

THE NORTHERN TERRITORY OF AUSTRALIA

FOOD STANDARDS ACT  
No. 45 of 1979  
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# THE NORTHERN TERRITORY OF AUSTRALIA

No. 45 of 1979

## AN ACT

Relating to the manufacture and sale of food for  
human consumption or use

[Assented to 27 April 1979]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

- |  |              |
|--|--------------|
| 1. This Act may be cited as the <u>Food Standards Act 1979</u> .   | Short title  |
| 2. This Act shall come into operation on a date to be fixed by the Administrator by notice in the <u>Gazette</u> .   | Commencement |
| 3. In this Act, unless the contrary intention appears -  | Definitions  |
| "goods for use as food" means goods that are represented to be or are likely to be taken to be for use as food or drink by humans, and includes confectionery, flavouring, a colouring substance, spices, condiments and any other substance that may be used in food or drink for humans, but does not include a drug or therapeutic substance; |              |
| "government analyst" means a person -  |              |
| (a) who, under a law of a State, the Territory or another Territory relating to public health, the purity of food or standards of manufacture of food, is -  |              |
| (i) appointed to be an analyst;  |              |
| (ii) registered or enrolled as an analyst;<br>or   |              |
| (iii) approved, licensed or certified as an analyst; or  |              |
| (b) who is appointed under section 16 to be a government analyst;  |              |
| "inspector" means an Inspector of Health within the meaning of the <u>Public Health Act</u> ;  |              |

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"manufacture" includes to compose, prepare, preserve, pack, label or treat goods for use as food and to do all things to goods to deliver them for consumption or use by humans;

"package" includes a parcel, container, wrapper or other thing in which goods for use as food are packed;

"sell" includes -

- (a) sell (whether by wholesale or retail), barter or exchange;
- (b) agreeing to sell or offering or exposing for sale;
- (c) receiving, keeping or having in possession for sale; or
- (d) sending, forwarding or delivering for or on sale.

Restriction on sale of goods for use as food in the Territory

4. Subject to section 5, a person shall not sell goods for use as food which have been brought into the Territory from a State or another Territory unless those goods may be lawfully manufactured and sold as goods for use as food of that type in that State or Territory.

Penalty: For a first offence - \$500 or imprisonment for 3 months;

for a second offence - \$1,000 or imprisonment for 6 months; and

for a subsequent offence - \$2,000 or imprisonment for 12 months.

Minister may apply standards

5.(1) Notwithstanding section 4, the Minister may, by order published in the Gazette, direct -

- (a) that goods for use as food of a kind specified in the order shall not be manufactured or sold; or
- (b) that goods for use as food of a kind specified in the order shall not be manufactured or sold unless those goods comply with the standards of manufacture specified in the order.

(2) The standards referred to in sub-section (1) may be applied by the Minister by reference, with or without variation, to a specific or general standard as it applies at a particular point in time or from time to time.

## Food Standards

(3) Where the Minister applies a standard in accordance with sub-section (2) with a variation, he shall, in the order, set out in full the manner in which the particular standard is varied.

(4) An order made under this section is effective on and from the date of publication in the Gazette.

6. A person who -

(a) manufactures; or

(b) sells,

goods for use as food of a kind specified in an order made under section 5 shall comply with that order.

Penalty: For a first offence - \$500 or imprisonment for 3 months;

for a second offence - \$1,000 or imprisonment for 6 months; and

for a subsequent offence - \$2,000 or imprisonment for 12 months.

7. Evidence of an order made under section 5 may, in any legal proceedings, be given by the production of a copy of the Gazette.

8. Where standards have been applied in accordance with this Act to goods for use as food and those standards provide a method of analysing those goods for testing compliance with the standards, goods for use as food that do not pass the tests referred to in that method of analysis do not comply with those standards.

9.(1) An inspector authorized in writing by the Minister for the purpose of this section either generally or for any limited period or for any particular case may -

(a) enter and inspect a place in which he has reasonable grounds for believing goods for use as food are manufactured for sale or sold and inspect any such article found there;

(b) inspect any goods which he has reasonable grounds for believing are goods for use as food which are being conveyed for the purpose of sale by any means of transit;

(c) examine and open any package which contains or which he has reasonable grounds to believe contains goods for use as food;

(d) remove for examination or analysis goods being

Person to  
comply with  
order

Proof of  
order

Goods for use  
as food to  
pass tests set  
out in  
standards as  
applicable to  
those goods

Powers of  
inspector

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goods for use as food or portions or samples of those goods;

- (e) weigh, count, measure, gauge or mark any goods being goods for use as food or a package containing those goods and fasten, secure or seal those goods or that package or a door or opening affording access to those goods or that package; and
- (f) seize any goods being goods for use as food which contravene, or appear to him to contravene, this Act or an order made under this Act.

(2) Where goods for use as food are manufactured, sold or conveyed during the night, an entry and inspection under this section may be made at a reasonable time of night, otherwise an entry and inspection shall be made only at a reasonable time in the day.

Inspector  
may take  
sample

10.(1) On payment or offer of payment -

- (a) to a person manufacturing for sale, selling or carrying for delivery goods for use as food; or
- (b) to a person apparently acting as that person's agent or servant or apparently in charge of those goods,

of the current market value of those goods, an inspector may demand and select and take or obtain samples of those goods for the purposes of this Act.

(2) An inspector may require a person to show and permit him to inspect the package in which goods for use as food at the time are kept, and may take or draw, or may require that person to take or draw, from that package the samples demanded by the inspector.

(3) Where goods for use as food are kept for retail sale and are usually sold in a closed package, no person shall be required by an inspector to sell less than the whole of the package.

(4) A purchase and sale of a sample of goods in accordance with this section shall be deemed to be a purchase and sale of goods for use as food unless the seller proves that the bulk from which the sample was taken was not offered, exposed or intended for sale for use as food or drink by humans.

Method of  
dealing with  
sample taken

11.(1) An inspector taking or obtaining a sample of goods in accordance with section 10 shall -

- (a) divide the sample into 3 approximately equal parts;

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- (b) mark and seal or fasten up each part in such manner as its nature permits; and
- (c) offer one of the parts to the owner of the goods or his agent or servant or the person who is apparently in charge of the goods.

(2) At or about the time of taking a sample in the manner prescribed in sub-section (1), an inspector shall notify the person to whom he offers or proposes to offer one of the parts that it is his intention to have the goods analysed.

(3) The inspector taking the sample shall deliver one of the remaining 2 parts to a government analyst, and shall retain the third part.

(4) When goods are manufactured or sold as goods for use as food and are contained in a package in such quantity that their division into 3 approximately equal parts as required by sub-section (1) would furnish parts insufficient for accurate analysis, additional packages which purport to contain similar goods under the same label, may be taken or obtained, and the contents of 2 or more packages may be mixed together and the mixture divided in the manner and distributed as required by this section and delivered for analysis.

(5) The delivery to a government analyst of a part of a sample may be effected either personally or by sending the part by registered post in a sealed package addressed to that analyst at his usual address.

(6) Where an inspector, in proceedings for an offence against this Act, has given evidence of having -

- (a) marked in a particular fashion a part of a sample of goods taken in accordance with this section;
- (b) packaged that part of the sample;
- (c) sealed the package in a particular fashion; and
- (d) sent the package by registered post in the manner specified in sub-section (5),

a certificate produced by that inspector purporting to be signed by a government analyst stating that he, the government analyst, received in good order a package addressed to him, sealed in the same fashion, containing goods of the same nature as those sent by the inspector and marked in the same fashion is evidence -

- (e) of the facts stated in the certificate;

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(f) that the package received by that analyst was the same package as that sent by the inspector and was not broken into or interfered with in transit; and

(g) that the part of the sample received by that analyst was the part of the sample sent to that analyst by the inspector.

Person may  
require  
sample taken

12.(1) The Minister may, if requested by a person tendering the cost of the sample, require an inspector to purchase a sample of goods being goods for use as food and submit that sample for analysis.

(2) Unless the Minister otherwise directs, the cost of an analysis carried out pursuant to this section shall be borne by the person requesting it.

(3) A sample to be taken in pursuance of a request made under sub-section (1) shall be taken in accordance with section 10.

Government  
analyst to  
analyse goods  
for use as  
food and  
report  
findings

13.(1) After carrying out an analysis of goods for the purposes of this Act, a government analyst shall furnish to the Minister a report of analysis in which that analyst shall set out his findings as a result of the analysis and the method of analysis adopted by him in arriving at those findings.

(2) A report under sub-section (1) shall be in writing, dated and signed by the government analyst.

(3) Where a method of analysis of particular goods for use as food is prescribed in the standards applicable to goods of that kind, a government analyst shall in his analysis of those goods, adopt that method of analysis.

Offence to  
use report,  
&c., for  
trade  
purposes

14.(1) A person shall not use for trade purposes or as an advertisement, a copy of a report of analysis carried out in pursuance of this Act or an extract from such a report.

(2) A person shall not use for trade purposes, as an advertisement, a communication or correspondence from the Minister or a government department relating to goods for use as food, or to any other matter to which this Act applies.

Penalty: \$1,000.

Minister  
may appoint  
government  
analyst

15.(1) The Minister may appoint a person to be a government analyst.

(2) An appointment under sub-section (1) may be general or may be for a specific purpose.

(3) In proceedings for an offence against this

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Act, a certificate signed by the Minister stating -

- (a) that a person named in the certificate was on a stated date appointed to be a government analyst; and
- (b) that the appointment is a general appointment or that the appointment is for a specific purpose and stating that purpose,

is evidence that the person so named was, on the specified date, appointed as a government analyst under sub-section (1) for the purpose specified in the certificate.

16.(1) In this section, "report of analysis" means a report that complies with section 13.

Evidence by  
certificate

(2) In any legal proceedings, a certificate -

- (a) purporting to be signed by the person who is, under a law of a State or a Territory relating to public health, the purity of foods or the standards for the manufacture of foods, responsible for the appointment, registration, enrolment, approval, licensing or certifying of a person as an analyst; and
- (b) stating that a person named in that certificate was, on a date specified in that certificate, an appointed, registered, enrolled, approved, licensed or certified analyst within the meaning of the law of that State or Territory,

is evidence of the matters stated in that certificate.

(3) Subject to this section, the production, in any legal proceedings, of a document purporting to be a report of analysis is, without proof of the signature of the person appearing to have signed it, evidence of the matters stated in that document.

(4) Subject to sub-section (5), sub-section (3) does not apply -

- (a) if the person intending to rely on the production of the document (in this section called "the prosecutor") has not, at the time of service of the process originating the proceedings (in this section called "the summons") served the other party to the proceedings (in this section called "the defendant") with a copy of the document; or
- (b) if the defendant has, at least 7 days before the return date of the summons, given to the prosecutor notice in writing personally or by post that he requires the government analyst to attend as a witness.



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(5) Notwithstanding a failure to comply with this section, the court hearing the proceedings -

- (a) may allow a report of analysis to be admitted in evidence at any time during the proceedings; or
- (b) may extend the time for giving a notice under sub-section (4)(b),

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

(6) The court may, in addition to any other order as to costs, order a defendant who gives notice under sub-section (4)(b), to pay so much of the expense of the prosecutor involved in and incidental to having the government analyst attend before the court as a witness as the court considers reasonable.

(7) Service of a copy of a report of analysis shall be proved in the same manner as service of summons is proved in the court hearing the proceedings.

Exemption  
from  
liability

17. A person is not guilty of an offence against this Act involving the sale of goods for use as food if he proves -

- (a) that he received from the person from whom he purchased or acquired the goods, or the authorized agent of that person, a guarantee in writing that the goods were in accordance with the standards applicable to those goods; and
- (b) that he had no reason to believe that the goods were not in accordance with those standards.

Offences

18. A person shall not -

- (a) assault, intimidate or obstruct an inspector in the exercise of his powers or in the discharge of his duties under this Act;
- (b) refuse to sell or to allow to be taken a sample demanded in accordance with this Act;
- (c) give, procure, offer or promise any bribe, recompense, inducement or reward with the intention of influencing an inspector or an analyst in the exercise of his powers or in the discharge of his duties under this Act;
- (d) retake or attempt to retake any goods seized, taken or obtained under this Act or resist or attempt to prevent such a seizure;

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- (e) without authority, open, alter, break, remove or erase any mark, fastening or seal placed by an inspector, in pursuance of this Act, upon goods or upon a package, place, door or opening containing or affording access to goods; and
- (f) refuse to state his name or place of abode or address when requested by an inspector, or state a false name or place of abode or address.

Penalty: For a first offence - \$500 or imprisonment for 3 months; and

for a second or any subsequent offence - \$1,000 or imprisonment for 6 months.

19. All offences against this Act shall be tried before a court of summary jurisdiction.

Offences to be tried summarily

20.(1) In the case of a conviction under this Act, the goods to which the conviction relates may, by order of the court, be forfeited to the Crown.

Forfeiture

(2) A forfeiture under sub-section (1) may extend to the whole of any similar goods, and to all packages containing any similar goods -

- (a) the property of the person convicted;
- (b) found on the premises of that person; or
- (c) in the possession of that person at the time of the committing of the offence.

(3) All goods forfeited under this Act shall be disposed of as the Minister may direct.

21. Where a person is convicted of an offence, the court may order that all or any part of the fees and other expenses of and incidental to the analysis of goods for use as food, in respect of which the conviction is obtained, shall be paid by the person convicted as part of the costs attending the conviction, and those fees and expenses shall be recoverable in the same manner as those costs are recoverable.

Court may award costs to include those of and incidental to analysis

22. A person is deemed to manufacture or sell goods if he manufactures or sells them on his own account or as the agent or servant of another person.

Person deemed to manufacture goods if he manufactures on own account or for other person

23. The Administrator may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations