or  
6 (b) any pictorial representation or design; or  
7 (c) any other representation by any means at all;

8 used or apparently used to promote, directly or indirectly, the sale of  
9 food.

10 **analysis** includes any examination or testing of food or anything  
11 else.

12 **animal** includes an amphibian, bird, crustacean, fish, mollusc or  
13 reptile.

14 **approved code of practice** means a code of practice approved under  
15 section 149 (1) (Codes of practice).

16 **authorised analyst** means an analyst mentioned in the *Public Health*  
17 *Act 1997*, section 15A (2) (Functions of analysts) who is authorised  
18 to exercise a function under this Act.

19 **authorised officer** means a public health officer who is authorised  
20 under the *Public Health Act 1997*, section 12A (2) (Functions of  
21 public health officers) to exercise a function under this Act.

22 **certificate of registration**, for a food business, means a certificate of  
23 registration issued under section 96 (1) for the business.

24 **clearance certificate** means a clearance certificate issued under  
25 section 86 (2).

26 **Commonwealth Act** means the *Australia New Zealand Food*  
27 *Authority Act 1991* (Cwlth).

28 **connected**, with an offence, for part 5 (Inspection and seizure  
29 powers)—see section 45.

- 1        *date of service*, for part 9 (Infringement notices for certain  
2        offences)—see section 107.
- 3        *disciplinary notice*—see section 101 (1) (Procedure for taking  
4        action in relation to registration).
- 5        *displayed for sale*—see section 9 (2) (Meaning of *sell* etc).
- 6        *dispose*, of food, for part 4 (Emergency powers)—see section 37.
- 7        *emergency order*—see section 38 (Making of emergency orders).
- 8        *equipment* means all or any part of—
- 9            (a) any utensil, machinery, instrument, device, apparatus or appliance  
10           that is used, or that is designed or intended for use, in relation  
11           to the handling of food; or
- 12           (b) any substance, utensil, machinery, instrument, device,  
13           apparatus or appliance that is used, or that is designed or  
14           intended for use, in cleaning anything mentioned in  
15           paragraph (a).
- 16        *examine* includes inspect, weigh, count, test or measure.
- 17        *executive officer*, of a corporation, means a person, by whatever  
18        name called and whether or not the person is a director of the  
19        corporation, who is concerned with, or takes part in, the  
20        corporation's management.
- 21        *falsely described*, for part 3 (Offences relating to food)—see  
22        section 15 (False descriptions of food).
- 23        *food*—see section 8 (Meaning of *food*).
- 24        *food authority*—see the Commonwealth Act, section 3 (1),  
25        definition of *authority*.
- 26        *Note*     *Authority* is defined as the Australia New Zealand Food Authority but  
27        legislation has been introduced into the Commonwealth Parliament to  
28        change its name to Food Standards Australia New Zealand.
- 29        *food business*—see section 10 (Meaning of *food business*).

- 1        **food business register**—see section 105 (Registers of food  
2        businesses).
- 3        **food safety standard**—see the Commonwealth Act, section 3 (1),  
4        definition of *standard*.
- 5        **food standards code** means the Australia New Zealand Food  
6        Standards Code as defined in the Commonwealth Act, section 3 (1),  
7        as that code is applied, adopted or incorporated under the  
8        regulations.
- 9        **food transport vehicle** means a vehicle used for the transport of  
10       food intended for sale.
- 11       **handling**, of food, includes the making, manufacturing, producing,  
12       collecting, extracting, processing, storing, transporting, delivering,  
13       preparing, treating, preserving, packing, cooking, thawing, serving  
14       or displaying of food.
- 15       **identity card** means an identity card issued under the *Public Health*  
16       *Act 1997*, section 16 (Identity cards).
- 17       **improvement notice** means an improvement notice served under  
18       section 79 (Service of improvement notices).
- 19       **infringement notice**—see section 107 (Definitions for pt 9).
- 20       **infringement notice offence**—see section 107 (Definitions for pt 9).
- 21       **infringement notice penalty**, for part 9 (Infringement notices for  
22       certain offences)—see section 107.
- 23       **label** includes any tag, brand, mark or statement in writing or any  
24       representation or design or other descriptive matter on or attached to  
25       or used or displayed in relation to or accompanying any food or  
26       package.
- 27       **occupier**, for part 5 (Inspection and seizure powers)—see  
28       section 45.
- 29       **offence**, for part 5 (Inspection and seizure powers)—see section 45.

1 **package** includes any container or wrapper in or by which food  
2 intended for sale is completely or partly encased, covered, enclosed,  
3 contained or packed and, for food carried or sold or intended to be  
4 carried or sold in more than 1 package, includes every such package.

5 **place of seizure**, for part 5 (Inspection and seizure powers)—see  
6 section 52 (6) (a) (Power to seize things).

7 **premises** includes—

8 (i) land (whether or not vacant); or

9 (ii) all or any part of a building, tent, stall or other structure  
10 (whether of a permanent or temporary nature); or

11 (iii) a pontoon; or

12 (iv) a food transport vehicle or any other vehicle.

13 **primary food production**—see section 11 (Meaning of *primary*  
14 *food production*).

15 **prohibition order** means a prohibition order served under section 82  
16 (Service of prohibition orders).

17 **proprietor**, of a food business, means—

18 (a) the person conducting the food business; or

19 (b) if that person cannot be identified—the person in charge of the  
20 food business.

21 **recall order**, for part 4 (Emergency orders)—see section 37.

22 **registered**, in relation to a food business, means registered under  
23 section 92 (Registration of food businesses).

24 **reminder notice**, for part 9 (Infringement notices for certain  
25 offences)—see section 107 (Definitions for pt 9).

26 **sell**—see section 9 (1) (Meaning of *sell* etc).

27 **unsafe**—see section 12 (Meaning of *unsafe* food).

28 **unsuitable**—see section 13 (Meaning of *unsuitable* food).

- 1            **vehicle** means any means of transport, whether or not self-propelled,  
2            and whether used on land or water or in the air.
- 

## Endnote

### Penalty units

The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.