



AUSTRALIAN CAPITAL TERRITORY

Food (Amendment) Act 1993

No. 52 of 1993

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AUSTRALIAN CAPITAL TERRITORY

Food (Amendment) Act 1993

No. 52 of 1993

An Act to amend the *Food Act 1992*

[Notified in ACT Gazette S165: 27 August 1993]

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

Short title

1. This Act may be cited as the *Food (Amendment) Act 1993*.

Commencement

2. (1) Section 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Food Act 1992*.¹

Interpretation

4. Section 4 of the Principal Act is amended by inserting the following definitions:

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

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

‘approved code of practice’ means a code of practice approved under section 19A, as in force under this Act;

‘determined fee’ means the fee determined under section 20A for the purposes of the provision in which the expression occurs;

‘food business’ means the business of—

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

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

‘improvement notice’ means an improvement notice given under section 19V;

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

‘inspector’ means an inspector appointed for the purposes of the *Public Health Act 1928*;

‘licence’ means a licence in force under this Act;

‘licensee’ means the holder of a licence;

‘prohibition notice’ means a prohibition notice given under section 19W;

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

‘Tribunal’ means the Australian Capital Territory Administrative Appeals Tribunal.”.

Presumptions

5. Section 7 of the Principal Act is amended—

- (a) by omitting from paragraph (c) “and”; and
- (b) by adding at the end the following word and paragraph:

“and (e) food that fails to comply with a requirement of this Act or the regulations, being food that is part of a batch, lot or consignment of food of the same class or description, shall be presumed to be representative of all of the food in that batch, lot or consignment;”.

Insertion

6. Before section 9 of the Principal Act the following heading is inserted in Part II:

“Division 1—Substandard food”.

Labelling requirements

7. Section 14 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) Except in relation to prescribed food, subsection (1) does not apply in relation to food that, before or at the time of sale, is packed—

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

Insertion

8. After section 18 of the Principal Act the following Divisions are inserted:

“Division 2—Food safety requirements

Interpretation

“18A. For the purposes of this Division—

- (a) in determining whether food is injurious to health, regard shall be had—
 - (i) to the probable effect of that food on the health of the person consuming it; and

- (ii) to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities; and
- (b) food shall, in the absence of evidence to the contrary, be taken to be unfit for human consumption if, without limiting the generality of that expression—
 - (i) it is damaged, deteriorated or perished;
 - (ii) it contains any foreign substance or matter;
 - (iii) it contains animal or vegetable matter that is decomposed or dirt contaminated;
 - (iv) it contains part of an animal not normally sold for human consumption; or
 - (v) it is the product of a diseased animal or of an animal that has died otherwise than by slaughter.

Rendering food unsafe

“18B. (1) A person shall not render any food for sale—

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

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

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

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

Sale of unsafe food

“18C. A person shall not sell food that is—

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

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

“Division 3—Miscellaneous

Certificate evidence

“18D. In any proceeding under this Act or the regulations, a certificate purporting to be signed by the Minister stating—

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

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

Defences

9. Section 19 of the Principal Act is amended by inserting in subsection (3) “or 18C” after “section 18”.

Insertion

10. After Part II of the Principal Act the following Parts are inserted:

“PART IIA—CODES OF PRACTICE**Preparation**

“19A. (1) The Minister may, by instrument, approve—

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

dealing with all matters—

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

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

Disallowance

“19B. An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Publication

“19C. (1) The Minister shall publish in the *Gazette* and in a daily newspaper circulating in the Territory a notice of each approval given under subsection 19A (1)—

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

“(2) The Minister shall ensure that a copy of the code of practice to which an approval under subsection 19A (1) relates is made available for public inspection during office hours at the place or places specified in the notice under subsection (1).

“(3) In this section—

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

“PART IIB—LICENCES

Requirement to be licensed

“19D. (1) A person shall not carry on a food business except in accordance with a licence.

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

“(2) The regulations may—

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

Application for licence

“19E. An application for a licence shall—

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

Further information on licence application

“19F. The Minister may, by written notice, require an applicant for a licence to provide, either orally or in writing, such further information relating to the application as is specified in the notice.

Grant or refusal

“19G. (1) Where an application for a licence has been made by a person in accordance with section 19E, the Minister shall, subject to section 19H but otherwise as soon as practicable following receipt of the application, by notice in writing given to the applicant—

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

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

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

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

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

Licence not to be granted while premises incomplete

“19H. A licence shall not be granted in respect of food premises that, at the date of the application, have not been completed or are being altered until the Minister is satisfied that the relevant requirements for the occupation and use of those premises have been duly complied with.

Effect of licence

“19J. Subject to this Act, a licence authorises the licensee to carry on a food business in accordance with the licence on or from the food premises specified on the licence.

Inspection of licence

“19K. The licensee of a food business shall ensure that a copy of the licence granted in respect of that business is available for inspection at the food premises specified on the licence upon request by an inspector at any reasonable time.

Penalty: \$100.

Duration

“19L. (1) A licence, unless sooner surrendered or cancelled, remains in force for the period of 12 months commencing on the date on which it was granted or last renewed.

“(2) A licence shall not be taken to be in force while it is suspended under section 19R or 19S.

Renewal

“19M. The Minister shall, on application by a licensee, and on payment of the determined fee, before the expiration of the term of a licence, renew the licence for a period of 12 months commencing on the day immediately following the day on which, but for its renewal, the licence would have expired.

Alteration of food premises

“19N. (1) A licensee shall not, without the approval of the Minister—

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

Penalty: \$5,000.

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

“(3) An application shall—

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

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

“(5) The Minister shall, if satisfied, having regard to such of the matters referred to in subsection 19G (3) as he or she considers to be relevant to the circumstances of the application, by notice in writing given to the licensee—

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

Notice of transfer of food business

“19P. (1) Where a food business is transferred to a new proprietor, the licensee and the new proprietor shall each give notice of the transfer to the Minister not later than 7 days after the date of the transfer.

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

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

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

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

Variation of licences

“19Q. (1) On application by a licensee, the Minister shall, if satisfied that it is desirable in the interests of food safety, by notice in writing given to the licensee—

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

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

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

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

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

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

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

“(5) In this section—

‘licence’ includes a licence that is suspended.

Suspension or cancellation of licences

“19R. (1) For the purposes of this section, a licence may be suspended or cancelled on any of the following grounds:

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

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

the Minister shall give written notice to the licensee—

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

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

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

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

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

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

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

Emergency suspension of licences

“19S. (1) For the purposes of this section, a licence may be suspended on any of the following grounds:

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

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

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

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

“(4) The notice of suspension shall—

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

Return of licence

“19T. (1) Within 7 days after the date of effect of the variation, suspension or cancellation of a licence, the person who was licensed shall not, without reasonable excuse, fail to return the licence to the Minister.

Penalty: \$ 500.

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

“PART IIC—IMPROVEMENT AND PROHIBITION NOTICES

Interpretation

“19U. A reference in this Part to ‘licensee’ shall, in relation to a food business in respect of which—

- (a) a licence has not been granted; or

- (b) a licence has ceased to be in force;

be read as a reference to ‘proprietor’ in relation to that food business.

Improvement notices

“19V. (1) Where an inspector believes on reasonable grounds that a person—

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

the inspector may give—

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

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

“(2) An improvement notice shall—

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

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

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

“(5) An improvement notice continues in force until revoked in accordance with section 19X.

Prohibition notices

“19W. (1) Where an inspector believes on reasonable grounds that—

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

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

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

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

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

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

- (a) any part of the food premises where a specified activity is, or is not, to be carried on;
- (b) any substance, compound or article that is, or is not, to be used in connection with a specified activity;
- (c) any practice or procedure that is, or is not, to be followed in connection with a specified activity;
- (d) the recall of any food or appliance that may have been consigned or distributed for sale;
- (e) the impounding or isolation of any food or appliance;

- (f) the destruction or disposal, in a manner specified in the notice, of any food or appliance; or
- (g) the specification of a period, being a period that is, in the inspector's opinion, reasonable within which the licensee is to comply with a direction.

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

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

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

“(6) A prohibition notice continues in force until revoked in accordance with section 19X.

Revocation of notices

“19X. (1) An inspector shall, on his or her own motion or on application by the licensee of a food business, revoke an improvement notice or a prohibition notice, if satisfied after carrying out an inspection in relation to the matters in respect of which the relevant notice was issued—

- (a) in the case of an improvement notice—that the licensee has complied with the notice; or
- (b) in the case of a prohibition notice—that adequate measures have been taken by the licensee to prevent or remove the relevant risk of injury to health that gave rise to the notice.

“(2) An application by a licensee for the purposes of subsection (1) shall—

- (a) be made in writing;
- (b) be addressed to the inspector who issued the relevant notice;
- (c) specify the measures taken by the licensee in compliance with the notice;
- (d) nominate a date for an inspection to be made in relation to the matters in respect of which the notice was given; and

(e) be accompanied by the determined fee.

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

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

Compliance with notices

“19Y. A licensee to whom—

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

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

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

“PART IID—REVIEW OF DECISIONS

Review by Tribunal

“19Z. (1) An application may be made to the Tribunal for review of a decision of the Minister—

- (a) granting a licence subject to conditions under paragraph 19G (1) (a);
- (b) refusing to grant a licence under paragraph 19G (1) (b);
- (c) refusing to approve an alteration to food premises under paragraph 19N (5) (b);
- (d) refusing to vary a licence under paragraph 19Q (1) (b);
- (e) varying a licence under subsection 19Q (3);
- (f) suspending or cancelling a licence under subsection 19R (3); or
- (g) suspending a licence under paragraph 19S (2) (b).

“(2) An application may be made to the Tribunal for review of a decision of an inspector—

- (a) giving an improvement notice;

- (b) refusing to extend a period for compliance with an improvement notice under subsection 19V (4);
- (c) giving a prohibition notice;
- (d) refusing to extend a period for compliance with a prohibition notice under subsection 19W (3); or
- (e) refusing to revoke an improvement notice or a prohibition notice under subsection 19X (3).

“(3) Notice given to a person of a decision referred to in subsections (1) and (2) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

“(4) The validity of a decision referred to in subsection (1) or (2) shall not be taken to have been affected by a failure to comply with subsection (3).”.

Insertion

11. After section 20 of the Principal Act the following section is inserted:

Fees

“20A. The Minister may, by notice in the *Gazette*, determine fees for the purposes of this Act and the regulations.”

Regulations

12. Section 22 of the Principal Act is amended by adding at the end the following subsections:

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

- (a) requiring precautions, including measures for personal hygiene, to be taken in relation to infectious diseases;

- (b) in relation to training in matters relevant to the safety of food, including provisions—
 - (i) relating to the provision of training programs by the Territory;
 - (ii) relating to the approval of training programs;
 - (iii) relating to the accreditation of persons who conduct training programs; and
 - (iv) requiring persons who are, or intend to become, involved in food businesses, whether as proprietors or employees or otherwise, to undertake training programs;
 - (c) in relation to food safety plans for food businesses;
 - (d) requiring the keeping of records and the furnishing of returns in relation to matters relevant to the safety of food;
 - (e) providing for requirements in relation to the design, siting and construction of food premises; and
 - (f) providing for requirements in relation to appliances.
- “(4) The regulations may prescribe penalties not exceeding—
- (a) if the offender is a natural person—\$1,000; or
 - (b) if the offender is a body corporate—\$5,000;

for offences against the regulations.

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

NOTE

1. Act No. 47, 1992.

[Presentation speech made in Assembly on 17 June 1993]