

NORTHERN TERRITORY OF AUSTRALIA

FOOD ACT 2004

As in force at 1 May 2016

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NORTHERN TERRITORY OF AUSTRALIA

As in force 1 May 2016

FOOD ACT 2004

An Act providing for the safety and suitability of food for human consumption and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Food Act 2004*.

2 Commencement

The provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3 Objects

The objects of this Act include the following:

- (a) to ensure food for sale is both safe and suitable for human consumption;
- (b) to prevent misleading conduct in connection with the sale of food;
- (c) to provide for the application of the Food Standards Code in the Territory.

4 Application of Act to primary food production

- (1) Parts 7, 9 and 10 do not apply to or in respect of primary food production.
- (2) The functions conferred on authorised officers by Parts 6 and 8 may only be exercised in respect of primary food production:
 - (a) to enable the investigation and prosecution of offences against this Act or the Regulations; or

(b) in connection with making or enforcing emergency orders.

Note: The definition of **food business** excludes primary food production.

5 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 2 Interpretation

6 Definitions

In this Act, unless the contrary intention appears:

advertisement means:

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

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

analysis means an analysis for the purposes of this Act and includes any examination or testing of food or any other matter or substance.

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

approved analyst means a person approved to carry out analyses under Part 8, Division 3.

approved form means a form approved from time to time by the Chief Health Officer.

authorised officer means a person appointed under Part 4, Division 3.

chief executive, in relation to an enforcement agency, means:

- (a) if the enforcement agency is a body – the person responsible for the daily conduct of the affairs of the enforcement agency; or
- (b) if the enforcement agency is a natural person – that person.

emergency order means an order made under Part 5.

enforcement agency means:

- (a) the Chief Health Officer; or
- (b) a person or body appointed to be an enforcement agency under section 33.

equipment means the whole or part of:

- (a) any utensil, machinery, instrument, device, apparatus or appliance that is used, or that is designed or intended for use, in or in connection with the handling of food; or
- (b) any substance, utensil, machinery, instrument, device, apparatus or appliance that is used, or that is designed or intended for use, in cleaning anything referred to in paragraph (a).

examine includes weigh, count, test or measure.

food has the meaning in section 7.

food business has the meaning in section 8.

food safety auditor means a person approved under the Regulations to carry out audits of food safety programs and assessments of food businesses.

food safety program has the same meaning as in Standard 3.2.1 of the Food Standards Code.

Food Safety Standards means the standards contained in Chapter 3 of the Food Standards Code.

Food Standards Australia New Zealand has the same meaning as in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth.

Food Standards Code means the Australia New Zealand Food Standards Code within the meaning of the *Food Standards Australia New Zealand Act 1991* of the Commonwealth.

food transport vehicle means a vehicle used for the transport of food for sale.

handling, in relation to food, includes making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving and displaying food.

improvement notice means an improvement notice issued under section 100.

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

package includes any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packed and, if food is carried or sold or intended to be carried or sold in more than one package, includes every such package.

premises includes:

- (a) land (whether or not vacant);
- (b) the whole or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature);
- (c) a pontoon; and
- (d) a vehicle (other than a food transport vehicle that is engaged in the transport of food).

primary food production has the meaning in section 9.

prohibition order means a prohibition order issued under section 104.

proprietor, in relation to a food business, means:

- (a) the person carrying on the food business; or
- (b) if that person cannot be identified – the person in charge of or apparently in charge of the food business.

recall order means an emergency order that requires a person or a class of persons to recall or dispose of food.

registered food business means a food business in respect of which registration has been granted under section 72 or renewed under section 75.

registration, in relation to a food business, means registration granted under section 72 or renewed under section 75.

sell includes:

- (a) barter, offer or attempt to sell;
- (b) receive for sale;
- (c) have in possession for sale;
- (d) display for sale;
- (e) cause or permit to be sold or offered for sale;
- (f) send, forward or deliver for sale;
- (g) dispose of by any method for valuable consideration;
- (h) dispose of to an agent for sale on consignment;
- (i) provide under a contract of service;
- (j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work;
- (k) dispose of by way of raffle, lottery or other game of chance;
- (l) offer as a prize or reward;
- (m) give away for the purpose of advertisement or in furtherance of trade or business;
- (n) supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment;
- (o) supply food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions; and
- (p) sell for the purpose of resale.

unsafe has the meaning in section 10.

unsuitable has the meaning in section 11.

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

7 **Meaning of food**

(1) In 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);
- (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 referred to in paragraph (a);
- (c) any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid;
- (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; and
- (e) any substance or thing declared to be a food under a declaration in force under section 3B of the *Food Standards Australia New Zealand Act 1991* of the Commonwealth;

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* of the Commonwealth.
- (3) To avoid doubt, **food** may include live animals or plants.

8 **Meaning of food business**

In this Act:

food business means a business, enterprise or activity (other than a business, enterprise or activity that is primary food production) that involves:

- (a) handling food intended for sale; or
- (b) selling food,

regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves handling or selling food on one occasion only.

9 Meaning of *primary food production*

(1) In this Act:

primary food production means growing, raising, cultivating, picking, harvesting, collecting or catching food, and includes the following activities:

- (a) transporting or delivering food on, from or between the premises on which it was grown, raised, cultivated, picked, harvested, collected or caught;
- (b) packing, treating (for example washing) or storing food on the premises on which it was grown, raised, cultivated, picked, harvested, collected or caught;
- (c) storing food in a silo that is not connected with a food processing operation and transporting or delivering food from, between or to such silos;
- (d) selling livestock at saleyards and transporting livestock to and from saleyards;
- (e) any other food production activity that is regulated by or under a prescribed Act.

(2) However, ***primary food production*** does not include:

- (a) a process involving the substantial transformation of food (for example manufacturing or canning), regardless of whether the process is carried out on the premises on which the food was grown, cultivated, picked, harvested, collected or caught;
- (b) selling or servicing food directly to the public; or
- (c) any other prescribed food production activity.

Note: Section 9(2)(c) enables regulations to be made prescribing food production activities that are not included in the definition of primary food production. A regulation might be made, for example, to prescribe a food production activity in relation to which significant and unmanaged food safety hazards have been identified.

10 Meaning of *unsafe* in relation to food

- (1) For the purposes of this Act, food is unsafe at a particular time if it would be likely to cause physical harm to a person who might later consume it, assuming:
 - (a) it was, after that particular time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use;
 - (b) nothing happened to it after that particular time and before being consumed by the person that would prevent it being used for its reasonable intended use; and
 - (c) it was consumed by a person according to its reasonable intended use.
- (2) However, food is not unsafe for the purposes of this Act merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons.
- (3) In subsection (1):
processes includes processes involving storage and preparation.

11 Meaning of *unsuitable* in relation to food

- (1) For the purposes of this Act, food is unsuitable if it is food that:
 - (a) is damaged, deteriorated or perished to an extent that it affects its reasonable intended use;
 - (b) contains any damaged, deteriorated or perished substance that affects its reasonable use;
 - (c) is the product of a diseased animal, or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption; or
 - (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.
- (2) However, food is not unsuitable for the purposes of this Act merely because:
 - (a) at any particular time before it is sold for human consumption it contains an agricultural or veterinary chemical;

- (3) A person must not, in the course of carrying on a food business, sell food that is packaged or labelled in a way that falsely describes the food.

Maximum penalty: If the offender is a natural person –
500 penalty units.

 If the offender is a body corporate –
2 500 penalty units.

Note: Examples of food that is falsely described are contained in section 21.

- (4) Subsections (2) and (3) do not limit the generality of subsection (1).

18 Sale of food not complying with purchaser's demand

- (1) A person must not, in the course of carrying on a food business, supply food by way of sale if the food is not of the nature or substance demanded by the purchaser.

Maximum penalty: If the offender is a natural person –
500 penalty units.

 If the offender is a body corporate –
2 500 penalty units.

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

19 Sale of unfit equipment or packaging or labelling material

- (1) A person must not sell equipment that, if used for the purposes for which it was designed or intended to be used:

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

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

Maximum penalty: If the offender is a natural person –
500 penalty units.

 If the offender is a body corporate –
2 500 penalty units.

- (2) A person must not sell equipment that, if used for the purposes for which it was designed or intended to be used:
- (a) would render, or be likely to render, food unsuitable; or
 - (b) would put other equipment, or would be likely to put other equipment, in such a condition that, if the other equipment were used for the purposes for which it was designed or intended to be used, it would render, or be likely to render, food unsuitable.

Maximum penalty: If the offender is a natural person –
400 penalty units.

 If the offender is a body corporate –
2 000 penalty units.

- (3) A person must not sell packaging or labelling material which, if used for the purposes for which it was designed or intended to be used:
- (a) would render, or be likely to render, food unsafe; or
 - (b) would render, or would be likely to render, food unsuitable.

Maximum penalty: If the offender is a natural person –
500 penalty units.

 If the offender is a body corporate –
2 500 penalty units.

20 Compliance with Food Standards Code

- (1) A person must comply with any requirement imposed on the person by the Food Standards Code in relation to carrying on a food business or to food intended for sale or food for sale.

Maximum penalty: If the offender is a natural person –
500 penalty units.

 If the offender is a body corporate –
2 500 penalty units.

- (2) A person must not sell any food that does not comply with a requirement of the Food Standards Code that relates to the food.

Maximum penalty: If the offender is a natural person –
500 penalty units.

 If the offender is a body corporate –
2 500 penalty units.

- (f) the food is not of the nature or substance represented by the manner in which it is packaged, labelled or offered for sale.
- (2) Without limiting the application of subsection (1) to section 14(2), food is falsely described for that subsection if it is supplied in response to a purchaser's request for a particular type of food, or a food that does not contain a particular ingredient, and the food is not of that type or contains that ingredient.

Division 3 Defences

22 Defence relating to publication of advertisements

- (1) In any proceedings for an offence under this Part in relation to the publication of an advertisement, it is a defence for a person to prove that the person carried on the business of publishing or arranging for the publication of advertisements and that the person published or arranged for the publication of the advertisement in question in the ordinary course of that business.
- (2) Subsection (1) does not apply if the person:
 - (a) should reasonably have known that the publication of the advertisement was an offence;
 - (b) had previously been informed in writing by the Chief Health Officer that publication of such an advertisement would constitute an offence; or
 - (c) is the proprietor of a food business or is otherwise engaged in the conduct of a food business for which the advertisements concerned were published.

23 Defence in respect of food for export

- (1) In any proceedings for an offence under this Part involving a contravention of or failure to comply with a provision of the Food Standards Code in relation to food, it is a defence for a person to prove that:
 - (a) the food in question is to be exported to another country; and
 - (b) the food complies with the laws in force at the time of the alleged offence in the place to which the food is to be exported, being laws that deal with the same subject-matter as the provision of the Food Standards Code concerned.
- (2) This section does not apply to food that was originally intended for export but was sold in the Territory.

24 Defence of due diligence

- (1) In any proceedings for an offence under this Part, it is a defence if it is proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.
- (2) Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved:
 - (a) that the commission of the offence was due to:
 - (i) an act or default of another person; or
 - (ii) reliance on information supplied by another person;
 - (b) that:
 - (i) the person carried out all of the checks of the food concerned as were reasonable in all the circumstances; or
 - (ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person;
 - (c) that the person did not import the food into the Territory from another country; and
 - (d) if the offence involves the sale of food, that:
 - (i) the person sold the food in the same condition as when the person purchased it; or
 - (ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in any contravention of this Act or the Regulations.
- (3) For the purposes of subsection (2)(a), another person does not include:
 - (a) an employee or agent of the defendant; or
 - (b) if the defendant is a body corporate – a director, employee or agent of the defendant.

- (4) Without limiting the ways in which a person may satisfy the requirements of subsection (1) or (2)(b)(i), a person may satisfy those requirements by proving that:
- (a) if the offence relates to a food business for which a food safety program is to be prepared and implemented in accordance with the Regulations – a food safety program that complies with the Regulations has been prepared and implemented for the food business and the person complied with the food safety program; or
 - (b) in any other case – the person complied with a scheme (for example, a quality assurance program or an industry code of practice) that was:
 - (i) designed to manage food safety hazards and based on Australian national or international standards, codes or guidelines designed for that purpose; and
 - (ii) documented in some manner.

25 Defence of mistaken and reasonable belief not available

In any proceedings for an offence under Division 2, it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence.

26 Defence in respect of handling food

In any proceedings for an offence against section 12, 15(1) or 16(1), it is a defence if it is proved that the person caused the food to which the offence relates to be destroyed or otherwise disposed of immediately after the food was handled in the manner that was likely to render it unsafe or unsuitable.

27 Defence in respect of sale of unfit equipment or packaging or labelling material

In any proceedings for an offence under section 19(1) or (2), it is a defence if the person proves that the person reasonably believed that the equipment or material concerned was not intended for use in connection with the handling of food.

Division 4 General

28 Application of provisions outside Territory

For prosecuting an offence against this Part, it does not matter that the food concerned was sold or intended for sale outside the Territory.

Note: Section 23 provides a defence in relation to food intended for export.

29 Alternative verdicts for serious food offences

- (1) On the trial of a person charged with an offence against section 12, the person may be found alternatively guilty of an offence against section 15(1), and the person is liable to punishment accordingly.
- (2) On the trial of a person charged with an offence against section 13, the person may be found alternatively guilty of an offence against section 15(2), and the person is liable to punishment accordingly.

Part 4 Administration

Division 1 Chief Health Officer

30 Powers and functions of Chief Health Officer

- (1) The Chief Health Officer has the powers and functions conferred or imposed on him or her by or under this Act.
- (2) In particular, the Chief Health Officer has the following functions in relation to the administration of this Act:
 - (a) to take measures to ensure that this Act and the Regulations are complied with;
 - (b) to provide advice or recommendations to the Minister concerning possible changes to this Act or the Regulations –
 - (i) that the Chief Health Officer considers appropriate or necessary; or
 - (ii) that are proposed for consideration by Food Standards Australia New Zealand.

31 Delegation

- (1) Subject to this section, the Chief Health Officer may, in writing, delegate all or any of the Chief Health Officer's powers and functions under this Act to:
 - (a) a named person;
 - (b) a person by reference to the office, position or designation held or occupied by the person;
 - (c) a person from time to time holding, acting in or performing the duties of a prescribed office, designation or position;
 - (d) a body corporate;
 - (e) a body politic; or
 - (f) a class of persons or bodies.
- (2) The Chief Health Officer must not delegate the following powers and functions:
 - (a) the power of delegation under subsection (1);
 - (b) a power or function under section 32;
 - (c) a power or function under section 35;
 - (d) a power or function under Part 5;
 - (e) a power or function under Part 8, Division 3.
- (3) A power or function must not be delegated under this section to an enforcement agency or an officer of the enforcement agency unless the enforcement agency consents in writing to the delegation.

32 Exemption from application of Act

- (1) Subject to subsection (2), the Chief Health Officer may exempt:
 - (a) by written notice given to a person – the person or the business the person is carrying on; or
 - (b) by notice in the *Gazette* – a class of persons or businesses,

from the application of this Act, the Regulations or a specified provision of this Act or the Regulations.
- (2) The Chief Health Officer must not exempt a person or class of persons from the application of the provisions of Part 3 or 5.

- (3) An exemption may be subject to the conditions (including the payment of a fee) the Chief Health Officer considers appropriate and specifies in the notice.
- (4) A person must comply with the conditions of an exemption.

Maximum penalty for an offence against subsection (4): If the offender is a natural person – 500 penalty units.

If the offender is a body corporate –
2 500 penalty units.

Division 2 Enforcement agencies

33 Appointment of enforcement agencies

- (1) The Chief Health Officer may, by notice in the *Gazette*, appoint a person or body to be an enforcement agency for the purposes of this Act.
- (2) The appointment of an enforcement agency may be subject to the conditions (if any) that the Chief Health Officer considers appropriate and specifies in the instrument of appointment.
- (3) The instrument of appointment is to describe the role the enforcement agency is expected to have in the administration of this Act.

34 Powers and functions of enforcement agencies

- (1) An enforcement agency has the powers and functions in relation to the administration of this Act that are conferred or imposed on it by or under this Act or are delegated to it under this Act.
- (2) An enforcement agency may exercise its powers and perform its functions under this Act by an authorised officer appointed by the enforcement agency or, in the case of an enforcement agency other than the Chief Health Officer, any other person employed or engaged by the enforcement agency.
- (3) An enforcement agency other than the Chief Health Officer must not delegate a power or function conferred or imposed on it by this Act.

35 Conditions on exercise of powers etc. by enforcement agencies

- (1) The Chief Health Officer may, in writing, impose conditions or limitations on the exercise of a power or the performance of a function by the enforcement agency under this Act.
- (2) Before imposing a condition or limitation under subsection (1), the Chief Health Officer must confer with the enforcement agency regarding the imposition of the condition or limitation.

36 Reports by enforcement agencies

- (1) The chief executive of an enforcement agency must report to the Chief Health Officer on the exercise of the enforcement agency's powers and performance of the enforcement agency's functions under this Act as required by the Chief Health Officer.
- (2) The chief executive of an enforcement agency must report to the Chief Health Officer on any proceedings for an offence against this Act or the Regulations commenced by an authorised officer of the enforcement agency.
- (3) A report under subsection (2) must be given to the Chief Health Officer within one month after the proceedings are finally determined.

Division 3 Authorised officers

37 Appointment of authorised officers

- (1) The Chief Health Officer is an authorised officer.
- (2) The chief executive of an enforcement agency is an authorised officer.
- (3) A member of the Police Force is an authorised officer while exercising the powers and performing the functions imposed on an authorised officer under this Act.
- (4) The Chief Health Officer may, in writing, appoint a person to be an authorised officer.
- (5) Any other enforcement agency that is a body corporate may, in writing, appoint the number of authorised officers it considers necessary for the proper exercise of its powers and performance of its functions for the purposes of this Act.

- (6) A person is not to be appointed an authorised officer unless the person holds qualifications or experience approved in writing by the Chief Health Officer.
- (7) The Chief Health Officer must prepare and maintain a list of the authorised officers he or she appoints.
- (8) Each other enforcement agency must prepare and maintain a list of authorised officers appointed by the enforcement agency.

38 Functions of authorised officers

- (1) An authorised officer, other than the Chief Health Officer, performs functions for the purposes of this Act as directed by the enforcement agency who appointed him or her.
- (2) In performing his or her functions under this Act, an authorised officer acts for and on behalf of the enforcement agency who appointed him or her.

39 Identity cards of authorised officers

- (1) The Chief Health Officer must issue an identity card to each authorised officer he or she appoints.
- (2) Each other enforcement agency must issue an identity card to each authorised officer appointed by it.
- (3) The Chief Health Officer and the chief executive of an enforcement agency must carry an identity card when exercising the powers and performing the functions of an authorised officer.
- (4) An identity card must be in an approved form.
- (5) On an authorised officer being requested to display his or her identity card by:
 - (a) the proprietor of a food business;
 - (b) a person in charge of or apparently in charge of premises where a food business is being conducted and where the authorised officer is performing or about to perform his or her functions; or
 - (c) a person who the authorised officer requires to answer a question, produce a document or other thing or give assistance to the authorised officer,

the authorised officer must display his or her identity card to the person.

- (6) A person who was appointed as an authorised officer by the Chief Health Officer or another enforcement agency must as soon as reasonably possible after ceasing to be an authorised officer return his or her identity card to the Chief Health Officer or other enforcement agency.

Part 5 Emergency powers

40 Application of Part

In the event of an inconsistency between a provision of or under this Part and a provision of or under the *Emergency Management Act 2013*, the provision of or under the *Emergency Management Act 2013* prevails.

41 When emergency order may be made

The Chief Health Officer may make an emergency order under this Part if the Chief Health Officer has reasonable grounds to believe that making the emergency order is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

42 Nature of order

- (1) An emergency order may do one or more of the following:
- (a) require the publication of warnings, in an approved form, that a particular food or type of food is unsafe;
 - (b) prohibit cultivating, taking, harvesting or obtaining, from a specified area, a particular food or type of food or other primary produce intended to be used for human consumption;
 - (c) prohibit a particular food or type of food from being advertised or sold;
 - (d) direct that a particular food or type of food consigned or distributed for sale or sold be recalled and specify the manner in which, and the period within which, the recall must be conducted;
 - (e) direct that a particular food or type of food or other primary produce intended to be used for human consumption be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which the impounding, isolation, destruction or disposal must be conducted;

- (f) prohibit absolutely the carrying on of an activity in relation to a particular food or type of food, or permit the carrying on of the activity in accordance with conditions specified in the order;
 - (g) despite paragraph (f), impose conditions relating to the taking and analysis of samples of food or of water or soil or any other thing that is part of the environment in which an activity referred to in that paragraph is carried on in relation to the food;
 - (h) specify methods of analysis (not inconsistent with any methods prescribed by the Food Standards Code) of any samples required to be taken in accordance with the order.
- (2) An emergency order may be varied or revoked by the Chief Health Officer in the same manner as it was made.

43 Special provisions relating to recall orders

- (1) A recall order may require a person, or a class of persons, to whom the order applies to disclose to the public or to a class of persons specified in the order, in a specified manner, one or more of the following:
- (a) the particular food or type of food to be recalled or disposed of;
 - (b) the reasons why the food is considered to be unsafe;
 - (c) the circumstances in which the consumption of the food is unsafe;
 - (d) procedures for disposing of the food.
- (2) A person who is required by a recall order to recall food must, as soon as practicable after a recall is completed, give written notice to the Chief Health Officer that the recall is completed.
- (3) A person to whom a recall order applies is liable for the cost incurred by or on behalf of the Chief Health Officer in connection with the recall order and the Chief Health Officer may recover the cost as a debt from that person.
- (4) In any proceedings for the recovery of the debt, a certificate signed by the Chief Health Officer setting the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

44 Manner of making orders

- (1) An emergency order:
 - (a) may be made in writing addressed to the persons intended to be bound by it and served on each of those persons; or
 - (b) may be addressed to one or more persons, to a class of persons or to all persons.
- (2) Notice of an emergency order addressed as referred to in subsection (1)(b) setting out the terms of the order and the persons to be bound by the order must, as soon as practicable after the order is made, be published in a newspaper that, in the opinion of the Chief Health Officer, is most likely to bring the order to the attention of the persons bound by it.
- (3) On an emergency order taking effect, the emergency order is binding on the persons to whom it is addressed.
- (4) An emergency order that is served on a person takes effect when it is served.
- (5) An emergency order expires 90 days after the day on which it takes effect, unless it is sooner revoked.
- (6) Subsection (5) does not prevent a further emergency order being made in the same terms as an emergency order that has expired or is about to expire.

45 Compensation

- (1) A person to whom an emergency order applies who suffers loss as a result of the emergency order may apply to the Chief Health Officer for compensation if the person considers that there were insufficient grounds for making the emergency order.
- (2) If there were insufficient grounds for making the emergency order, the Chief Health Officer must pay the compensation to the applicant that is just and reasonable.
- (3) If the Chief Health Officer determines the amount of compensation he or she must pay to an applicant, he or she must give written notice of the determination to the applicant.
- (4) If the Chief Health Officer does not, within 28 days after receiving the application, determine the amount of compensation payable, the Chief Health Officer is taken to have refused to pay compensation to the applicant.

- (5) An applicant who is dissatisfied with the Chief Health Officer's determination of the amount of compensation payable or the Chief Health Officer's refusal to pay compensation, may apply to the Local Court to review the merits of the determination or refusal.
- (6) The application for review must be made:
- (a) if the review is of the determination of the amount of compensation payable – within 28 days after the day on which the applicant received notice of the Chief Health Officer's determination; or
 - (b) if the review is of the refusal to pay compensation – within 28 days after the expiry of the 28-day period referred to in subsection (4).
- (7) In determining the review, the Local Court must, by notice in writing to the person who requested the review:
- (a) affirm the decision reviewed;
 - (b) vary the decision reviewed;
 - (c) revoke the decision reviewed; or
 - (d) substitute a decision for that decision.
- (8) The Local Court must specify the reasons for its determination in the notice.

46 Failure to comply with emergency orders

A person must not, without reasonable excuse:

- (a) carry on an activity in contravention of a prohibition imposed on the person by an emergency order; or
- (b) fail, neglect or refuse to comply with an emergency order.

Maximum penalty: If the offender is a natural person –
500 penalty units or imprisonment for
6 months.

 If the offender is a body corporate –
2 500 penalty units.

47 Limitation on stay of operation of emergency powers

In any proceedings for judicial review or in any other proceedings, a court or tribunal is not authorised to make an interlocutory order that has the effect of staying the operation of an emergency order.

Part 6 Powers of entry, inspection and seizure

Division 1 Entry, inspection and seizure

48 Power of entry and inspection of authorised officers

- (1) For the purposes of this Act, an authorised officer may, at any reasonable time, do one or more of the following:
- (a) alone, or with the members of the Police Force or other persons as the authorised officer considers necessary, enter and inspect any premises that the authorised officer reasonably believes are used in connection with the handling of food intended for sale, the sale of food or a food transport vehicle;
 - (b) alone, or with the members of the Police Force or other persons as the authorised officer considers necessary, enter and inspect any premises or food transport vehicle, in which the authorised officer reasonably believes that there are records or documents that relate to the handling of food intended for sale or the sale of food;
 - (c) examine any food intended for sale;
 - (d) open and examine any container, receptacle or package that the authorised officer reasonably believes contains food intended for sale or any equipment;
 - (e) open and examine any equipment;
 - (f) subject to Part 8, Division 1 – demand, select and obtain samples of any food sold or intended for sale for analysis, or for carrying out any other examination, to determine whether this Act is or the Regulations are being complied with;
 - (g) take samples of water or soil or any other thing that is part of the environment in which any food is handled for analysis to determine whether that environment poses a risk to the safety of the food for human consumption;
 - (h) take samples of any substance or thing, other than for analysis, that the authorised officer reasonably believes may be used as evidence that an offence has been, or is being, committed under this Act or the Regulations;
 - (i) examine a record or document, make copies of the record or document or a part of the record or document and, for that purpose, remove and retain (for the period as may be

- reasonably necessary) the record or document or the part of the record or document;
- (j) stop and detain any vehicle that the authorised officer is authorised by this subsection to enter;
 - (k) open, or require to be opened, a container used for the conveyance of goods, or a package, that the authorised officer reasonably believes to contain food sold or intended for sale, or equipment;
 - (l) take photographs, films or audio or visual recordings as the authorised officer considers necessary;
 - (m) take measurements and make sketches or drawings or any other type of record;
 - (n) require a person to provide information or answer questions in connection with the authorised officer's functions under this Act or to produce a record, document or thing that an authorised officer is authorised to examine under this Act;
 - (o) require a person to state the person's name and residential address;
 - (p) generally make such investigations and inquiries as may be necessary to ascertain whether an offence under this Act or the Regulations has been or is being committed.
- (2) This section does not authorise entry into premises or a part of premises that is being used solely for residential purposes unless:
- (a) the occupier of the premises consents to the entry;
 - (b) entry is made under the authority of a search warrant; or
 - (c) the premises or part of the premises is being used for the preparation or service of meals provided with paid accommodation.

49 Self-incrimination not an excuse

- (1) A person is not excused from a requirement under section 48 to provide information or answer questions, or to produce a record, document or thing, on the ground that the information, answer, record, document or thing might incriminate the person or make the person liable to a penalty.
- (2) However, any information or answer given or record, document or thing produced by a natural person in compliance with a

requirement referred to in subsection (1) is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against section 52, 53, 54 or 55.

50 Power of seizure

An authorised officer may seize any food, equipment, vehicle, package, labelling or advertising material, or any other substance or thing, that the authorised officer believes on reasonable grounds is evidence that an offence under this Act or the Regulations has been or is being committed.

51 Search warrants

- (1) An authorised officer may apply to a Local Court Judge for a search warrant if the authorised officer has reasonable grounds for believing that an offence against this Act or the Regulations has been or is being committed on premises.
- (2) A Local Court Judge to whom an application is made under subsection (1) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant, when accompanied by a member of the Police Force and the other persons (if any) named in the warrant to:
 - (a) enter the premises concerned; and
 - (b) search the premises for evidence of the commission of an offence against this Act or the Regulations.

52 Failure to comply with requirements of authorised officer

- (1) A person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer under this Division.

Maximum penalty: If the offender is a natural person –
500 penalty units.

 If the offender is a body corporate –
2 500 penalty units.

- (2) Subsection (1) does not apply unless, when the authorised officer makes the requirement, the authorised officer informs the person that a refusal or failure to comply with the requirement may constitute an offence.

53 Interfering with seized substances or things

A person must not, without the permission of an authorised officer, detain, remove or tamper with any food, equipment, vehicle, package, labelling, advertising material or other substance or thing that has been seized under this Act, unless:

- (a) the food, equipment, vehicle, package, labelling, advertising material or substance or thing has been returned in accordance with Division 2; or
- (b) an order disallowing the seizure of the food, equipment, vehicle, package, labelling, advertising material or substance or thing has been made under Division 2.

Maximum penalty: If the offender is a natural person –
500 penalty units or imprisonment for
6 months.

If the offender is a body corporate –
2 500 penalty units.

54 False information

A person of whom a requirement is made or to whom a direction is given under this Act must not, in connection with the requirement or direction, provide any information or produce a document that the person knows is false or misleading in a material particular.

Maximum penalty: If the offender is a natural person –
500 penalty units or imprisonment for
6 months.

If the offender is a body corporate –
2 500 penalty units.

55 Obstructing or impersonating authorised officers

- (1) A person must not, without reasonable excuse, resist, obstruct or attempt to obstruct an authorised officer who is exercising his or her powers or performing his or her functions under this Act.

Maximum penalty: 500 penalty units or imprisonment for
6 months.

- (2) A person must not falsely represent, by words or conduct, that he or she is an authorised officer.

Maximum penalty: 500 penalty units or imprisonment for
6 months.

- (3) A person must not threaten, intimidate or assault an authorised officer who is exercising his or her powers or performing his or her functions under this Act.

Maximum penalty: If the offender is a natural person –
500 penalty units or imprisonment for
6 months.

If the offender is a body corporate –
2 500 penalty units.

Division 2 Substances or things seized by authorised officers

56 Interpretation

In this Division, a reference to food or a substance or thing that has been seized is a reference to food or a substance or thing seized under Division 1.

57 Seized substances or things

- (1) A substance or thing may, at the option of an authorised officer, be detained in the premises where it was found or be removed to another place and be detained there.
- (2) If the substance or thing is detained in the premises where it was found, the authorised officer:
- (a) may place it in a room, compartment or cabinet in those premises;
 - (b) may mark, fasten and seal the door or opening providing access to that room, compartment or cabinet; and
 - (c) must ensure that it is marked in a manner that indicates that it has been seized under this Act.

58 Notification of seizure

An authorised officer who seizes a substance or thing must, as soon as practicable after the seizure, give the person from whom the substance or thing was seized written notification of the seizure that includes the following:

- (a) a description of the substance or thing;
- (b) the reason for seizing the substance or thing;

- (c) details of the person's right to make an application to the Local Court under section 65 for an order disallowing the seizure of the substance or thing;
- (d) if the substance or thing has been removed from the premises where it was seized – the address of the place where the substance or thing is held;
- (e) the name of the enforcement agency under whose authority the authorised officer is acting.

59 Destruction of filthy, decomposed or putrid matter

- (1) If an authorised officer who has seized food is satisfied that the food consists wholly or partly of filthy, decomposed or putrid matter or that it poses an immediate risk to health or property, the authorised officer may cause the food to be destroyed.
- (2) Subsection (1) applies despite any provision of this Part to the contrary.

60 Return of substance or thing seized

If, before a substance or thing is forfeited to the Territory under section 61, the enforcement agency under whose authority the authorised officer who seized the substance or thing was acting at the time of seizing it becomes satisfied that no offence relating to the substance or thing has been committed against this Act or the Regulations, the enforcement agency must, as soon as practicable, deliver the substance or thing to:

- (a) the person from whom it was seized; or
- (b) any other person who appears to the enforcement agency to be entitled to it.

61 Forfeiture of substance or thing

- (1) Unless a substance or thing is dealt with under section 60 or an application for an order disallowing its seizure has been made under section 65, on the expiry of the period within which an application in respect of it may be made under section 65, the substance or thing is forfeited to the Territory.
- (2) If an application for an order under section 65 is refused or withdrawn before a decision on the application is made, the substance or thing is forfeited to the Territory on the date on which the application is refused or withdrawn.

- (3) Subject to subsection (4), an enforcement agency may destroy, sell or otherwise dispose of a substance or thing that is forfeited to the Territory.
- (4) An enforcement agency must not destroy, sell or otherwise dispose of a substance or thing under subsection (3) unless the enforcement agency has received written approval to do so from the Chief Health Officer.

62 Cost of destruction or disposal of forfeited substance or thing

- (1) A person who was, immediately before a substance or thing is forfeited to the Territory, the owner of the substance or thing is liable for the costs incurred in connection with its lawful destruction or disposal (including any storage costs) by or on behalf of the enforcement agency who destroyed or disposed of it.
- (2) The enforcement agency may recover an amount of costs due and owing to it under subsection (1) as a debt in a court of competent jurisdiction.
- (3) In any proceedings for the recovery of the debt, a certificate signed by the chief executive of the enforcement agency stating the amount of the costs and the manner in which they were incurred is evidence of the matters certified.

63 Return of forfeited substance or thing

- (1) If:
 - (a) an enforcement agency becomes satisfied that no offence relating to a substance or thing that was seized and forfeited to the Territory under this Division has been committed against this Act or the Regulations; and
 - (b) the substance or thing has not been destroyed or disposed of in a manner that would prevent its return,

the enforcement agency must, as soon as practicable, deliver the substance or thing to the person from whom it was seized or to any other person who appears to the enforcement agency to be entitled to the substance or thing.

- (2) On the delivery of the substance or thing to the person, any proprietary and other interests in the substance or thing that existed immediately before its forfeiture are restored.

64 Compensation to be paid in certain circumstances

- (1) A person may apply to an enforcement agency for compensation for a substance or thing seized by an authorised officer acting for and on behalf of the enforcement agency.
- (2) If:
 - (a) no offence relating to the substance or thing has been committed against this Act or the Regulations; and
 - (b) the substance or thing cannot be returned or, as a consequence of being seized, has depreciated in value,the enforcement agency must pay the compensation to the applicant that is just and reasonable in relation to the substance or thing.
- (3) The enforcement agency must determine the amount of compensation to be paid by it for the substance or thing and give written notice of its determination to the applicant and, if not the same person, the person from whom the substance or thing was seized or who is otherwise entitled to the substance or thing.
- (4) The applicant or, if not the same person, the person from whom a substance or thing was seized or who is otherwise entitled to receive compensation for the substance or thing may, if dissatisfied with the enforcement agency's determination of the amount of compensation payable, apply to the Local Court to review the merits of the determination.
- (5) The application for review must be made within 72 hours after notice of the enforcement agency's determination under subsection (3) was received by the person making the application.
- (6) In determining the review, the Local Court must, by notice in writing to the person who requested the review:
 - (a) affirm the decision reviewed;
 - (b) vary the decision reviewed;
 - (c) revoke the decision reviewed; or
 - (d) substitute a decision for that decision.
- (7) The Local Court must specify the reasons for its determination in the notice.

65 Application for order disallowing seizure

A person claiming to be entitled to a substance or thing seized by an authorised officer may, within 72 hours after the substance or thing was seized, file an application with the Local Court for an order disallowing the seizure.

66 Enforcement agency entitled to answer application

The enforcement agency under whose authority the authorised officer seized the substance or thing the subject of an application made under section 65:

- (a) is a party to the application;
- (b) must be served with a copy of the application in accordance with the Local Court's rules of court; and
- (c) is entitled to appear as respondent at the hearing of the application.

67 Order disallowing seizure of substance or thing

- (1) On hearing an application under section 65, the Local Court must make an order disallowing the seizure of the substance or thing the subject of the application if it is satisfied that:
 - (a) it is proved that the applicant would, but for the seizure of the substance or thing, be entitled to the substance or thing and it is not proved that an offence relating to the substance or thing has been committed against this Act or the Regulations; or
 - (b) there are exceptional circumstances justifying the making of the order.
- (2) If the Local Court is not satisfied as to the matters specified in subsection (1)(a) or (b), the Local Court must dismiss the application.

68 Ancillary orders

- (1) If the Local Court makes an order disallowing the seizure of a substance or thing under section 67, the Local Court must also make one or both of the following orders:
 - (a) an order directing the respondent to deliver the substance or thing concerned to the applicant or to the other person who appears to the Local Court to be entitled to the substance or thing;

77 Registration non-transferable

The registration of a food business is not transferable.

78 Variation of conditions of registration of food business

- (1) Subject to this section, if in the opinion of the Chief Health Officer it is appropriate to do so, the Chief Health Officer may:
 - (a) on his or her own motion; or
 - (b) on the application of the proprietor of a registered food business in an approved form to the Chief Health Officer,

by notice in writing given to the proprietor vary the conditions of the registration of the food business.
- (2) Before varying the conditions of the registration under subsection (1)(a), the Chief Health Officer must give the proprietor written notice:
 - (a) specifying the proposed variation;
 - (b) specifying the reasons for the variation; and
 - (c) inviting the proprietor to, within the period of not less than 7 days specified in the notice, submit reasons why the variation should not be made.
- (3) The Chief Health Officer must not vary the registration under subsection (1)(a) unless he or she has considered the submissions (if any) submitted by the proprietor in accordance with the notice referred to in subsection (2).
- (4) Having considered the submissions of the proprietor, the Chief Health Officer may vary the conditions of the registration as proposed in the notice under subsection (2) or in any other way he or she considers appropriate.
- (5) The application referred to in subsection (1)(b) must be:
 - (a) in an approved form; and
 - (b) accompanied by the prescribed fee (if any).
- (6) If the proprietor makes an application referred to in subsection (1)(b), the Chief Health Officer must consider the application and determine whether to vary the registration of the food business in accordance with the application.

- (7) The conditions of registration may be varied by the addition, substitution or deletion of a condition.
- (8) Variation of the conditions of the registration takes effect on:
 - (a) the date notice of the variation is received by the proprietor; or
 - (b) the date specified for that purpose in the notice,whichever occurs last.
- (9) The proprietor of the registered food business must comply with the conditions of the registration as varied under this section.
- (10) Subsections (2), (3), (4), (5), (6) and (7) do not apply if the variation is for a formal or clerical reason that does not alter the effect of the registration.

79 Cancellation of registration of food business

- (1) Subject to this section, the Chief Health Officer may cancel the registration of a food business.
- (2) The Chief Health Officer may cancel the registration:
 - (a) if the proprietor contravenes or fails to comply with the registration;
 - (b) if the proprietor is found guilty of an offence against this Act or the Regulations, or any other Act or instrument of a legislative or administrative character made under another Act, relating to the conduct of the food business; or
 - (c) for any other reason that the Chief Health Officer considers appropriate.
- (3) Before the Chief Health Officer cancels the registration, the Chief Health Officer must give written notice to the proprietor:
 - (a) specifying that he or she proposes to cancel the registration;
 - (b) specifying the reasons for the cancellation; and
 - (c) inviting the proprietor to, within 14 days after the date the proprietor receives the notice, submit reasons why the Chief Health Officer should not cancel the registration.
- (4) If, having considered the submissions of the proprietor (if any), the Chief Health Officer continues to hold the opinion that the registration should be cancelled, the Chief Health Officer may, by written notice to the proprietor, cancel the registration.

- (5) Notice under subsection (4) must specify:
- (a) the reasons for the cancellation;
 - (b) the conditions relating to the cancellation (if any); and
 - (c) the procedures for review under section 84.
- (6) Cancellation of the registration takes effect on:
- (a) the date the notice under subsection (4) is received by the proprietor; or
 - (b) the date specified in the notice,
- whichever occurs last.
- (7) The proprietor must comply with the notice under subsection (4).

Maximum penalty for an offence against subsection (7): If the offender is a natural person – 500 penalty units.

If the offender is a body corporate –
2 500 penalty units.

80 Cancellation of registration no bar to proprietor re-applying for registration

- (1) Subject to subsection (2), the cancellation of the registration of a food business under section 79 does not bar the person to whom the registration was issued from applying to register a food business.
- (2) The person may not apply to register a food business before the expiry of 12 months after the date the registration was cancelled.

81 Register of registered food businesses

- (1) The Chief Health Officer must establish and maintain, in a form or combination of forms and in the manner the Chief Health Officer considers appropriate, a register of registered food businesses.
- (2) The following information must be recorded in the register in respect of each registered food business:
- (a) the name and principal business address of the proprietor of the food business;
 - (b) the address of each premises where the operations of the food business are carried on;

in an approved form, notify the Chief Health Officer of the sale or disposal not later than 14 days after the date of the sale or disposal.

Maximum penalty: If the offender is an individual – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

- (2) The approved form for a notice for subsection (1) must require details of the following:
- (a) the food business or other property sold or otherwise disposed of;
 - (b) the name and address of the purchaser.

84 Review of decisions relating to registration

- (1) A person aggrieved by a decision of the Chief Health Officer, or a delegate of the Chief Health Officer, under this Part may apply for review of the merits of the decision in accordance with this section.
- (2) If the decision was made by the Chief Health Officer, the person may apply to the Local Court to review the decision.
- (3) If the decision was made by a delegate of the Chief Health Officer, the person may apply to the Chief Health Officer to review the decision.
- (4) The person must make the application within 14 days after receiving notice of the decision.
- (5) In determining the review, the Chief Health Officer or Local Court must, by notice in writing to the person who requested the review:
- (a) affirm the decision reviewed;
 - (b) vary the decision reviewed;
 - (c) revoke the decision reviewed; or
 - (d) substitute a decision for that decision.
- (6) The Chief Health Officer or Local Court must specify the reasons for the determination in the notice.

Part 8 Taking and analysis of samples

Division 1 Taking of samples

85 Proprietor to be informed

An authorised officer who obtains a sample of food for analysis or another authorised officer must, before the sample is obtained or as soon as practicable after it is obtained:

- (a) inform the proprietor of the food business from which the sample is to be or was obtained that the sample is being obtained for analysis; or
- (b) if the proprietor is not present or readily available – inform the person from whom the sample is to be or was obtained or who is or was in charge of the food from which the sample is to be or was obtained that the sample is being obtained for analysis.

86 Payment for sample

When an authorised officer obtains a sample of food for analysis, the authorised officer must pay or tender payment of:

- (a) the prescribed amount in respect of the sample; or
- (b) if there is no prescribed amount – the amount equal to the current market value of the sample,

to the person from whom he or she obtains the sample.

87 Samples from food vending machines

Sections 85 and 86 do not apply where an authorised officer:

- (a) obtains a sample from a food vending machine by making proper payment for the sample; and
- (b) is unable at the time to identify a person who appears to be in charge of the food vending machine.

88 Packaged food

If an authorised officer takes for analysis under this Act a sample of food that is contained in a sealed package intended for retail sale, the authorised officer must take the whole package.

89 Procedure for taking samples

- (1) This section applies subject to the Food Standards Code.

- (2) Subject to subsection (3), an authorised officer who obtains a sample of food for analysis must:
- (a) divide the sample into 3 parts and mark and seal or fasten each part in a manner that is appropriate to the nature of the sample;
 - (b) leave one part with one of the following persons:
 - (i) the proprietor of the food business;
 - (ii) the person from whom the sample was obtained;
 - (iii) a person appearing to be the employee or agent of the proprietor of the food business or person from whom the sample was obtained;
 - (c) submit one part for analysis; and
 - (d) retain one part for future comparison.
- (3) If dividing the sample into 3 parts in accordance with subsection (2) would, in the opinion of the authorised officer:
- (a) affect or impair the composition or quality of the sample in such a way as to render the separate parts unsuitable for accurate analysis;
 - (b) result in the separate parts being an insufficient size for accurate analysis; or
 - (c) render the sample in any other way unsuitable for analysis (including unsuitable for analysis by a method of analysis prescribed in relation to the particular food from which the sample was taken),
- the authorised officer may take the number of samples that the authorised officer considers necessary to enable an accurate analysis to be carried out and may deal with those samples in the manner he or she considers appropriate in the circumstances.
- (4) However, if an authorised officer takes the sample of food in the form of separate or severable objects, it is not necessary for the authorised officer to divide one of those objects into parts in accordance with subsection (2), but he or she may:
- (a) take a number of those objects;

- (b) divide the number of objects taken into the requisite parts (with each part consisting of one or more separate or severable objects); and
- (c) then deal with those parts as required by subsections (2) and (3).

90 Samples to be submitted for analysis

Having complied with section 89, the authorised officer must submit the sample of food for analysis under Division 2, unless no longer of the opinion that the sample ought to be analysed.

Division 2 Procedures relating to analyses

91 Who carries out analyses

An analysis must be carried out by an approved analyst or under the supervision of an approved analyst.

92 Compliance with Food Standards Code

The person who carries out an analysis must do so in accordance with the Food Standards Code.

93 Certificate of analysis

- (1) On completion of an analysis, the approved analyst who carried out the analysis or who supervised the carrying out of the analysis must give to the person who requested the analysis, or that person's agent, a certificate of analysis.
- (2) The certificate of analysis must:
 - (a) be in an approved form;
 - (b) be dated and signed by the approved analyst;
 - (c) contain a written report of the analysis (including setting out the findings of the analysis); and
 - (d) specify the requirements (if any) of the Food Standards Code that relate to the analysis and certify that the analysis was carried out in accordance with those requirements.

Division 3 Approval of analysts

94 Approval of persons to carry out analyses

- (1) The Chief Health Officer may approve a natural person to carry out analyses under this Act.
- (2) A natural person may make an application to the Chief Health Officer for approval under subsection (1).
- (3) The application must be:
 - (a) in an approved form;
 - (b) accompanied by the information the Chief Health Officer requires to determine the application; and
 - (c) accompanied by the prescribed fee (if any).
- (4) After considering the application, the Chief Health Officer may:
 - (a) grant the application, with or without conditions; or
 - (b) refuse the application.
- (5) If the Chief Health Officer grants the application, he or she must issue the applicant's approval to the applicant.
- (6) The approval must be in writing and must set out the conditions (if any) to which the approval is subject.
- (7) If the Chief Health Officer refuses an application, he or she must give notice to the applicant of the refusal and the reasons for the refusal.

95 Term of approval

An approval granted under section 94 remains in force:

- (a) until the expiry of the period specified in the approval;
- (b) unless it is suspended; or
- (c) until it is cancelled.

96 Approved analyst to give notice of certain interests

- (1) As soon as practicable after being approved to carry out analyses, an approved analyst must notify the Chief Health Officer of any direct or indirect interests he or she has in food businesses.

Maximum penalty: 100 penalty units.

- (2) If, after notifying the Chief Health Officer under subsection (1), there is a change in the interests notified or the approved analyst acquires new interests in a food business, the approved analyst must notify the Chief Health Officer of the change or new interest as soon as practicable after the change or acquisition.

Maximum penalty: 100 penalty units.

97 Variation of conditions or suspension or cancellation of approval of approved analyst

- (1) The Chief Health Officer may, on his or her own motion or on the request of an approved analyst, vary the conditions of the approved analyst's approval.
- (2) The Chief Health Officer may, on his or her own motion, suspend or cancel the approved analyst's approval on one or more of the following grounds:
- (a) the approved analyst has wilfully or negligently contravened this Act or the Regulations;
 - (b) the approved analyst has contravened a condition of his or her approval;
 - (c) the approved analyst has not competently carried out his or her duties under this Act;
 - (d) the approved analyst has a direct or indirect interest in a food business that, in the opinion of the Chief Health Officer, could affect the performance of the approved analyst's duties under this Act;
 - (e) for any other reason the Chief Health Officer considers appropriate.

- (3) The Chief Health Officer may not vary the conditions of, or suspend or cancel, the approved analyst's approval unless he or she has:
 - (a) given written notice to the approved analyst of his or her intention to vary the conditions of, or suspend or cancel, the approved analyst's approval and his or her reasons for doing so;
 - (b) given the approved analyst a reasonable opportunity to make submissions concerning the variation, suspension or cancellation; and
 - (c) considered the submissions (if any) made by the approved analyst.
- (4) If the Chief Health Officer decides to vary the conditions of the approved analyst's approval or suspend or cancel the approved analyst's approval, the Chief Health Officer must give the approved analyst written notice of the variation, suspension or cancellation.
- (5) The variation, suspension or cancellation of the approved analyst's approval takes effect on the day on which the approved analyst receives notice of the variation, suspension or cancellation or, if a later date is specified in the notice, on that later date.
- (6) The Chief Health Officer must, if requested to do so by the approved analyst, cancel the approved analyst's approval.
- (7) Subsections (2), (3), (4) and (5) do not apply to the cancellation of an approval under subsection (6).

98 Review of decisions relating to approvals

- (1) A person aggrieved by a decision of the Chief Health Officer, or a delegate of the Chief Health Officer, relating to any of the following matters may apply for the review of the merits of the decision in accordance with this section:
 - (a) granting or refusing an application for approval to carry out analyses under this Act;
 - (b) imposing a condition of an approved analyst's approval;
 - (c) varying the conditions of an approved analyst's approval;
 - (d) suspending or cancelling an approved analyst's approval.
- (2) If the decision was made by the Chief Health Officer, the person may apply to the Local Court to review the decision.

- (3) If the decision was made by a delegate of the Chief Health Officer, the person may apply to the Chief Health Officer to review the decision.
- (4) The person must make the application within 14 days after receiving notice of the decision.
- (5) In determining the review, the Chief Health Officer or Local Court must, by notice in writing to the person who requested the review:
 - (a) affirm the decision reviewed;
 - (b) vary the decision reviewed;
 - (c) revoke the decision reviewed; or
 - (d) substitute a decision for that decision.
- (6) The Chief Health Officer or Local Court must specify the reasons for the Chief Health Officer's or Local Court's determination in the notice.

99 List of approved analysts

- (1) The Chief Health Officer must prepare and maintain a list of approved analysts.
- (2) The Chief Health Officer must:
 - (a) revise the list regularly; and
 - (b) make the list available for inspection by the public.

Part 9 Improvement notices

100 Grounds for issuing improvement notice

An authorised officer may issue an improvement notice to the proprietor of a food business if the authorised officer believes, on reasonable grounds, that:

- (a) premises, equipment or a food transport vehicle used by the food business in connection with the handling of food intended for sale is in an unclean or insanitary condition or is otherwise unfit for the purpose for which it is designed or intended to be used;
- (b) premises, equipment or a food transport vehicle used in connection with handling food intended for sale does not comply with the Food Safety Standards;

- (c) the food safety program for the food business is not being implemented adequately in relation to premises or a food transport vehicle used by the food business in connection with handling food intended for sale; or
- (d) the Food Standards Code is being contravened in relation to handling food intended for sale on premises or in a food transport vehicle used by the food business.

101 Form and contents of improvement notice

- (1) An improvement notice may require one or more of the following things to be done within 24 hours after the notice is issued or the longer period (if any) specified in the notice:
 - (a) premises, equipment or a food transport vehicle to be put into a clean and sanitary condition, or to be repaired, to the satisfaction of an authorised officer;
 - (b) equipment or a vehicle to be replaced;
 - (c) if it relates to a food business that is required under the Regulations to develop and implement a food safety program, but has not done so:
 - (i) a food safety program for the food business to be developed and implemented in accordance with the Regulations and Food Standards Code; or
 - (ii) the food safety program for the food business to be reviewed or varied so that it complies with the Regulations or Food Standards Code;
 - (d) measures to be taken to comply with the Food Safety Standards in relation to handling food intended for sale.
- (2) The improvement notice:
 - (a) must specify that it is issued under this Part;
 - (b) must specify the provision of the Food Standards Code to which it relates (if any); and
 - (c) may specify particular action to be taken to ensure compliance with that provision of the Food Standards Code.
- (3) Before the improvement notice expires, the authorised officer who issues the improvement notice may, on his or her own motion or on the application of the proprietor, extend the period within which the proprietor must comply with the improvement notice.

102 Compliance with improvement notice

A person must not contravene or fail to comply with an improvement notice issued to the person.

Maximum penalty: If the offender is a natural person –
500 penalty unit.

If the offender is a body corporate –
2 500 penalty units.

103 Notification of compliance with improvement notice

- (1) If an improvement notice is complied with, an authorised officer must note the date of the compliance on a copy of the notice of improvement.
- (2) The person to whom the improvement notice was issued may request a copy of the improvement notice noted in accordance with subsection (1) and, if the person does, an authorised officer must give a copy to the person.

Part 10 Prohibition orders**104 Grounds for issuing prohibition order**

The Chief Health Officer may issue a prohibition order to the proprietor of a food business if:

- (a) the Chief Health Officer believes, on reasonable grounds, that circumstances specified in section 100(a), (b), (c) or (d) exist; and
- (b) either:
 - (i) the proprietor has been issued with an improvement notice in relation to the circumstances and has not complied with the improvement notice within the time specified under section 101(1) or extended under section 101(3); or
 - (ii) the circumstances are giving rise to or are likely to give rise to a serious danger to public health.

105 Form and contents of prohibition order

- (1) A prohibition order may require that, until a certificate of clearance is issued under section 108:
- (a) food intended for sale must not be handled on specified premises or a specified part of specified premises;
 - (b) food intended for sale must not be conveyed in a specified food transport vehicle;
 - (c) specified equipment must not be used in connection with food intended for sale; or
 - (d) food intended for sale must not be handled by a food business in a specified way or for a specified purpose.
- (2) The prohibition order:
- (a) must specify that it is issued under this Part;
 - (b) must specify the provision of the Food Standards Code (if any) to which it relates; and
 - (c) may specify particular action to be taken to ensure compliance with that provision of the Food Standards Code.

106 Display of prohibition order

A person to whom a prohibition order is issued must display a copy of the prohibition order in a conspicuous place on each premises to which the prohibition order relates.

Maximum penalty: If the offender is a natural person –
20 penalty units.

 If the offender is a body corporate –
100 penalty units.

107 Compliance with prohibition order

A person must not contravene or fail to comply with a prohibition order issued to the person.

Maximum penalty: If the offender is a natural person –
500 penalty units.

 If the offender is a body corporate –
2 500 penalty units.

108 Certificate of clearance

- (1) If, after an inspection by an authorised officer of the premises, part of the premises, food transport vehicle or equipment, or way of handling food, in respect of which a prohibition order was issued, the Chief Health Officer is satisfied that:
 - (a) the premises, part of the premises, food transport vehicle or equipment, or the handling of food in the specified way or for the specified purpose, is not a serious danger to public health or is no longer giving rise or likely to give rise to a serious danger to public health; and
 - (b) the person to whom the prohibition order was issued has complied with the prohibition order,the Chief Health Officer must issue a certificate of clearance to the person.
- (2) On the issue of the certificate of clearance, the prohibition order is cancelled.

109 Request for inspection by proprietor issued with prohibition order

- (1) The proprietor of a food business whose premises (other than a vehicle) or part of whose premises is the subject of a prohibition order may, at any time after the prohibition order has been issued, make a written request to the Chief Health Officer to inspect the premises.
- (2) The proprietor of a food business whose vehicle (which may be a food transport vehicle or any other vehicle) or equipment or way of handling food is the subject of a prohibition order may, at any time after the prohibition order was issued, make a written request to the Chief Health Officer to inspect the vehicle, equipment or way of handling food at a place and time agreed to by the proprietor and the Chief Health Officer.
- (3) On receiving a request under subsection (1) or (2), the Chief Health Officer must arrange for an authorised officer to inspect the premises, vehicle, equipment or way of handling food.
- (4) If:
 - (a) a proprietor of a food business makes a request for an inspection under subsection (1) or (2); and

- (b) through no fault of the proprietor, the premises, vehicle, equipment or way of handling food concerned is not inspected by an authorised officer within 72 hours of the Chief Health Officer receiving the request,

the Chief Health Officer is taken to have issued a certificate of clearance to the proprietor in respect of the premises, vehicle, equipment or way of handling food in accordance with section 108(1) and section 108(2) applies.

110 Review of decision to refuse certificate of clearance

- (1) A person aggrieved because the Chief Health Officer, or the delegate of the Chief Health Officer, does not give the person a certificate of clearance in accordance with section 108 may apply for the review of the merits of the decision in accordance with this section.
- (2) If the decision was made by the Chief Health Officer, the person may apply to the Local Court to review the decision.
- (3) If the decision was made by a delegate of the Chief Health Officer, the person may apply to the Chief Health Officer to review the decision.
- (4) In determining the review, the Chief Health Officer or Local Court must, by notice in writing to the person who requested the review:
 - (a) affirm the decision reviewed;
 - (b) vary the decision reviewed;
 - (c) revoke the decision reviewed; or
 - (d) substitute a decision for that decision.
- (5) The Chief Health Officer or Local Court must specify the reasons for the determination in the notice.

111 Compensation

- (1) If a person to whom a prohibition order applies:
 - (a) considers that there were no grounds for making the prohibition order; and
 - (b) suffers loss as a result of the prohibition order,the person may apply to the Chief Health Officer for compensation.

- (2) If there were no grounds for issuing the prohibition order, the Chief Health Officer must pay the amount of compensation to the applicant that is just and reasonable.
- (3) The Chief Health Officer must, within 28 days after receiving the application, give written notice to the applicant of the amount of compensation to be paid to the applicant.
- (4) If the Chief Health Officer does not give notice under subsection (3), the Chief Health Officer is taken to have refused to pay compensation to the applicant.
- (5) If the applicant is dissatisfied:
 - (a) because the Chief Health Officer has refused to pay compensation to the applicant; or
 - (b) as to the amount of compensation specified in a notice under subsection (3),the applicant may apply to the Local Court for review of the merits of the refusal or the determination of the amount of compensation.
- (6) The application for review of the Chief Health Officer's refusal to pay compensation must be made within 2 months after the date the application for compensation was made.
- (7) The application for review of the amount of compensation must be made to the Local Court within 28 days after receiving notice of the amount of the compensation under subsection (3).
- (8) In determining the review, the Local Court must, by notice in writing to the person who requested the review:
 - (a) affirm the decision reviewed;
 - (b) vary the decision reviewed;
 - (c) revoke the decision reviewed; or
 - (d) substitute a decision for that decision.
- (9) The Local Court must specify the reasons for its determination in the notice.

Part 11 Procedure and evidentiary matters

112 Commencement of proceedings

- (1) Subject to subsection (2), proceedings for an offence against this Act or the Regulations must be commenced:
 - (a) if the offence relates to a sample of food – within 6 months after the date on which the sample was obtained; or
 - (b) in any other case – within 12 months after the date on which the offence is alleged to have been committed.
- (2) The court may extend the time for commencing proceedings for the offence.
- (3) Proceedings for the offence may be commenced by an authorised officer or any other person authorised by the Minister to do so.

113 Analyst's certificate to be served with summons

- (1) If an analyst's certificate will be used in proceedings for an offence against this Act or the Regulations, the certificate must be served with the summons for the offence.
- (2) The summons must be made returnable not less than 14 days after the date on which the summons is served.

114 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
 - (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer knew, or could reasonably have been expected to have known, that the contravention would happen; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

declared provision means:

- (a) section 32(4); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

114A Criminal liability of executive officer of body corporate – deemed liability if body corporate commits offence

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) An offence against subsection (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
- (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.

- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 12, 13, 15(1) or (2), 16(1) or (2), 17(1), (2) or (3), 18(1), 19(1), (2) or (3), 20(1) or (2), 52(1), 73(3), 75(5), 79(7), 102, 107 or 129(3); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

115 Prosecution of employers for actions of employees

- (1) If the actions of an employee constitute or allegedly constitute an offence against this Act or the Regulations, the employee's employer may be prosecuted for the offence (whether or not the employee is also prosecuted) as if he or she had personally performed those actions.
- (2) It is a defence to a prosecution of an employer for an offence referred to in subsection (1) that the employer did not authorise (either expressly or by implication) the actions of the employee constituting the offence.
- (3) In this section:

employee includes a person who provides services to another person under a contract with the other person or a third party.

employer includes a person to whom another person provides services under a contract entered into with the other person or a third party.

116 Liability of employees and agents

- (1) Subject to subsection (2), it is no defence to a prosecution of a person in the capacity of an employee or agent for an offence against this Act or the Regulations that the person was, at the time of the commission of the offence, an employee or agent of another person.

- (2) It is a defence to a prosecution of a person referred to in subsection (1) for an offence against this Act or the Regulations that the person was, at the time of the commission of the offence, under the personal supervision of the proprietor of the food business or the owner or person in charge of the premises, food transport vehicle or equipment, or a person representing the proprietor, owner or person in charge, in relation to which the offence was committed.

117 No defence to allege deterioration of sample

It is not an defence to a prosecution for an offence against this Act or the Regulations that relates to a sample of food to allege that a part of the sample retained for future comparison with a part of the sample that has been analysed has deteriorated, perished or undergone material change in its constitution from natural causes.

118 Onus to prove certain matters on defendant

If a person who was responsible for making a statement on a package or in an advertisement relating to the origin or composition of food or the therapeutic or nutritive properties of the effect of food is prosecuted for an offence against this Act or the Regulations relating to the false description of the food because of the statement, the onus of proving the correctness of the statement is on the defendant.

119 Presumptions

In proceedings for an offence against this Act or the Regulations, it is presumed until the contrary is proved on the balance of probabilities that:

- (a) a substance or thing that is capable of being used as food and that was sold or prepared for sale or conveyed or intended for sale was sold, prepared, conveyed or intended for sale;
- (b) a substance or thing that is capable of being used as food is not for human consumption if it is prominently indicated as not being for human consumption, whether by words, colour or any other marking;
- (c) food that is part of a batch, lot or consignment of food of the same class or description is representative of all of the food in the batch, lot or consignment;
- (d) each part of a sample of food divided for the purpose of analysis under this Act is of uniform composition with every other part of the sample;

- (e) a person who sold food in the course of the conduct of a food business and who is or was not the proprietor of the food business sold the food as the agent of the proprietor;
- (f) a person who appears from a statement on a package containing food for sale to have imported, manufactured, packed or prepared the food is the importer, manufacturer, packager or preparer of the food, as the case requires;
- (g) food that is sold to a consumer was at some time sold by a person who respectively imported, manufactured, prepared or packed the food; and
- (h) a signature purporting to be that of the Chief Health Officer, the chief executive or other officer of an enforcement agency, an authorised officer or an approved analyst is that signature.

120 Certificate evidence of results of analysis and evidence of analysts

- (1) A certificate of the result of an analysis relating to an offence against this Act or the Regulations obtained by a party to proceedings for the offence is:
 - (a) admissible in the proceedings or any other proceedings relating to the offence; and
 - (b) evidence of the facts stated in it if:
 - (i) it was issued under section 93(2); and
 - (ii) a copy of it is served by the party who obtained it on the other parties to the proceedings at least 7 days before the hearing of the proceedings.
- (2) The party who produces a certificate referred to in subsection (1) is not required to call the analyst who carried out the analysis the subject of the certificate as a witness in the proceedings unless the court hearing the proceedings orders otherwise (whether on application or by any other means).
- (3) In proceedings for an offence against this Act or the Regulations, the prosecution cannot rely on an analysis as evidence unless the person who carried out the analysis:
 - (a) is an approved analyst; or
 - (b) was acting under the supervision of an approved analyst.

121 Documents as evidence of matters under Act or Regulations

In any proceedings for an offence against this Act or the Regulations:

- (a) a document purporting to be a copy of any registration, approval, notice, order or authority under this Act is evidence of that registration, approval, notice, order or authority;
- (b) a document purporting to be signed by the Chief Health Officer certifying that at a specified time or during a specified period:
 - (i) there was or was not in force a registration, approval, notice, order or authority in relation to a specified person; or
 - (ii) that a registration, approval, notice, order or authority was or was not subject to specified conditions,is evidence of the matters contained in the document; and
- (c) a document purporting to be signed by the Chief Health Officer certifying:
 - (i) as to the receipt or otherwise of a notice, application or payment; or
 - (ii) that an amount of fees or other money is payable under this Act by a specified person and has at the date of the certificate not been paid,

is evidence of the matters contained in the document.

122 Power of court to order further analysis

- (1) If a court hearing proceedings for an offence against this Act or the Regulations is satisfied that there is an inconsistency between the evidence of the analysts for the parties to the proceedings, the court may, at the request of a party to the proceedings or on its own motion, order that a part of a sample taken under section 89 be sent by the enforcement agency, under whose authority the authorised officer who took the sample was acting, to another analyst specified by the court or agreed to by the parties.
- (2) The analyst who is sent the part of the sample for analysis must make an analysis of the part for the information of the court.
- (3) Subject to section 126, the cost of the analysis must be paid by the enforcement agency referred to in subsection (1).

123 Right of defendant to have third person before court

- (1) If a defendant charged with an offence under this Act or the Regulations alleges that the act or omission constituting the offence was due to the act or default of another person, the defendant may, on complying with this section, have that other person brought before the court which will hear and determine the charge.
- (2) The defendant must:
 - (a) at least 7 days before the return date of the summons served on the defendant, give the informant and the court written notice of his or her intention to bring the other person before the court;
 - (b) include in the notice under paragraph (a) particulars of his or her claim that the contravention was due to the act or default of the other person and that the defendant exercised due diligence to ensure compliance with the provisions of this Act or the Regulations against which the alleged offence was committed; and
 - (c) lay an information against the other person for the offence he or she is charged with or another offence against this Act or the Regulations.
- (3) If the defendant complies with subsection (2), the court must issue a summons directed to the other person requiring the other person to appear before the court on the date and at the time and place specified in the summons and, if that date is not the return date for the original summons, must adjourn the hearing of the original charge to that date or the hearing of both charges to a later date and notify the parties accordingly.
- (4) On hearing the charges, the original informant or his or her legal practitioner as well as the other person who the defendant alleges committed the offence may:
 - (a) if the defendant gives evidence – cross-examine the defendant;
 - (b) cross-examine the witnesses called by the defendant (if any); and
 - (c) call evidence in rebuttal.

- (5) The court:
- (a) may convict the other person if the commission of the offence is proved and the original defendant satisfies the court that the elements of the offence were constituted by the acts or omissions of the other person; and
 - (b) must dismiss the charge against the original defendant if the original defendant satisfies the court that he or she exercised due diligence to ensure compliance with the relevant provision of the Act or the Regulations.
- (6) This section does not operate to prevent a court ordering that proceedings against the other person are to be heard separately if the court considers it just to do so.

124 Alternative defendants

- (1) If it appears to an enforcement agency that an offence against this Act or the Regulations has been committed and that a person is likely to be charged with committing the offence but the enforcement agency is reasonably satisfied that:
- (a) the offence was due to the act or omission of another person; and
 - (b) the first-mentioned person could successfully defend a proceeding by relying on section 123,
- the enforcement agency may commence proceedings against the other person for the offence without proceedings being commenced against the first-mentioned person.
- (2) In the proceedings, the other person may be charged with the offence with which the first-mentioned person might have been charged and, on proof that the offence was due to the acts or omissions of the other person, the other person may be found guilty of committing the offence.

125 Disclosure by witnesses

- (1) In proceedings for an offence against this Act or the Regulations, a witness for the prosecution is not compelled to disclose the fact that the witness received information, the nature of the information received by the witness or the name of the person from whom the witness received the information.

- (2) An authorised officer appearing as a witness in proceedings for an offence against this Act or the Regulations is not compelled to produce a document containing confidential matter made or received in his or her capacity as an authorised officer.
- (3) Despite subsections (1) and (2), if a court hearing proceedings referred to in subsection (1) or (2) considers that it is just to do so, the court may order the disclosure of information or the production of a document referred to in that subsection.

126 Court may order costs and expenses

- (1) A court that hears proceedings for an offence against this Act or the Regulations has power to make the orders it considers just in respect of the costs and expenses of and incidental to the examination, seizure, detention, storage, analysis (including further analysis), destruction or other disposition of a substance or thing the subject of the proceedings.
- (2) Subsection (1) applies in addition to any other law that empowers the court to award costs.

127 Court may order forfeiture

On finding a person guilty of committing an offence against this Act or the Regulations, the court may order the forfeiture to the Territory of any substance or thing used in the commission of the offence.

128 Court may order corrective advertising

On finding a person guilty of committing an offence against this Act or the Regulations, the court may make one or both of the following orders:

- (a) an order requiring the offender to disclose in a particular manner to the public, to a particular person or to a particular class of persons specified information or information of a specified class which the offender possesses or to which the offender has access;
- (b) an order requiring the offender to publish advertisements at his or her own expense and in the manner, at the times and in the terms specified in the order.

Part 12 Miscellaneous

129 Adoption and application of national guidelines

- (1) The Chief Health Officer may adopt national guidelines relating to the administration of this Act.
- (2) The Chief Health Officer and other enforcement agencies and authorised officers must comply with the national guidelines adopted under subsection (1) when exercising powers and performing functions under this Act.
- (3) A person carrying out duties in the course of carrying on the operations of a food business must comply with the national guidelines adopted under subsection (1).

Maximum penalty: If the offender is a natural person –
500 penalty units.

If the offender is a body corporate –
2 500 penalty units.

- (4) In this section:

national guidelines means guidelines prepared by Food Standards Australia New Zealand.

130 Protection from liability

- (1) This section applies to a person who is or has been:
 - (a) the Chief Health Officer;
 - (b) the chief executive of an enforcement agency or another officer or member of the staff of the enforcement agency;
 - (c) a member of an enforcement agency;
 - (d) an authorised officer; or
 - (e) an approved analyst or a person carrying out analyses under the supervision of an approved analyst.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

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- (4) This section has effect subject to Part VIIA of the *Police Administration Act 1978* to the extent it relates to the civil liability of an authorised officer who is or has been a member of the Police Force.

131 Bribery

A person must not give, procure, offer or promise a bribe, recompense or reward to influence a person in the exercise of his or her powers or the performance of his or her functions or duties under this Act.

Maximum penalty: If the offender is a natural person –
400 penalty units or imprisonment for
2 years.

If the offender is a body corporate –
2 000 penalty units.

132 Disclosure of confidential information

- (1) Subject to subsection (2), a person must not disclose information or publish a document or part of a document obtained by him or her in connection with the administration of this Act or the Regulations 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 the Regulations; or
- (c) for the purposes of legal proceedings relating to the administration of this Act or the Regulations or a report of such proceedings.

Maximum penalty: If the offender is a natural person –
500 penalty units.

If the offender is a body corporate –
2 500 penalty units.

- (2) The Chief Health Officer or an authorised officer may, if authorised to do so by the Minister (whether generally authorised or authorised for a particular purpose) communicate to Food Standards Australia New Zealand, or a person or other authority administering or enforcing a law of another jurisdiction that corresponds to this Act, information which comes to his or her knowledge because of the exercise of his or her powers, performance of his or her functions or discharge of his or her duties under this Act.

133 Publication of names of offenders

- (1) The Chief Health Officer may publish in the *Gazette*, or a newspaper or other publication circulating in the Territory or a part of the Territory, a notice in respect of a person who is found guilty, or whose employee or agent is found guilty, of an offence against this Act or the Regulations relating to handling or selling of food.
- (2) The notice may contain the following information:
 - (a) the address of the person's place of business;
 - (b) the name under which the person carries on business;
 - (c) a description of the nature of the offence, the decision of the court, the penalty imposed or any forfeiture incurred;
 - (d) any other information relating to the safety of the food concerned as the Chief Health Officer considers appropriate.
- (3) If the Chief Health Officer publishes a notice under subsection (1), he or she must do so within 21 days after the finding of guilt is made, unless the person found guilty appeals against the finding of guilt.
- (4) If the person appeals, the Chief Health Officer must not publish a notice under this section unless a final order is made on appeal affirming the finding of guilt.
- (5) If the finding of guilt is affirmed by final order on appeal and the Chief Health Officer decides to publish a notice under subsection (1) in respect of the affirmed finding of guilt, the Chief Health Officer must do so no later than 21 days after the final order on appeal is made.
- (6) A person who in good faith publishes the edition of the newspaper or other publication in which a notice under this section is published incurs no liability for doing so.

134 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) The Regulations may:

- (a) prescribe the fees payable in relation to matters under this Act or the Regulations and, in doing so, may:
 - (i) prescribe different fees to apply in different circumstances or areas;
 - (ii) provide for the payment of a part or proportion of a fee;
 - (iii) provide for the exemption of a person or a class of persons from the payment of a fee; or
 - (iv) provide for the exemption from the payment of a fee in prescribed circumstances;
- (b) prescribe the time and manner for the payment of fees;
- (c) provide for the classification of food businesses;
- (d) require the development, implementation, review and variation of food safety programs for a food business or a class of food businesses in accordance with Standard 3.2.1 of the Food Standards Code;
- (e) provide for the auditing of food safety programs to ascertain whether they comply with this Act, the Regulations and the Food Standards Code and for the assessment of food businesses to ascertain whether they comply, and are being conducted in accordance with, this Act, the Regulations and the Food Safety Standards, including providing for the following:
 - (i) the determination of the frequency of the conduct of audits of food safety programs and assessments of food businesses;
 - (ii) the making of reports of the results of an audit of a food safety program or assessment of the food business;
 - (iii) the contents of reports referred to in subparagraph (ii);
 - (iv) the remedying of any deficiencies identified by an audit or assessment and follow-up procedures to check if deficiencies are remedied;

- (f) provide for the approval of persons as food safety auditors by the Chief Health Officer, including providing for the following:
 - (i) the making of an application by a person for approval as a food safety auditor and the form of the application;
 - (ii) the matters the Chief Health Officer must consider or be satisfied about when deciding whether to grant or refuse an application for approval;
 - (iii) the term of an approval of a food safety auditor;
 - (iv) the granting of approval subject to conditions;
 - (v) the preparation and maintenance of a list of food safety auditors by the Chief Health Officer and the making of the list available for inspection by the public;
 - (vi) the duties, powers and functions of food safety auditors;
 - (vii) the requirement of food safety auditors to notify the Chief Health Officer of all direct and indirect interests of the auditor in food businesses;
 - (viii) the requirement that identity cards are to be issued to food safety auditors and providing for the form and use of the identity cards;
 - (ix) the variation of the conditions (if any) of an approval and the suspension and cancellation of an approval;
 - (x) the review by the Local Court of the merits of the decisions of the Chief Health Officer relating to an approval of a food safety auditor;
 - (xi) offences relating to obstructing or impersonating a food safety auditor;
- (g) regulate, restrict or prohibit the use or sale of a substance or thing or a class of substances or things as food or as an ingredient or additive in food;
- (h) require persons selling a specified class of food to provide specified information in relation to the food to purchasers;
- (i) impose requirements with regard to packaging and labelling food generally or a class of food;
- (j) provide for regular analysis, examination or testing of food;

- (k) provide for keeping of records relating to the handling and selling of food and the inspection of those records;
 - (l) regulate the form and content of advertisements relating to food;
 - (m) regulate or restrict the use of automatic food vending machines;
 - (n) prescribe a condition or class of conditions that may be imposed on the registration of a food business or renewed registration of a food business;
 - (o) provide for the making of reports by proprietors of food businesses relating to the operations of the food businesses;
 - (p) require the provision of information, returns or reports to the Minister or other person or authority;
 - (q) provide for the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations, the service of a notice relating to payment of the amount on a person alleged to have committed the offence and the particulars to be included in the notice;
 - (r) designate an offence against a regulation as a regulatory offence; and
 - (s) prescribe penalties not exceeding 100 penalty units or, if the offence is committed by a body corporate, 500 penalty units for offences against the Regulations.
- (3) A regulation referred to in subsection (2)(c), (d), (e) or (f) may:
- (a) require a matter or thing to which it refers to be approved by or done to the satisfaction of the Chief Health Officer; or
 - (b) confer a discretion on the Chief Health Officer.

135 Regulations may apply, adopt or incorporate other documents

- (1) Subject to subsection (3), the Regulations may apply, adopt or incorporate, whether wholly or in part or with or without modification, a standard, code or other document as in force at a particular date or as in force from time to time.
- (2) A standard, code or other document applied, adopted or incorporated under subsection (1) may refer to, apply, adopt or incorporate or may require a thing to be done in accordance with,

the whole or a specified part of a document, standard, rule, specification or method formulated, issued, prescribed or published by another person or body, whether with or without modification or as in force at a particular date or as in force from time to time.

- (3) The Regulations must:
- (a) describe the subject matter of the standard, code or other document applied, adopted or incorporated under subsection (1);
 - (b) specify the date on which the standard, code or document applies or is adopted or incorporated (which may not be earlier than the commencement of the Regulations); and
 - (c) specify the place where and the times when a member of the public may either inspect, or purchase for a reasonable fee, a copy of the standard, code or document.

136 Temporary regulations that apply in addition to or in place of Food Standards Code

- (1) The Administrator may make a regulation that contains a provision that is in addition to, or in substitution for, a provision of the Food Standards Code as it applies in the Territory.
- (2) The Administrator must not make a regulation referred to in subsection (1) unless the Minister certifies that the regulation is necessary because it relates to public health and safety.
- (3) A regulation referred to in subsection (1) continues in force for the period not exceeding 12 months specified in the Regulations.

Part 13 Repeal, savings and transitional provisions

137 Definitions

In this Part:

Public Health (Eating Houses) Regulations means the *Public Health (Shops, Eating Houses, Boarding-houses, Hostels and Hotels) Regulations 1960*.

repealed Food Act means the *Food Act 1986* in force before the commencement of this Act.

138 Repeal

The Acts specified in the Schedule are repealed.

139 Savings: authorized officers

- (1) A person who, immediately before the commencement of Part 4, Division 3, was an authorized officer within the meaning of the repealed Food Act is, on and after that commencement, taken to be an authorised officer until the period that he or she would, but for that commencement, have been appointed under the repealed Act expires.
- (2) This Act applies to and in relation to each authorized officer referred to in subsection (1) as if he or she were an authorised officer appointed under section 37.
- (3) Subject to the appearance of a contrary intention, a reference in any Act, instrument of a legislative or administrative character or other document to an authorized officer within the meaning of the repealed Food Act is, on the commencement of Part 4, Division 3, taken to be and to have effect as if it were a reference to an authorised officer.
- (4) This section does not affect the power of the Chief Health Officer to appoint other authorised officers under section 37.

140 Savings: analysts

- (1) A person who, immediately before the commencement of Part 8, Division 3, was an analyst within the meaning of the repealed Food Act is, on and after that commencement, taken to be an approved analyst until the period for which he or she would, but for that commencement, have been appointed under the repealed Act expires.
- (2) This Act applies to and in relation to each analyst referred to in subsection (1) as if he or she were an analyst approved under section 94.
- (3) Subject to the appearance of a contrary intention, a reference in an Act, instrument of a legislative or administrative character or other document to an analyst within the meaning of the repealed Food Act is, on the commencement of Part 8, Division 3, taken to be and to have effect as if it were a reference to an approved analyst.
- (4) This section does not affect the power of the Chief Health Officer to approve other analysts under section 94.

141 Savings: samples taken and items seized under repealed Food Act

- (1) A sample of food obtained under section 16 of the repealed Food Act is, on and after the commencement of Part 8, Divisions 1 and 2:
 - (a) if the sample has not been analysed – taken to be, and this Act applies to it and it may be dealt with under this Act as if it were, a sample of food obtained under and in accordance with Part 8, Division 1 and submitted for analysis in accordance with Part 8, Division 2; and
 - (b) if the sample has been analysed – taken to have been analysed under and in accordance with Part 8, Division 2 of this Act, and the analyst who analysed the sample is taken to have been an approved analyst and the report of that analyst in respect of the sample under section 20 of the repealed Food Act is taken to be, and this Act applies to it and it may be dealt with under this Act as if it were, a certificate of analysis given under and in accordance with section 93.
- (2) Subject to subsection (3), an article that was seized under the repealed Food Act and was, immediately before the commencement of Part 6, being detained under the repealed Food Act by or at the direction of an authorized officer is, on and after that commencement, taken to be, and this Act applies to it and it may be dealt with under this Act as if it were, a substance or thing seized under Part 6, Division 1.
- (3) Any notice of the seizure and detention of an article given by an authorized officer under section 24 of the repealed Food Act is, on and after the commencement of Part 6, taken to be and to have effect, and this Act applies to it and it may be dealt with under this Act, as if it were written notification given under and in accordance with section 58.

142 Savings: registration as eating house under Public Health (Eating Houses) Regulations

- (1) If, immediately before the commencement of Part 7, a certificate of registration of an eating house issued under regulation 13 of the Public Health (Eating Houses) Regulations was in force, on and after that commencement the certificate continues in force as if it were the registration of a food business until the period the certificate would, but for that commencement, have been in force under those Regulations expires.

- (2) This Act applies to and in relation to each certificate of registration referred to in subsection (1), and the certificate may be dealt with under this Act, as if it were the registration of a food business granted under section 72.
- (3) Subject to the appearance of a contrary intention, a reference in any Act, instrument of a legislative or administrative character or other document to an eating house within the meaning of the repealed Food Act is, on and after the commencement of this Act, taken to be and to have effect as if it were a reference to a food business.

143 Savings: applications for registration as an eating house under Public Health (Eating Houses) Regulations

If, immediately before the commencement of Part 7, an application for registration of an eating house made under regulation 13 of the Public Health (Eating Houses) Regulations is pending, the application is, on and after that commencement, taken to be an application to register a food business made under and in accordance with section 71 and this Act applies to, and the application is to be dealt with under this Act, as if it were an application to register a food business.

144 Savings: *Food (Administration) Regulations 1995* and other instruments of legislative or administrative character

- (1) The *Food (Administration) Regulations 1995* in force under the repealed Food Act immediately before the commencement of this Act continue, on and from that commencement, to be in force as if they were regulations made under and in accordance with this Act and apply, and may be varied, amended or repealed, as if they were made under this Act.
- (2) A notice served under section 11 of the repealed Food Act in respect of which a certificate referred to in section 11(2) of that Act has, on the commencement of this Act, not been issued to the proprietor concerned or not withdrawn, continues on and after that commencement to have effect and this Act applies, and the notice is to be dealt with under this Act, as if it were an improvement notice.
- (3) A notice published in the *Gazette* under section 54 or 55 of the repealed Food Act and in force immediately before the commencement of this Act continues to have effect on and after that commencement and this Act applies, and the notice may be dealt with under this Act, as if it were an emergency order.

145 Administrator may make regulations dealing with savings and transitional matters

- (1) The Administrator may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A regulation referred to in subsection (1):
 - (a) has effect subject to sections 139, 140, 141, 142, 143 and 144 but despite any other provisions of this Act; and
 - (b) may take effect from the date of assent to this Act or a later date.
- (3) To the extent that a regulation referred to in subsection (2)(b) takes effect from a date that is earlier than the date it is notified in the *Gazette*, the regulation does not operate so as to:
 - (a) affect, in a manner prejudicial to a person (other than the Territory or an authority of the Territory), the rights of the person existing before the date it is notified; or
 - (b) impose liabilities on a person (other than the Territory or an authority of the Territory) in respect of anything done or omitted to be done before the date it is notified.

Part 14 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015**146 Offences – before and after commencement**

- (1) Sections 114 and 114A, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the **new sections**) apply in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 13 of that Act (the **commencement**) only if:
 - (a) all the conduct constituting the relevant offence occurred after the commencement; and
 - (b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.
- (2) Section 114, as in force before the commencement:
 - (a) continues to apply in relation to offences committed by a body corporate before the commencement; and

- (b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new sections do not apply.

Schedule Repealed Acts

section 138

Food Act 1986

Act No. 45, 1986

Food Amendment Act 1990

Act No. 60, 1990

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 2004 (Act No. 20, 2004)***

Assent date	15 March 2004
Commenced	1 July 2004 (<i>Gaz</i> G26, 30 June 2004, p 3)

Police Administration Amendment (Powers and Liability) Act 2005 (Act No. 11, 2005)

Assent date	17 March 2005
Commenced	20 April 2005 (<i>Gaz</i> G16, 20 April 2005, p 5)

Statute Law Revision Act 2005 (Act No. 44, 2005)

Assent date	14 December 2005
Commenced	14 December 2005

Public and Environmental Health Act 2011 (Act No. 7, 2011)

Assent date	16 March 2011
Commenced	1 July 2011 (<i>Gaz</i> S28, 3 June 2011)

Penalties Amendment (Children and Families, Health and Primary Industry, Fisheries and Resources) Act 2011 (Act No. 28, 2011)

Assent date	31 August 2011
Commenced	21 September 2011 (<i>Gaz</i> G38, 21 September 2011, p 4)

Statute Law (Miscellaneous Provisions) Act 2011 (Act No. 44, 2011)

Assent date	21 December 2011
Commenced	27 January 2012 ((other than amdts to <i>Darwin Port Corporation Act</i> and <i>Marine Act</i> listed in the Sch to Act) <i>Gaz</i> S3, 27 January 2012))

Emergency Management Act 2013 (Act No. 27, 2013)

Assent date	8 November 2013
Commenced	27 November 2013 (<i>Gaz</i> S63, 27 November 2013)

Statute Law Amendment (Directors' Liability) Act 2015 (Act No. 26, 2015)

Assent date 18 September 2015
 Commenced 14 October 2015 (*Gaz* G41, 14 October 2015, p 3)

Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)

Assent date 6 April 2016
 Commenced 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 40, 130 and 137.

4 LIST OF AMENDMENTS

s 6	amd No. 7, 2011, s 140
ss 12 – 20	amd No. 28, 2011, s 4
s 32	amd No. 28, 2011, s 4
s 40	amd No. 27, 2013, s 128
s 46	amd No. 28, 2011, s 4
s 51	amd No. 8, 2016, s 45
ss 52 – 55	amd No. 28, 2011, s 4
s 66	amd No. 8, 2016, s 45
ss 70 – 71	amd No. 28, 2011, s 4
s 73	amd No. 28, 2011, s 4
s 74	amd No. 44, 2011, s 20
s 75	amd No. 28, 2011, s 4
s 79	amd No. 28, 2011, s 4
s 82	amd No. 28, 2011, s 4
s 83	amd No. 28, 2011, s 4
	sub No. 44, 2011, s 21
s 96	amd No. 28, 2011, s 4
s 98	amd No. 44, 2005, s 27
s 102	amd No. 28, 2011, s 4
ss 106 – 107	amd No. 28, 2011, s 4
s 111	amd No. 44, 2005, s 27
s 114	sub No. 26, 2015, s 40
s 114A	ins No. 26, 2015, s 40
s 129	amd No. 28, 2011, s 4
s 130	amd No. 11, 2005, s 21; No. 44, 2005, s 27
ss 131 – 132	amd No. 28, 2011, s 4
pt 14 hdg	ins No. 26, 2015, s 41
s 146	ins No. 26, 2015, s 41