

**NORTHERN TERRITORY OF AUSTRALIA**

**FOOD ACT**

As in force at 1 May 1997

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 May 1997

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## FOOD ACT

**An Act relating to the preparation and sale of food and standards of food for sale and other matters**

### **Part I Preliminary**

#### **1 Short title**

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

#### **2 Commencement**

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### **3 Repeal**

The Acts specified in the Schedule are repealed.

#### **4 Interpretation**

(1) In this Act, unless the contrary intention appears:

***advertisement*** means a representation by any means used or apparently used to promote directly or indirectly the sale of food or an appliance.

***analysis*** means an examination or analysis of food carried out by an analyst for the purposes of this Act.

***analyst*** means a person appointed under section 14 to carry out analyses.

***animal*** means a member of the animal kingdom other than man.

***appliance*** means the whole or a part of a utensil, machine, instrument, apparatus or other thing used, designed, suitable or intended for use:

(a) in or for the preparing, packing, storing, handling, conveying, serving, selling or supplying of food; or

(b) in the cleaning of another appliance.

**approved** means approved by the Chief Health Officer.

**article** includes:

- (a) food;
- (b) an appliance;
- (c) a package;
- (d) material used in packing food;
- (e) the whole or a part of anything used or intended for use for or in connection with the sale or conveying for sale of food;
- (f) advertising material used or intended to be used in connection with the sale of food; and
- (g) a label.

**authorized officer** means a person appointed under section 7, the Chief Health Officer, or a Medical Officer of Health or Health Surveyor within the meaning of the *Public Health Act*.

**Chief Health Medical Officer** means the Chief Health Officer within the meaning of the *Public Health Act*.

**corresponding law** means a law of the Commonwealth or a State or another Territory of the Commonwealth which, in the opinion of the Minister, substantially corresponds to this Act or the Regulations or any provision of them and which the Minister, by notice in the *Gazette*, declares to be a corresponding law.

**examine** includes weigh, count, test or measure.

**food** means a substance of a kind ordinarily consumed or intended to be consumed by man as food, and includes:

- (a) drink;
- (b) chewing gum;
- (c) an ingredient, food additive or other substance that is ordinarily used for or in connection with the composition or preparation of food; and
- (d) a substance declared under subsection (2) to be food for the purposes of this Act,

but does not include a therapeutic substance within the meaning of the *Therapeutic Goods and Cosmetics Act*.

**food premises** means premises kept or used for the sale, preparation, packing, storing, handling, serving, supplying or conveying, for sale, of food.

**food vehicle** means a vehicle which is kept or used or is capable of being used for the carriage or storage, or in connection with the sale, preparation, packing, storing, handling, serving or conveying, for sale, of food.

**food vending machine** means a machine used or intended to be used for selling food without intervention or addition by or on behalf of the seller at the time of the sale.

**ingredient** includes an ingredient of an ingredient.

**label** includes a tag, brand, mark or statement in writing or a pictorial or symbolic representation or other descriptive matter on or attached to or used or displayed in connection with or accompanying food or a package of food.

**package** means anything in or by which food for sale is wholly or partly covered, enclosed, contained or packed.

**premises** includes land, whether or not appurtenant to a building, a building or part of a building and a tent, stall or other temporary structure, but does not include premises used exclusively as a private dwelling house.

**prepare** includes manufacture, process and treat.

**proprietor** means:

- (a) in relation to food premises, the owner or, where the owner is not the occupier, the occupier of the food premises, and includes a person in charge or apparently in charge of the food premises;
- (b) in relation to a food vehicle:
  - (i) where the vehicle is not the subject of a hire-purchase agreement or other lease or hire agreement, the owner; or
  - (ii) where the vehicle is the subject of a hire-purchase agreement or other lease or hire agreement, the lessee or hirer under that agreement,

and includes a person in charge or apparently in charge of the vehicle; and

- (c) in relation to an appliance:
  - (i) where the appliance is on food premises, the owner or occupier of the food premises; or
  - (ii) where the appliance is in a food vehicle, the owner, lessee or hirer of the food vehicle.

***publish*** means to bring to the notice of the public or a section of the public by any means.

***registration***, in relation to a food vending machine, includes renewal of registration.

***sample*** includes part of a sample.

***sell***, in relation to food, means sell or supply for human consumption, and includes:

- (a) every method of disposition for valuable consideration, including barter and the disposal by raffle, lottery or other game of chance;
- (b) an offer or attempt to sell, to receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale or cause or permit to be sold, exposed or offered for sale;
- (c) the supply or use pursuant to a contract, together with accommodation, service or entertainment, in consideration of an inclusive charge for the article supplied and the accommodation, service or entertainment;
- (d) to offer as a prize or reward, whether in connection with entertainment or for the purpose of advertisement or to further trade or business or otherwise;
- (e) to give to a person for the purpose of advertisement or to further trade or business; and
- (f) to expose or deposit on premises for the purpose of being offered for supply or use under paragraph (c) or as a prize or reward under paragraph (d).

***substance*** includes an article and a compound included in food.



**vehicle** means a device that is a means of conveyance by land, water or air whether or not it is capable of being operated, and includes a cart, caravan, bicycle, railway carriage, ship, boat, barge, hulk, aircraft or hovercraft.

- (2) The Minister may, by notice in the *Gazette*, declare a substance represented as being for consumption by man to be food.
- (3) For the purposes of this Act, food is adulterated where:
  - (a) it is labelled as being a particular type of food or a form of that type and:
    - (i) it contains or is mixed with or diluted by a substance in a quantity which diminishes in any manner any of its properties as compared with such food in a pure state and in an unadulterated condition; or
    - (ii) has had a constituent wholly or partly extracted or removed so that its proper-ties, as compared with such food in a pure state, are diminished;
  - (b) the Regulations specify that food generally or food of the type or form concerned is to contain not more than a specified quantity or proportion of a particular substance, and the food contains more than that quantity or proportion;
  - (c) it is damaged, deteriorated, impoverished, contaminated or perished;
  - (d) it is prepared in a manner whereby damage, deterioration, impoverishment, contamination or inferiority is or may be concealed;
  - (e) it is, either wholly or in part, the product of a diseased animal or one that has died naturally or, in the case of a warm blooded animal, one that has died otherwise than by slaughter;
  - (f) being a particular type of food, it has been prepared, stored or dealt with so that its taste or smell is not the taste or smell ordinarily associated with that type of food;
  - (g) it is injurious or dangerous to health;
  - (h) a package or anything included in the package in which the food is packed, or any thing or matter with which food comes in contact:
    - (i) is damaged, deteriorated, contaminated or perished; or

- (ii) consists, either wholly or in part, of a substance which may render the article injurious to health or dangerous; or
- (j) subject to regulations made under this or any other Act, it contains a foreign substance or matter.

## **5 Crown to be bound**

This Act binds the Crown.

## **Part II Administration**

### **6 Delegation**

- (1) The Minister may, by instrument in writing, delegate to a person any of his powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

### **7 Authorized officers**

- (1) The Minister may, in writing, appoint a person to be an authorized officer for the purposes of this Act.
- (2) The Minister shall issue to an authorized officer an identity card, verified by the Minister, containing a photograph and the signature of the authorized officer.

### **8 Powers of authorized officers**

- (1) For the purposes of this section, **premises** includes a vehicle.
- (2) Subject to this section, where an authorized officer is satisfied that there are reasonable grounds for believing that an offence against this Act has been, is being or is about to be committed, he may, with such assistance as he thinks necessary, at any reasonable time, enter premises and:
  - (a) examine the premises and their fittings, fixtures or appliances, and any other thing, which he believes on reasonable grounds has been, is being or is intended to be, used for or in connection with the sale, preparation, packing, storing,

- handling or serving of food;
- (b) examine food found on the premises;
  - (c) take and remove the food, or samples of it, or an appliance referred to in paragraph (a);
  - (d) open and examine a package which he believes, on reasonable grounds, contains food;
  - (e) examine and, if he thinks fit, remove for copying books, documents or other records found on the premises which contain information relevant to the enforcement of this Act and make copies of or take extracts from them;
  - (f) seize and detain for such time as he thinks fit the food or an appliance by means of or in relation to which he believes, on reasonable grounds, there has been a breach or contravention of this Act;
  - (g) mark, fasten, secure or seal any food or appliance;
  - (h) mark, fasten, secure or seal a door, gate or opening affording access to the food or an appliance;
  - (j) take and remove anything whether or not an article to which this Act applies, which he believes, on reasonable grounds, may be used as evidence in proceedings for an offence against this Act; and
  - (k) take such photographs or films or audio or visual recordings in relation to the premises or a thing referred to in paragraph (j) which he believes, on reasonable grounds, may be used as evidence in proceedings for an offence against this Act, as he thinks fit.
- (3) An authorized officer may, at any time, stop and detain a vehicle on or in which he believes, on reasonable grounds, food or an appliance of a kind referred to in subsection (2)(a) is being conveyed or on or in which food is sold, prepared, packed, stored, handled or served.
- (4) An authorized officer exercising a power under this section shall identify himself and produce his identity card to a person:
- (a) in or on premises; or
  - (b) who claims an interest in the things in respect of which the power was exercised,

who questions the right of the authorized officer to exercise that power.

- (5) The production by an authorized officer of his identity card under subsection (4) is, until the contrary is proved, sufficient authority for the officer to exercise a power which he appears, under this Act, empowered to exercise.

## **9            Liability for acts**

Where under this Act an authorized officer does an act or makes an omission in good faith in:

- (a) the exercise or purported exercise of a power; or
- (b) the performance or purported performance of a function,

no action, claim or demand, whether civil or criminal, in respect of that act or omission lies, or shall be commenced or allowed, against the Crown or the authorized officer.

# **Part III            Labelling, hygiene, &c.**

## **Division 1        Labelling requirements**

### **10            Labelling on packages**

- (1) A package of food intended for sale shall bear a label setting out, in the prescribed manner:
  - (a) where there is a standard prescribed for the food and a name has been prescribed to be used in relation to that food – the prescribed name;
  - (b) where no standard or name has been prescribed in relation to that food – a name or description sufficient to indicate the true nature of the food to which it relates;
  - (c) the name and business address of the vendor, manufacturer or packer of the contents of the package or, in the case of imported food, the name and business address of the importer;
  - (d) subject to regulations made or deemed to be made under this Act, the requirements of any other law of the Territory relating to the date-marking or storage of the food; and
  - (e) such other particulars as are prescribed.

- (2) The Regulations may prescribe food or classes of food to which, or the circumstances in which, subsection (1) does not apply.
- (3) Subsection (1) does not apply, unless otherwise prescribed in relation to a particular class of food, where the food was packed in the presence of the purchaser before or at the time of the sale.

## **Division 2            Hygiene requirements, &c.**

### **11            Unclean conditions of food premises, &c.**

- (1) Where the Chief Health Officer is satisfied, by his own inspection or by the report of an authorized officer, that food premises, a food vehicle or an appliance is in an unclean or insanitary condition, he may, by notice in writing served on the proprietor, require that the food premises, food vehicle or appliance be put into a clean and sanitary condition, to the satisfaction of an authorized officer, within such period after the service of the notice as is specified in the notice.
- (2) Where, after the expiration of the period referred to in subsection (1), the Chief Health Officer is not satisfied that the food premises, food vehicle or appliance to which the notice served under that subsection relates has been put into a clean and sanitary condition, he may, by further notice in writing served on the proprietor, require that the food premises, food vehicle or appliance, as the case may be, shall not be kept or used for the sale, preparation, packing, storing, handling, serving, supplying or conveying for sale of food until an authorized officer has issued to the proprietor a certificate in writing certifying that the food premises, food vehicle or appliance has been put into, and is in, a clean and sanitary condition.
- (3) The proprietor on whom a notice under subsection (2) is served may, at any time after it has been served, request, in writing, the Chief Health Officer to cause the food premises, food vehicle or appliance to be inspected by an authorized officer.
- (4) Where a request under subsection (3) relates to a food vehicle or appliance, the Chief Health Officer shall, by notice in writing served on the proprietor, specify the place where an inspection of the food vehicle or appliance shall be made.
- (5) Where a request is made under subsection (3) and:
  - (a) an inspection made:
    - (i) in the case of food premises, within 24 hours after the receipt of the request by the Chief Health Officer; or

(ii) in the case of a food vehicle or appliance, within 24 hours after the receipt of the notice referred to in subsection (4) by the proprietor; and

(b) the authorized officer making the inspection refuses on completion of the inspection to issue to the proprietor a certificate referred to in subsection (2),

the proprietor may, within 14 days after the refusal, appeal to a Local Court against that refusal.

(6) Where a request is made under subsection (3) and the food premises, food vehicle or appliance to which the request relates is not inspected within the appropriate period referred to in subsection (5)(a), a certificate in respect of the food premises, food vehicle or appliance shall be deemed, for the purposes of subsection (7), to have been issued to the proprietor under subsection (2) on the expiration of that period.

(7) Where a notice under subsection (2) has been served on a proprietor and:

(a) a certificate has not subsequently been issued under that subsection, or is not deemed to have been issued under subsection (6); or

(b) an appeal under subsection (5) against the refusal of an authorized officer to issue a certificate has not been allowed,

a person who, in the breach of the notice:

(c) keeps or uses the food premises or food vehicle for the sale, preparation, packing, storing, handling, serving, supplying or conveying for sale of food; or

(d) uses the appliance in or for the selling, preparing, packing, storing, handling, serving or supplying of food or in or for the cleaning of another appliance,

is guilty of an offence.

Penalty: \$5,000.

## **12 Appeal against refusal to issue certificate**

(1) The Local Court to which an appeal under section 11(5) is made has jurisdiction to hear and determine the appeal, and may regulate its own procedure.

- (2) An appeal under section 11(5) shall be a hearing de novo but shall not operate to stay a notice under section 11(2) or affect the liability of a person for an offence against section 11(7).
- (3) The Local Court may determine an appeal under section 11(5) by confirming the refusal of the authorized officer to issue the certificate or directing the authorized officer to issue the certificate and the authorized officer shall issue the certificate accordingly.
- (4) The costs of an appeal under section 11(5) shall be at the discretion of the Local Court hearing the appeal.

### **Division 3            Food vending machines**

#### **13            Vending machines**

- (1) In this section, unless the contrary intention appears, **servicing** means stocking or replenishing a food vending machine with food.
- (2) No person shall install a food vending machine in or on premises without first obtaining the approval in writing of the Chief Health Officer.
- (3) For the purposes of subsection (2), a person is deemed to have obtained the approval required if the food vending machine intended to be installed is of a brand, class or kind that the Chief Health Officer has, by notice in the *Gazette*, declared that a person may instal without first obtaining the Chief Health Officer's specific approval in writing.
- (4) No person shall service, sell or permit the sale of food by means of a food vending machine unless the machine is registered under subsection (7) or is exempted from registration.
- (5) A food vending machine is exempt from registration if, after approval for its installation has been obtained pursuant to subsection (2), it is serviced with and used to sell only proprietary lines of food:
  - (a) manufactured in accordance with prescribed standards;
  - (b) packed so as to be protected from damage or contamination;
  - (c) that may be stored for a reasonable time without perishing or deteriorating; and
  - (d) not of a brand, class, or kind of food that the Chief Health Officer has, by notice in the *Gazette*, declared shall be sold only by means of a registered food vending machine when sold by vending machine.

- (6) The owner of a food vending machine that is not clearly exempt from registration shall, before servicing, using or allowing the machine to be used for selling food, apply to the Chief Health Officer for registration of the machine.
- (7) An application under subsection (6) shall be in the prescribed form and be accompanied by the prescribed fee (if any).
- (8) The Chief Health Officer shall, as soon as practicable after receiving an application under subsection (6):
  - (a) register the food vending machine in the name of each person who he is satisfied is sharing or is intended to receive or share the profits or proceeds of the sale of food from the machine;
  - (b) refuse to register the machine; or
  - (c) exempt the machine from registration.
- (9) For the purposes of this Act, food sold by means of a food vending machine shall be deemed to be sold by the person in whose name it is registered under subsection (8) or, if it is not so registered or is exempted under that subsection, by the person last servicing the machine, and shall be deemed to have been sold on the day when and at the place where the food was received by the purchaser.
- (10) Where, by or under this Act, the purchaser of food, whether for analysis or otherwise, is required or authorized to give or to deliver to a person a notice or a part of a sample of such food and the food was sold to the purchaser by means of a food vending machine, such notice or part shall be deemed to be sufficiently given or delivered if the notice or part is given or delivered, either personally or by registered post, to a person who is registered under subsection (8) in respect of the machine or, if it is not so registered or is exempted under that subsection, to the person last servicing the machine.

## **Part IV                      Samples and analysis, &c.**

### **14                      Appointment of analysts**

- (1) The Minister may, by notice in the *Gazette*, appoint a person to be an analyst for the purposes of this Act.
- (2) In proceedings for an offence against this Act, a certificate purporting to be signed by the Minister stating that:
  - (a) a person named in the certificate was, on a specified date, an analyst; and



- (b) the appointment of that analyst was a general appointment or that the appointment was for a stated purpose,

is conclusive evidence of the facts so stated.

## **15 Duties of analyst**

- (1) Where food is submitted under this Act for analysis, the analyst shall:

- (a) analyse the food himself; or
- (b) direct the analysis of the food by another person, which analysis shall be deemed to have been carried out by the analyst,

and the analyst shall make out a certificate in the prescribed form giving the result of the analysis.

- (2) Where a method has been prescribed for the analysis of a class of food submitted under this Act for analysis, the analyst shall analyse the food in accordance with that prescribed method.

## **16 Obtaining samples for analysis**

- (1) In obtaining a sample of food under section 8(2)(c), an authorized officer shall:

- (a) subject to subsection (4), pay, or tender payment of, an amount equal to the current market value of the sample to the person from whom the sample is obtained; and
- (b) before or as soon as practicable after obtaining the sample, inform the proprietor of the food premises or food vehicle of the authorized officer's intention to have the sample analysed.

- (2) An authorized officer may, for the purpose of enabling him to exercise the power conferred by section 8(2)(c), require the person having charge of the food to present and permit the inspection of a package containing the food and to take from the package the sample demanded.

- (3) An authorized officer, in obtaining a sample of food which is in an unopened package (not being a package containing 2 or more other packages containing the food), shall not, without the permission of the person having charge of the food, obtain less than the whole of the contents of the package.

- (4) Where an amount has been prescribed as the amount to be paid or tendered as payment for a sample of food, it shall not be necessary for an authorized officer to pay, or tender payment of, a higher amount for the sample.
- (5) Where an authorized officer obtains a sample of food from a food vending machine and no person on the premises or vehicle in or on which the machine is situated admits to being the owner or in charge of the machine, the authorized officer may, if he has properly paid for the sample, obtain the whole sample without following the procedure prescribed in subsection (1) and, if the sample is obtained for analysis, he shall mark, fasten and seal the sample in such manner as its nature will permit and retain it for analysis.
- (6) The obtaining under section 8 (2)(c) of a sample of food by an authorized officer shall, in proceedings for an offence of selling food in contravention of this Act, be deemed to be a sale of the food.

## **17 Procedure for taking samples**

- (1) Where the Regulations prescribe the number of samples to be taken under section 8(2)(c) by an authorized officer in relation to the class of food concerned, he shall take or purchase the prescribed number of samples and deal with them as prescribed.
- (2) Subject to subsection (3), where the Regulations do not prescribe the number of samples to be taken in relation to the class of food concerned or the type of analysis proposed to be carried out and an authorized officer takes or purchases a sample of food in accordance with section 16 with the intention that it be submitted for analysis, he shall:
  - (a) divide the sample into 3 parts and mark, fasten and seal each part in such manner as its nature will permit;
  - (b) leave one part with the proprietor of the food premises or food vehicle or person from whom the sample was obtained;
  - (c) retain one of the remaining parts for analysis; and
  - (d) retain the other remaining part for future comparison.
- (3) Where the number of samples to be taken by an authorized officer is not prescribed and if the division of a sample into 3 separate parts as required by subsection (2) would, in the opinion of the authorized officer:
  - (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis;

- (b) furnish parts insufficient for accurate analysis; or
- (c) render the sample in any other way unsuitable for analysis,

he shall take such number of samples as he considers necessary and shall deal with them in a manner appropriate in the circumstances.

- (4) Where a sample of food is taken by an authorized officer in the form of separate or severable objects, it shall not be necessary for the authorized officer in dividing the sample into parts pursuant to this section to divide any one of those objects and the authorized officer shall be deemed to have complied with this section if he takes a number of such objects, divides the number so taken into the requisite number of parts so that each part consists of one or more such separate or severable objects and deals with the parts in accordance with subsection (1), (2) or (3), as the case requires.
- (5) An authorized officer shall have complied with this section notwithstanding the failure by the proprietor of the food premises, or food vehicle, or person from whom the sample was obtained, to accept a part or parts to be delivered to him in accordance with this section.
- (6) A sample shall be delivered to an analyst either personally or by sending it by registered post in a sealed package addressed to the analyst at his usual place of business.

## **18 Evidence in relation to sample**

Where an authorized officer, in proceedings for an offence against this Act, has given evidence of having:

- (a) placed a part of a sample taken in accordance with section 17 in a container or package;
- (b) sealed or fastened and marked, in the prescribed manner, the container or package;
- (c) endorsed the prescribed particulars on the approved form accompanying the container or package;
- (d) packed the container in a particular manner; and
- (e) delivered the container or package, in accordance with section 17(6), to an analyst,

a certificate produced by the authorized officer signed by the analyst stating that:

- (f) the analyst received in good order the container or package addressed to him;
- (g) the container or package was packed in the same manner as stated by the authorized officer;
- (h) the container or package contained the part of the sample of the same nature as that sent by the authorized officer; and
- (j) the part of the sample was in a container or package sealed or fastened and marked in the same manner as that stated by the authorized officer,

is evidence:

- (k) of the facts stated in the certificate;
- (m) that the container or package received by the analyst was the same container or package as that sent by the authorized officer and was not broken into or interfered with in transit; and
- (n) that the part of the sample received by the analyst was the part of the sample sent to the analyst by the authorized officer.

## **19 Person may require sample taken**

- (1) The Chief Health Officer may, when requested by a person tendering the prescribed fee, direct an authorized officer to take a sample of food and submit the sample for analysis and the authorized officer shall comply with that direction.
- (2) Unless the Chief Health Officer otherwise directs, the cost of the analysis of a sample of food taken under this section shall be borne by the person requesting it.
- (3) A sample to be taken as the result of a request made under subsection (1) shall be taken in accordance with section 17 and dealt with in the prescribed manner.

## **20 Analyst to analyse sample and make report**

- (1) Subject to subsection (2), where an analyst receives a sample of food sent to him under this Act for analysis, he shall as soon as practicable after receiving it carry out an analysis of the food contained in the sample.

- (2) Where a particular method of analysis of food or a class of food has been approved, an analyst shall, in his analysis of that food, adopt that approved method of analysis.
- (3) As soon as practicable after carrying out an analysis of food under subsection (1), an analyst shall give to the Chief Medical Officer a written report of the analysis, dated and signed, in which he shall set out his findings and the method of analysis adopted by him in arriving at those findings.
- (4) Where:
  - (a) a particular method of analysis of food or class of food has been approved; and
  - (b) an analyst, in carrying out an analysis of the food or the food of that class for the purposes of this Act, has not adopted that approved method of analysis,

the report of the analysis of that food shall be deemed not to be a report of analysis for the purposes of this Act.

## 21 Use of report of analysis

- (1) Subject to section 20(4) and subsection (2), the production in any legal proceedings of a document purporting to be a report of analysis is, without proof of the signature of the person appearing to have signed it, evidence of the matters stated in that document.
- (2) Subsection (1) shall not apply where:
  - (a) the person (in this section called ***the prosecutor***) intending to rely on the production of the document has not, at the time of service of the instrument originating the proceedings, served the defendant with a copy of the document; or
  - (b) the defendant has, at least 7 days before the return date of the instrument originating the proceedings given to the prosecutor notice in writing personally or by post that he requires the analyst to attend as a witness.
- (3) Notwithstanding a failure to comply with subsection (2), the court hearing the proceedings may:
  - (a) allow a report of analysis to be admitted in evidence at any time during the proceedings; or
  - (b) extend the time for giving a notice under subsection (2)(b),

and may, for those purposes, adjourn the hearing on such terms as it thinks fit.

- (4) The court may, in addition to any other order as to costs, order a defendant who gives notice under subsection (2)(b) to pay so much of the expense of the prosecutor involved in and incidental to having the analyst attend before the court as a witness as it thinks fit.
- (5) Service of a copy of a report of analysis shall be proved in the same manner as service of a summons is proved in the court hearing the proceedings.

## **22 Supply of results of analyses**

Where an authorized officer submits food to an analyst for analysis the Minister shall supply, on demand and on payment of the prescribed fee, a copy of the certificate referred to in section 15 to the person from whom the food was taken or obtained or to the manufacturer, packer or importer of the food or the agent of the manufacturer.

## **23 Use of results of analyses for certain purposes prohibited**

A person who, for the purposes of trade or advertisement, uses in whole or in part a copy of the certificate of the result of an analysis is guilty of an offence.

Penalty: \$1,000.

## **Part V Seizure of articles, &c.**

### **24 Duties of authorized officers**

Where an article is seized and detained under section 8 by an authorized officer, the authorized officer shall, as soon as practicable in the prescribed form:

- (a) give notice of the seizure and detention to the person apparently in charge of it;
- (b) where there is no person apparently in charge of the article and the name and address, in the Territory, of a person appearing to the authorized officer to be the consignor or owner of it is set out on or attached to the article or a package containing the article, give notice of the seizure and detention to the consignor or owner; or

- (c) in any other case, give notice of the seizure and detention to the importer, consignee or agent of the article or to his agent if the name and address of such importer, consignee or agent is known to the authorized officer.

## **25 Removal of seized articles**

An article seized and detained or obtained under this Act may, at the direction of an authorized officer:

- (a) be kept or stored in or on the premises, vehicle or other place where it was seized and detained or obtained; or
- (b) be removed to such other place as the authorized officer thinks fit.

## **26 Remedies in respect of articles seized**

- (1) Where an article is seized and detained under section 8 by an authorized officer, the person from whom the article has been seized, or his agent or the consignor or the importer, may, within 72 hours after the seizure, make application in the prescribed form to a court for an order directing the authorized officer to release the article seized by him.
- (2) A person who makes an application under subsection (1) shall promptly give a copy of his application to the Chief Health Officer.
- (3) Where an application:
  - (a) has not been made under subsection (1) within the time referred to in that subsection; or
  - (b) has been properly made under that subsection but has been refused,

the article seized shall become the property of the Territory and, subject to section 27, shall be disposed of as the Minister directs.

## **27 Destruction of certain articles**

Notwithstanding section 26, where an authorized officer has, under this Act, seized food and:

- (a) the owner consents to the destruction of the food; or
- (b) the food is, in the opinion of the officer, decayed, deteriorated or putrefied,

the officer may:

- (c) destroy the food; or
- (d) if the owner of the food or the person in whose possession the food was at the time of seizure so requests, allow the owner or person, as the case may be, to destroy the food subject to such conditions (if any) as the officer stipulates.

## **28 Costs of destruction or storage**

(1) Where an article is seized under this Act and:

- (a) no application for its release is made under section 26(1); or
- (b) the owner consents to its destruction,

the owner of the article at the time of its seizure or, where the article is at the time of its seizure in the possession of a person who is not the owner and the identity of the owner is not known by the authorized officer, the person in whose possession the article is when seized, is liable for the costs and expenses incurred in the disposal, storage or destruction of that article.

(2) Where an application is made under section 26(1), the court may make such order in respect of the costs and expenses of the storage of the article seized or, if food is destroyed under section 27, the costs and expenses of any storage of the food seized and of its disposal, as it thinks fit.

## **29 Power of court to order forfeiture**

(1) Where a person has been found guilty of an offence against this Act the court before which the offence is proven before which the offence is proven may order that the article by means of or in relation to which the offence was committed or an article of a similar nature which is owned by or is in the possession of the defendant be forfeited and, on such order being made, the article shall be forfeited to the Territory and disposed of as the Minister directs.

(2) In addition to the powers conferred by subsection (1), the court may, subject to subsection (3), on the application of an authorized officer and on such notice being given to such persons as the court directs, order that an article of a nature similar to that of an article seized under this Act by the authorized officer under this Act which is found with the article so seized, be forfeited and, on such order being made, the article shall be forfeited to the Territory and disposed of as the Minister directs.



- (3) The court may not, under this section, order the forfeiture of an article unless it is satisfied that the article is one by means of or in relation to which this Act has been contravened.

## **Part VI            Offences, &c.**

### **Division 1        Offences**

#### **30            Sale of certain food**

A person who sells food that is unfit for human consumption or food that is adulterated is guilty of an offence.

Penalty:        \$2,500.

#### **31            Preparation of certain food**

A person who prepares for sale food that is unfit for human consumption or food that is adulterated is guilty of an offence.

Penalty:        \$5,000.

#### **32            Packing of certain food**

A person who packs for sale food that is unfit for human consumption or food that is adulterated is guilty of an offence.

Penalty:        \$2,500.

#### **33            Preparation of food not according to standard**

A person who prepares for sale food that does not comply with the standard prescribed for it by or under this Act is guilty of an offence.

Penalty:        \$3,000.

#### **34            False labelling of certain food**

A person who sells food which bears or has attached to it, or is contained in a package which bears or has attached to it, a name prescribed by or under this Act for a food for which there is a standard prescribed or which is otherwise designated or represented as being a food for which a standard is prescribed, and the food does not comply with the standard prescribed for that food, is guilty of an offence.

Penalty:        \$2,000.

**35            Protection of purchasers**

- (1) A person who sells food which is not of a nature, substance or quality demanded by the person purchasing the food is guilty of an offence.

Penalty:        \$2,000.

- (2) Where a person demands food by a name prescribed by or under this Act for a food for which there is a standard prescribed, he shall be deemed to have demanded food which complies with that standard.

**36            False packaging and labelling**

- (1) A person who packages or labels food in a manner that is false or misleading in a material particular or that is deceptive is guilty of an offence.

Penalty:        \$3,000.

- (2) A person who sells food which has been packaged or labelled in a manner that is false or misleading in a material particular or that is deceptive is guilty of an offence.

Penalty:        \$2,500.

**37            False advertising**

- (1) Subject to subsection (2), a person who, for the purpose of effecting or promoting the sale of food, publishes or causes to be published an advertisement which is false or misleading in a material particular or that is deceptive is guilty of an offence.

Penalty:        \$3,000.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:

- (a) he did not publish or cause to be published the advertisement;
- (b) he did not know and could not, with reasonable diligence, have ascertained that the advertisement was of a character referred to in that subsection; or
- (c) being a person whose business it is to publish or to arrange for the publication of advertisements, he received the advertisement for publication in the ordinary course of business and did not himself make or cause to be made a material alteration in the substance of the advertisement.

**38            Dispatch of certain food**

A person who, in or from the Territory, sells food which is to be dispatched outside the Territory and which is food:

- (a) of the condition referred to in section 30; or
- (b) packaged or labelled contrary to or not in compliance with this Act,

whether the actual sale is effected or is to become effective in the Territory or elsewhere, is guilty of an offence.

Penalty:        \$2,500.

**39            Obstruction of authorized officers**

A person who:

- (a) except with the authority of an authorized officer or pursuant to an order of a court, removes, alters or interferes with an article seized and detained under this Act;
- (b) except with the authority of an authorized officer or pursuant to an order of a court, erases, alters, opens, breaks or removes a mark, seal or fastening placed under this Act by an authorized officer on an article other than a part or parts of a sample or an object or package left by the officer with a person from whom a sample was obtained;
- (c) except with the authority of an authorized officer or pursuant to an order of a court, erases, alters, opens, breaks or removes a mark, seal or fastening placed under this Act by an authorized officer on a door, gate or opening affording access to an article to which this Act applies;
- (d) refuses to sell to an authorized officer or to allow him to take a sample of food in such quantity as he reasonably requires;
- (e) refuses to allow an authorized officer to take a sample of an article referred to in section 8(2)(c) in such quantity as he reasonably requires;
- (f) except with the authority of an authorized officer or pursuant to an order of a court, removes, alters or interferes with a sample or a thing or matter taken by an authorized officer pursuant to section 8(2)(j);
- (g) refuses or neglects to give an authorized officer assistance which the officer reasonably requires him to give or fails to

furnish the officer with such information as the officer reasonably requires or fails to produce or to permit the officer to examine and make copies of and extracts from books, documents or other records which the officer reasonably requires to be produced or to examine or make;

- (h) knowingly makes a false or misleading statement either orally or in writing to an authorized officer in the exercise of his powers or in the discharge of his duties under this Act;
- (j) assaults, intimidates, obstructs or attempts to obstruct an authorized officer in the exercise of his powers or in the discharge of his duties under this Act;
- (k) uses threatening, abusive or insulting language to an authorized officer in the exercise of his powers or in the discharge of his duties under this Act; or
- (m) upon demand by an authorized officer to state his name and address refuses to do so or states a false name or address,

is guilty of an offence.

Penalty:        \$1,000.

**40            Secrecy**

- (1) Subject to subsection (2), a person shall not disclose information or publish a document or part of a document obtained by him in connection with the administration of this Act unless the disclosure or publication is made:
  - (a) with the consent of the person from whom the information or document was obtained;
  - (b) in connection with the administration of this Act; or
  - (c) for the purposes of legal proceedings arising out of this Act or a report of such proceedings.

Penalty:        \$2,000.

- (2) An authorized officer may, when so authorized generally or in a particular case by the Minister, communicate information which comes to his knowledge in the exercise of his powers or in the discharge of his duties under this Act to such authority administering a corresponding law as the Minister specifies.

**41            General penalty**

A person who contravenes or fails to comply with this Act is guilty of an offence and, where no other penalty is by this Act expressly provided, liable to a penalty of \$2,000.

**42            Regulatory offences**

An offence against section 10(1), 11(7), 13(2), 13(4), 23, 30, 31, 33, 34, 35(1), 36(1), 36(2), 39, 40(1), 54(2) or 55(2) is a regulatory offence.

**Division 2            Liability in respect of offences, &c.**

**43            Defence in relation to food for export**

It shall be a defence to a prosecution for an offence against section 10, 30, 31, 32, 33 or 38 or a regulation made for the purposes of section 10(c) for the defendant to prove that:

- (a) the food in respect of which a charge is brought is to be exported out of Australia; and
- (b) the sale, preparation, packing or labelling of the food complies with the laws in force in the country to which that food is to be exported at the time at which it is exported.

**44            Liability of defendant**

- (1) Except as otherwise expressly provided in this Act, every person guilty of an offence under this Act shall, in addition to a penalty for that offence, be liable for the costs or expenses incurred in:
  - (a) the taking of proceedings in respect of the offence; and
  - (b) the examination, seizure, analysis or disposition of any thing in respect of which the proceedings are taken.
- (2) Where a person is found guilty of an offence against this Act in respect of food and a court is of the opinion that:
  - (a) the food has been so adulterated as to be injurious to health; or
  - (b) the offence was committed wilfully or by the culpable negligence of the person found guilty,

that person shall be liable, in addition to or instead of any other penalty, to a penalty of \$5,000.

**45            Offence by bodies corporate, &c.**

- (1) Where a body corporate is guilty of an offence against this Act, an officer of the body corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence.
- (2) For the purposes of this section, **officer**, in relation to a body corporate, includes:
  - (a) a director, secretary, executive officer or employee of the body corporate;
  - (b) a receiver, or a receiver and manager, of the property, or part of the property, of the body corporate;
  - (c) an office manager or a deputy office manager of the body corporate;
  - (d) a liquidator of the body corporate; and
  - (e) a trustee or other person administering a compromise or arrangement made between the body corporate and its creditors.

**46            Liability of person named on package**

Where an offence against this act is committed in respect of food in a package, a person who appears from a statement on the package or on a label attached to the package to have imported, manufactured or prepared the food or to have packed it shall, unless it is proved to the contrary, be presumed to have imported, manufactured, or prepared the food or to have had it packed, as the case may be.

**47            Contravention due to act of another person**

- (1) Subject to subsection (2), where a person is prosecuted for an offence against this Act he shall be entitled to have another person to whose act or default he alleges that the contravention in question was due brought before the court in the proceedings.
- (2) Subsection (1) shall not apply to or in relation to a prosecution unless the defendant:
  - (a) lays an information against the other person; and
  - (b) has given to the prosecutor not less than 10 days before the day on which the summons is returnable notice of his intention to avail himself of subsection (1).

- (3) In proceedings referred to in subsection (1), if, after the contravention has been proved, the first-mentioned defendant proves that the contravention was due to the act or default of the other person, the other person may be found guilty of the offence and, if the first-mentioned defendant further proves that he has used all due diligence to ensure that the act in question was complied with, he shall be acquitted of the offence.
- (4) Where a defendant avails himself of subsection (1):
- (a) the prosecutor, as well as the person whom the defendant charges with the offence, shall have the right to:
- (i) cross-examine the defendant, if he gives evidence, and any witness called by him; and
- (ii) call rebutting evidence; and
- (b) the court may make such order for the payment of costs as it thinks fit.
- (5) Where it appears to the Minister that an offence has been committed in respect of which proceedings might be taken under this Act against a person and the Minister is reasonably satisfied that the offence was due to an act or default of another person and that the first-mentioned person could establish a defence under subsection (1), the Minister may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person.
- (6) In proceedings taken pursuant to subsection (5), the defendant may be charged with the offence with which the first-mentioned person might have been charged and, on proof that the contravention was due to his act or default, be found guilty of that offence.

## **48            Presumptions**

For the purposes of this Act, food which is:

- (a) sold shall, until the contrary is proved, be presumed to have been sold for human consumption;
- (b) found in a vehicle or on premises or other places used for the sale, preparation, packing, storing, handling, serving, supplying or conveying for sale of food shall, until the contrary is proved, be presumed to be intended for sale for human consumption; and

- (c) found in a vehicle or on premises or other places used for the preparation for sale of food shall, until the contrary is proved, be presumed to be intended to be used in the preparation for sale of food.

#### **49            Certificate of analysis**

- (1) Subject to subsection (2), in proceedings for an offence against this Act a certificate purporting to be signed by a person who claims in the certificate that he carried out a scientific analysis or examination:
  - (a) setting out particulars of his qualifications to carry out that analysis or examination;
  - (b) identifying the thing analysed or examined by him; and
  - (c) giving particulars concerning the analysis or examination that he carried out and stating the conclusions at which he arrived,is evidence of the matters stated in that certificate.
- (2) A certificate may not be tendered in pursuance of subsection (1) without the consent of the person charged with the offence:
  - (a) unless, at least 7 days before the certificate is tendered, the person tendering the certificate serves on the person charged:
    - (i) a copy of the certificate; and
    - (ii) a notice in writing drawing the attention of the person charged to this section, informing him that it is proposed to tender the certificate in evidence in the proceedings and furnishing the name of a person who will accept service of notices and an address for service; or
  - (b) if, within 4 days after being served with a certificate and notice under paragraph (a), the person charged serves on the person referred to in paragraph (a)(ii) a notice in writing that the person charged objects to the certificate being given in evidence.



**50            Order for costs, &c.**

Where a scientific analysis or examination has been carried out for the purpose of proceedings for an offence against this Act, the court may, in addition to any other order as to costs, make such order as it thinks fit:

- (a) as to the payment of the expenses of and incidental to the analysis or examination; and
- (b) where the person charged has served a notice of objection under section 49(2)(b), as to the payment of the expenses of and incidental to the attendance at court of the person who carried out the analysis or examination.

**51            Proceedings for offences**

- (1) Where food has been taken or obtained for analysis pursuant to this Act, a prosecution for an offence against this Act in relation to it shall not be instituted later than 90 days after the day when the food was so taken or obtained or such further period as the court determines upon an application in that behalf.
- (2) In a prosecution for an offence against this Act in relation to food in which an analyst's certificate is to be used the summons shall not be made returnable in less than 14 days after the date on which it was served.
- (3) In a prosecution for an offence against this Act in relation to food, a copy of an analyst's certificate, if any, obtained on behalf of the prosecution shall be served with the summons.

**52            Source of information, &c., not to be disclosed**

- (1) A witness on behalf of a prosecution for an offence against this Act shall not be compelled to disclose the fact that he received information, or the nature of such information or the name of a person who gave such information.
- (2) An authorized officer appearing as a witness in a prosecution for an offence against this Act shall not be compelled to produce reports made or received by him confidentially in his official capacity or containing confidential information.

**53            Complaints to be dealt with summarily**

Except where expressly provided:

- (a) all complaints of and informations for an offence against this Act may be heard and determined summarily; and

- (b) all money, costs and expenses made payable or recoverable as a result of proceedings under the Act are recoverable as a debt due and payable to the Territory.

## **Part VII            Miscellaneous**

### **54            Power of Minister in emergency**

- (1) In an emergency the Minister may, by notice in the *Gazette*:
  - (a) prohibit the production, preparation, sale or supply of food of the class or description specified in the notice;
  - (b) prohibit the production, preparation, sale or supply of food of the class or description specified in the notice other than in accordance with such conditions as are specified in the notice;
  - (c) cause food of the class or description specified in the notice to be destroyed or otherwise disposed of as he thinks fit;
  - (d) cause food of the class or description specified in the notice to be tested or analysed in such place or manner as he may specify; or
  - (e) cause food of the class or description specified in the notice to be held or isolated in a place and prohibit the removal of such food from the place in which it is so held or isolated.
- (2) A person who fails to comply with, or contravenes, a notice under subsection (1) is guilty of an offence.

Penalty:        \$3,000.

### **55            Cultivation of food may be prohibited**

- (1) Where the Minister is of the opinion that food or food of a specified class or description if cultivated, taken, harvested or otherwise obtained from a specific area may be dangerous or injurious to persons consuming that food he may, by notice in the *Gazette*, prohibit the cultivation, taking, harvesting or obtaining of the food from that area.
- (2) A person shall not cultivate, take, harvest or obtain food from an area to which a notice under subsection (1) applies unless he first obtains the written approval of the Minister.

Penalty:        \$5,000.

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**56 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made:
  - (a) prescribing standards for food or food of a specified class or description;
  - (b) providing for the licensing of persons and the registration of premises, vehicles and appliances for specified purposes;
  - (c) requiring approval of premises, appliances, methods, processes, packages, seals or closures and sources of water;
  - (d) providing for the giving, service and enforcement of directions or notices for the rectification of acts or omissions in contravention of this Act;
  - (e) prohibiting the addition to, or mixing with, or use in the preparation of, or presence in food generally or food of a specified class or description, of a specified substance or a specified substance exceeding a prescribed quantity or proportion;
  - (f) prescribing the quantity or proportion of a specified substance which is the quantity or proportion, or the maximum or minimum quantity or proportion, which shall or may be added to, mixed with or used in the preparation of or present in food generally or food of a specified class or description;
  - (g) prohibiting in the sale, preparation, packing, storing, handling, serving, supplying or conveying for sale of food or food of a specified class or description the use of appliances or materials containing a specified substance or a substance exceeding a specified proportion;
  - (h) prescribing or prohibiting specified modes of preparation of food or food of a specified class or description;
  - (j) prescribing methods of analysis to be observed;
  - (k) prescribing qualifications for authorized officers;

- (m) prescribing that a specified food shall be packed in a specified manner;
- (n) prohibiting a manner of packing food;
- (p) requiring advertisements relating to food or to food of a specified class or description to contain specified words, or specified pictorial representations or designs, or prohibiting the use of specified words or words having the same or a similar effect or representations or designs of a similar nature, in advertisements;
- (q) prescribing the manner of labelling food generally or food of a specified class or description or packages of food generally or food of a specified class or description, the forms or kinds of labels, the matter to be contained in such labels, including specified words, statements, expressions, pictorial representations or designs of a specified kind, the size, style or colour of such matter or the nature or colour of the background on which it appears or prohibiting the use of specified words, or words having the same or similar effect or representations or designs of a similar nature, in labels;
- (r) requiring notices containing specified words, or specified pictorial representations or designs to be affixed to food vending machines or prohibiting the use in such notices of specified words or words having the same or a similar effect or representations or designs of a similar nature;
- (s) exempting food, or a package of food, of a specified class or description from a provision of this Act or the Regulations in relation to labelling;
- (t) requiring and providing for the recalling, destruction or denaturation of food which is adulterated and specifying circumstances in which such food shall be recalled, destroyed or denatured;
- (u) prohibiting the sale of food generally or food of a specified class or description containing a micro-organism of a specified kind or containing a micro-organism of a specified kind in excess of a specified number in a specified quantity;
- (w) prescribing the methods of sampling and dealing with samples obtained for analysis;
- (y) requiring notices containing specified words, or words having the same or a similar effect, or specified pictorial representation and designs to be affixed to vehicles used in the selling, preparing, packing, storing, handling, serving,

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supplying or conveying for sale of food or food of a specified class or description or prohibiting the use in such notices of specified words, or words having the same or a similar effect or specified pictorial representations and designs;

- (z) prescribing rates of payment for samples of food;
- (za) requiring the proprietor, manager or person in charge of premises, food premises, a food vehicle or vehicle in which food is sold, prepared, packed, stored, handled, served, supplied or conveyed for sale to keep such books or other records as may be prescribed;
- (zb) prescribing the mode of storing or conveying for sale of food or food of a specified class or description;
- (zc) prescribing the minimum size of and the packing required for an article not being food which is included in a package of food;
- (zd) prescribing the temperature at which food or food of a specified class or description which is stored or conveyed for sale shall be kept;
- (ze) requiring that food or food of a particular class, which is not contained in a package, displayed for sale shall be displayed in conjunction with a notice or label bearing prescribed information;
- (zf) prescribing the number of samples to be taken and the manner of dealing with such samples;
- (zg) providing for securing the wholesomeness, cleanliness and freedom from adulteration of food and securing the cleanliness of premises, food premises, a food vehicle or vehicle in which food is sold, prepared, packed, stored, handled, served, supplied or conveyed for sale;
- (zh) requiring laboratory and testing facilities to be provided at premises where food is prepared for sale and prescribing procedures and facilities to be used for the testing and examination of such food and notification of the results thereof;
- (zj) providing for:
  - (i) the standard of cleanliness of premises, food premises, food vehicles or vehicles in which food is sold, manufactured, prepared, packed, stored, handled, served, supplied or conveyed for sale;

- (ii) the standard of cleanliness of fittings, fixtures or appliances in premises, food premises, food vehicles or vehicles referred to in subparagraph (i);
  - (iii) the provision and proper use of satisfactory facilities in premises, food premises, food vehicles or vehicles referred to in subparagraph (i) for protecting food;
  - (iv) the construction of premises, food premises, food vehicles and vehicles used for the sale, manufacture, preparation, packing, storing, handling, serving or conveying food for sale;
  - (v) the prohibiting or regulation of the use of a prescribed material or materials of a prescribed class in the manufacture of appliances;
  - (vi) the type of clothing worn by persons in premises, food premises, food vehicles or vehicles referred to in subparagraph (i);
  - (vii) the promotion of hygiene;
  - (viii) the prevention of or minimizing the spread of disease;
  - (ix) the provision and use of fittings and appliances;
  - (x) standards for appliances and for requiring appliances of specified types to be approved by the Minister and prescribing the procedure for obtaining that approval; and
  - (xi) the inspection and testing of appliances;
- (zk) in relation to food vending machines, providing for:
- (i) their location, surroundings and cleanliness;
  - (ii) their manner of construction with particular reference to the provision of means for maintaining cleanliness;
  - (iii) their maintenance and servicing and the keeping of records;
  - (iv) the marking on or affixing of operating instructions and the name, address and other particulars of the person in whose name a food vending machine is registered;
  - (v) control of the temperature of food contained in them;

- (vi) the prevention of the adulteration of food contained in them;
  - (vii) their inspection and the inspection of their contents;
  - (viii) the prohibition of their operation in a faulty condition and rendering them inoperable whilst in a faulty condition;
  - (ix) the prohibition or regulation of the sale or supply from them of goods other than food, or of a kind or description of food, with food of another kind or description; and
  - (x) the prohibition of their use for dispensing foods other than foods which they are designed to dispense;
- (zm) prescribing forms;
- (zn) prescribing the fees and charges to be paid under this Act; and
- (zp) prescribing penalties not exceeding \$5,000 for a breach or contravention of the Regulations.
- (3) The Regulations may adopt wholly or partly or by reference the standards, rules, codes, specifications or methods specified in the Regulations that are:
- (a) recommended or adopted by the Standards Association of Australia;
  - (b) determined by the National Health and Medical Research Council, or the Authority within the meaning of the *Australia New Zealand Food Authority Act 1991* of the Commonwealth, and approved by the Council within the meaning of that Act, and as published in the Commonwealth of Australia *Gazette* at a particular time or as published from time to time; or
  - (c) prescribed or published under a corresponding law relating to the matter dealt with by the Regulations.

## Part VIII            Miscellaneous

### 57            Transitional

- (1) In this section, **repealed laws** means the *Food and Drugs Act*, the *Food and Drugs Regulations* and the *Food Standards Act* as in force immediately before the commencement of this Act.

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- (2) Notwithstanding the repeal of the *Food and Drugs Act* by section 3, the following provisions of that Act shall continue in force as if they were regulations made under this Act, shall be construed as if sections and subsections were regulations and subregulations and may be amended by regulations made under this Act accordingly:
    - (a) sections 5 and 14 to 20;
    - (b) Parts V and VI; and
    - (c) sections 107, 108 and 109.
  - (3) The Regulations referred to in subsection (2) may be cited as the *Food (Interim Provisions) Regulations*.
  - (4) A person who, immediately before the commencement of this Act was an authorized officer or an analyst under the repealed laws is an authorized officer or analyst respectively under this Act.
  - (5) The requirement in section 13(3) relating to the registration of certain food vending machines shall not apply to a person servicing, selling or permitting the sale of food by means of a food vending machine as at the commencement of this Act until the expiry of the period of 6 months after that commencement.

## **58       Weights and Measures (Date-Marking of Pre-packaged Foods) Regulations**

- (1) The *Weights and Measures (Date-Marking of Pre-Packaged Foods) Regulations* (comprising Regulations 1982, No. 34 and 1982, No. 68 and section 56 of the *Criminal Law (Regulatory Offences) Act 1983* and referred to in this section as **the Regulations**) made under the *Weights and Measures (Packaged Goods) Act* and in force immediately before the commencement of this Act shall, on the commencement, be deemed to have been made under this Act, and shall be construed as if the reference:
  - (a) in regulation 3 to the *Food and Drugs Act* were to this Act;
  - (c) to the Superintendent were to the Chief Health Officer; and
  - (d) in regulations 10 and 13 to an inspector were to an authorized person.
- (2) Any action or proceedings taken in respect of any matter arising under the Regulations before the commencement of this Act, but not completed or determined as at the commencement, shall be completed and determined as if this section had not been passed.



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**Schedule Repealed Acts**

section 3

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| Short title                                      | Number and year |
|--|-----------------|
| <i>Food and Drugs Ordinance 1936</i>             | No. 13, 1936    |
| <i>Food and Drugs Ordinance 1954</i>             | No. 19, 1954    |
| <i>Food and Drugs Ordinance 1957</i>             | No. 6, 1957     |
| <i>Food and Drugs Ordinance 1959</i>             | No. 17, 1959    |
| <i>Food and Drugs Ordinance 1968</i>             | No. 5, 1968     |
| <i>Food and Drugs Ordinance 1969</i>             | No. 52, 1969    |
| <i>Food and Drugs Act 1979</i>                   | No. 44, 1979    |
| <i>Food and Drugs Amendment Act 1981</i>         | No. 106, 1981   |
| <i>Food and Drugs Amendment Act (No. 2) 1981</i> | No. 5, 1982     |
| <i>Food and Drugs Amendment Act 1983</i>         | No. 73, 1983    |
| <i>Food Standards Act 1979</i>                   | No. 45, 1979    |
| <i>Food Standards Amendment Act 1981</i>         | No. 107, 1981   |

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**ENDNOTES**
**1 KEY**

Key to abbreviations

amd = amended od = order  
 app = appendix om = omitted  
 bl = by-law pt = Part  
 ch = Chapter r = regulation/rule  
 cl = clause rem = remainder  
 div = Division renum = renumbered  
 exp = expires/expired rep = repealed  
 f = forms s = section  
 Gaz = Gazette sch = Schedule  
 hdg = heading sdiv = Subdivision  
 ins = inserted SL = Subordinate Legislation  
 lt = long title sub = substituted  
 nc = not commenced

**2 LIST OF LEGISLATION*****Food Act 1986 (Act No. 45, 1986)***

Assent date 21 October 1986  
 Commenced 1 June 1988 (*Gaz G22*, 1 June 1988, p 4)

***Statute Law Revision Act (No. 2) 1987 (Act No. 59, 1987)***

Assent date 31 December 1987  
 Commenced 31 December 1987

***Food Amendment Act 1990 (Act No. 60, 1990)***

Assent date 14 December 1990  
 Commenced 31 May 1991 (s 2, s 2 *Trade Measurement Administration Act 1990* (Act No. 41, 1990 and *Gaz S27*, 31 May 1991)

***Statute Law (Miscellaneous Amendments) Act 1991 (Act No. 77, 1991)***

Assent date 16 December 1991  
 Commenced 16 December 1991

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
 Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz S15*, 13 June 1996)

***Statute Law Revision Act 1997 (Act No. 17, 1997)***

Assent date 11 April 1997  
 Commenced 1 May 1997 (*Gaz G17*, 30 April 1997, p 2)

**3 LIST OF AMENDMENTS**

s 4 amd No. 17, 1997, s 17  
 s 11 amd No. 17, 1997, s 17  
 s 13 amd No. 17, 1997, s 17  
 s 19 amd No. 17, 1997, s 17

## ENDNOTES

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- s 26            amd No. 17, 1997, s 17
- s 29            amd No. 17, 1996, s 6
- s 44            amd No. 17, 1996, s 6
- s 47            amd No. 17, 1996, s 6
- s 56            amd No. 59, 1987, s 3; No. 77, 1991, s 13; No. 17, 1997, s 9
- s 58            amd No. 60, 1990, s 3; No. 17, 1997, s 17