



Australian Capital Territory

Food Act 2001 No 66

Republication No 4

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Food Act 2001* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 March 2003. It also includes any amendment, repeal or expiry affecting the republished law to 11 March 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Food Act 2001

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Australian Capital Territory

Food Act 2001

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

Part 1 Preliminary

1 Name of Act

This Act is the *Food Act 2001*.

3 Objects of Act

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 relation to the sale of food;
- (c) to provide for the application in the ACT of the food standards code.

4 Dictionary

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

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

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

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

5 Notes

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

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

6 Application of Act to primary food production

- (1) The following parts do not apply in relation to primary food production:
 - (a) part 7 (Improvement notices and prohibition orders);
 - (b) part 8 (Notification and registration of food businesses).
- (2) The functions given to authorised officers under part 5 (Inspection and seizure powers) and part 6 (Taking and analysis of food samples) may only be exercised in relation to primary food production—
 - (a) to allow the investigation and prosecution of offences against this Act; or
 - (b) in relation to the making or enforcement of emergency orders under part 4 (Emergency powers).
- (3) In this section:

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

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

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

7 Application of Act to water suppliers

- (1) The following provisions do not apply in relation to the supply of water for human consumption through a relevant reticulated water system:
 - (a) section 16 (Knowingly handling food in unsafe way);
 - (b) section 18 (Knowingly falsely describing food);

- (c) section 22 (1) (which is about handling food in a way that renders it unsafe etc);
 - (d) section 23 (1) (which is about handling food in a way that renders it unsuitable etc);
 - (e) section 24 (Misleading conduct relating to sale of food);
 - (f) section 25 (Sale of food not complying with purchaser's demand);
 - (g) section 26 (Sale of unfit equipment or packaging or labelling material);
 - (h) part 7 (Improvement notices and prohibition orders);
 - (i) part 8 (Notification and registration of food businesses).
- (2) Section 27 (Compliance with food standards code), to the extent to which it requires compliance with the requirements of the food safety standards, does not apply in relation to the supply of water for human consumption through a relevant reticulated water system.
- (3) In this section:
- relevant reticulated water system*** means—
- (a) a reticulated water system provided by a utility under the *Utilities Act 2000* that is licensed under that Act for the distribution of water through a water network; or
 - (b) a reticulated water system provided by an entity prescribed under the regulations for this paragraph; or
 - (c) a reticulated water system that provides water to a place prescribed under the regulations for this paragraph.

Part 2 Key concepts

8 Meaning of *food*

- (1) For this Act, *food* includes—
- (a) any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared); or
 - (b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing mentioned in paragraph (a); or
 - (c) any substance used in preparing a substance or thing mentioned in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing mentioned in that paragraph, including, for example, a processing aid; or
 - (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; or
 - (e) any substance or thing declared to be a food under a declaration in force under the Commonwealth Act, section 3B and prescribed under the regulations for this paragraph;
- whether or not the substance, thing or chewing gum is in a condition fit for human consumption.
- (2) However, *food* does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989* (Cwlth).
- (3) To remove any doubt, *food* may include live animals and plants.

9 Meaning of *sell* etc

- (1) For this Act, *sell* includes—
- (a) barter, offer or attempt to sell; or
 - (b) receive for sale; or
 - (c) have in possession for sale; or
 - (d) display for sale; or
 - (e) cause or permit to be sold or offered for sale; or
 - (f) send, forward or deliver for sale; or
 - (g) dispose of by any method for valuable consideration; or
 - (h) dispose of to an agent for sale on consignment; or
 - (i) provide under a contract of service; or
 - (j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employee's employment or a term of the employee's contract of service, for consumption by the employee at the employee's place of work; or
 - (k) dispose of by way of raffle, lottery or other game of chance; or
 - (l) offer as a prize or reward; or
 - (m) give away for the purpose of advertisement or in furtherance of trade or business; or
 - (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; or
 - (o) supply food (whether or not for consideration) in the course of providing services to people in—

- (i) a prison (including a detention centre under the *Periodic Detention Act 1995* and an institution or shelter under the *Children and Young People Act 1999*), lockup or remand centre; or
 - (ii) a hospice, hospital, nursing home or other health facility operated by or on behalf of the Territory; or
 - (iii) any other institution (however described) prescribed under the regulations for this paragraph; or
- (p) sell for the purpose of resale.
- (2) For this Act, food or equipment that is displayed for the purpose of being offered as a prize or reward, or given away for the purpose of advertisement or in the furtherance of trade or business, is taken to have been *displayed for sale* by the owner of the food or equipment.

10 Meaning of *food business*

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

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

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

11 Meaning of *primary food production*

- (1) For this Act, *primary food production* is the growing, raising, cultivation, picking, harvesting, collection or catching of food, and includes the following:
- (a) the transport or delivery of food on, from or between the premises where it was grown, raised, cultivated, picked, harvested, collected or caught;
 - (b) the packing, treating (for example, washing) or storing of food on the premises where it was grown, raised, cultivated, picked, harvested, collected or caught;
 - (c) the storage of food in a silo that is not connected with a food processing operation and the transport or delivery of food from, between or to such silos;
 - (d) the sale of livestock at saleyards and the transport of livestock to and from saleyards;
 - (e) any other food production activity that is regulated under an Act prescribed under the regulations for this subsection.
- (2) However, *primary food production* does not include—
- (a) any process involving the substantial transformation of food (for example, manufacturing or canning), whether or not the process is carried out on the premises where the food was grown, cultivated, picked, harvested, collected or caught; or
 - (b) the sale or service of food directly to the public; or
 - (c) any other food production activity that is prescribed under the regulations for this subsection.

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

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

12 Meaning of *unsafe* food

- (1) For 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; and
 - (b) nothing happened to it after that particular time and before being consumed by the person that would prevent its being used for its reasonable intended use; and
 - (c) it was consumed by the person according to its reasonable intended use.
- (2) However, food is not *unsafe* for this Act only because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only in people with allergies or sensitivities that are not common to the majority of people.
- (3) In subsection (1):
processes include processes involving storage and preparation.

13 Meaning of *unsuitable* food

- (1) For this Act, food is *unsuitable* if it is food that—
 - (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use; or
 - (b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use; or
 - (c) is the product of a diseased animal, or an animal that has died otherwise than by slaughter, and has not been declared under another Territory law 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 this Act only because—
- (a) at any particular time before it is sold for human consumption it contains an agricultural or veterinary chemical; or
 - (b) when it is sold for human consumption it contains an agricultural or veterinary chemical in an amount that does not contravene the food standards code; or
 - (c) it contains a metal or nonmetal contaminant (within the meaning of the food standards code) in an amount that does not contravene the permitted level for the contaminant as provided by the food standards code; or
 - (d) it contains any matter or substance that is permitted by the food standards code.
- (3) In this section:
- slaughter*, of an animal, includes killing the animal in the process of capturing, taking or harvesting it for the purposes of preparing it for use as food.

Part 3 Offences relating to food

Division 3.1 Preliminary

14 Application of pt 3 to food sold etc outside ACT

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

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

15 False descriptions of food

- (1) For this part, food that is *falsely described* includes food to which any 1 or more of the following paragraphs applies:
- (a) the food is represented as being of a particular nature or substance for which there is a prescribed standard under the food standards code and the food does not comply with that prescribed standard;
 - (b) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance in a quantity or proportion that significantly diminishes its food value or nutritive properties as compared with food of the represented nature or substance;
 - (c) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance of lower commercial value than food of the represented nature or substance;
 - (d) the food is represented as being of a particular nature or substance and a constituent of the food has been completely or partly removed so that its properties are diminished as compared with food of the represented nature or substance;

- (e) any word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression about the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person;
 - (f) the food is not of the nature or substance represented by the way in which it is packaged, labelled or offered for sale.
- (2) Without limiting the application of subsection (1) to section 18 (2) (Knowingly falsely describing food) or section 21 (2) (False description of food), food is *falsely described* for those subsections if it is supplied in response to a purchaser's demand or other 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 3.2 Serious offences relating to food

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

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

16 Knowingly handling food in unsafe way

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

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

17 Knowingly selling unsafe food

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

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

18 Knowingly falsely describing food

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

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

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

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

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

Division 3.3 Other offences relating to food

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

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

19 Handling of food in unsafe way

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

Maximum penalty: 750 penalty units.

20 Sale of unsafe food

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

Maximum penalty: 750 penalty units.

21 False description of food

- (1) A person must not cause food intended for sale to be falsely described if the person ought reasonably to know that a consumer of the food who relies on the description is likely to suffer physical harm.

Maximum penalty: 750 penalty units.

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

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

Maximum penalty: 750 penalty units.

22 Handling and sale of unsafe food

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

Maximum penalty: 500 penalty units.

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

Maximum penalty: 500 penalty units.

23 Handling and sale of unsuitable food

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

Maximum penalty: 400 penalty units.

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

Maximum penalty: 400 penalty units.

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

24 Misleading conduct relating to sale of food

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

- (a) the advertising, packaging or labelling of food intended for sale; or
(b) the sale of food.

Maximum penalty: 500 penalty units.

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

Maximum penalty: 500 penalty units.

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

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

Maximum penalty: 500 penalty units.

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

25 Sale of food not complying with purchaser's demand

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

Maximum penalty: 500 penalty units.

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

26 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: 500 penalty units.

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

Maximum penalty: 500 penalty units.

27 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—

- (a) the conduct of a food business; or
- (b) food intended for sale; or

(c) food for sale.

Maximum penalty: 500 penalty units.

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

Maximum penalty: 500 penalty units.

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

Maximum penalty: 500 penalty units.

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

Maximum penalty: 500 penalty units.

Division 3.4 Defences

28 Defence relating to publication of advertisements

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

- (a) conducted the business of publishing or arranging for the publication of advertisements; and
- (b) published or arranged for the publication of the advertisement in the ordinary course of the business.

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

- (a) should reasonably have known that the publication of the advertisement was an offence; or
- (b) had previously been told in writing by an authorised officer that publication of such an advertisement would be 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 advertisement was published.

29 Defence in relation to food for export

- (1) In a proceeding for an offence against this part involving a contravention of a provision of the food standards code in relation to food, it is a defence if the defendant proves that—
 - (a) the food is to be exported to another country; and
 - (b) the food complies with the laws (the foreign laws) in force at the time of the offence in the place to which the food is to be exported; and
 - (c) the foreign laws deal with the same subject matter as the provision of the food standards code.
- (2) This section does not apply to food that was originally intended for export but was sold in the ACT.

30 Defence of appropriate diligence

- (1) In a proceeding for an offence against this part, it is a defence if the defendant proves that the defendant took all reasonable precautions and exercised all appropriate diligence to prevent the commission of the offence by the defendant or by another person under the defendant's control.
- (2) Without limiting how the defendant may satisfy subsection (1), the defendant satisfies the subsection if the defendant proves—
 - (a) that the commission of the offence was caused by—
 - (i) an act or omission of another person; or
 - (ii) reliance on information supplied by another person; and
 - (b) that—

- (i) the defendant carried out all 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 defendant; and
- (c) that the defendant did not import the food into the ACT from another country; and
- (d) for an offence involving the sale of food—
- (i) that the defendant sold the food in the same condition as the defendant purchased it; or
 - (ii) that the defendant sold the food in a different condition to that in which the defendant purchased it, but that the difference did not result in a contravention of this Act; and
- (e) that the defendant did not know and had no reason to suspect at the time of commission of the offence that the defendant's act or omission was an offence against this part.

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

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

another person does not include a person who was—

- (a) an employee or agent of the defendant; or
 - (b) if the defendant is a corporation—an executive officer, employee or agent of the defendant.
- (4) Without limiting how the defendant may satisfy subsection (1) or (2) (b) (i), the defendant satisfies the provision if the defendant proves—

- (a) for an offence relating to a food business for which a food safety program is required to be prepared under the regulations—that the defendant complied with a food safety program for the food business that complies with the requirements of the regulations; or
- (b) in any other case—that the defendant 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 way.

31 Defence in relation to handling food

- (1) This section applies to a proceeding for an offence against—
 - (a) section 16 (Knowingly handling food in unsafe way); or
 - (b) section 19 (Handling of food in unsafe way); or
 - (c) section 22 (1) (which is about handling food in a way that renders it unsafe etc); or
 - (d) section 23 (1) (which is about handling food in a way that renders it unsuitable etc).
- (2) It is a defence if the defendant proves that the defendant caused the food to which the offence relates to be destroyed or otherwise disposed of immediately after the food was handled in the way that rendered it, or was likely to render it, unsafe or unsuitable.

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

In a proceeding for an offence against section 26 (1) or (2) (Sale of unfit equipment or packaging or labelling material), it is a defence if

the defendant proves that the defendant reasonably believed that the equipment or material concerned was not intended for use in relation to the handling of food.

Division 3.5 Other matters

33 Defence of mistaken and reasonable belief not available

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

34 Onus on defendant to prove certain statements about food

- (1) This section applies to a proceeding for an offence against this part in which it is alleged that a statement on a package of food, or in an advertisement about food, that relates to the origin or composition of the food, or its therapeutic or nutritive properties, caused the food to be falsely described.
- (2) If the defendant was responsible for making the statement, the onus of proving the correctness of the statement is on the defendant.

35 Alternative verdicts for handling food in unsafe way

- (1) This section applies to a defendant charged with an offence against section 16 (Knowingly handling food in unsafe way).
- (2) If the trier of fact is not satisfied that the defendant committed the offence but is satisfied that the defendant committed a lesser food handling offence, the trier of fact may find the defendant not guilty of the offence charged but guilty of the lesser food handling offence.
- (3) In this section:

lesser food handling offence means an offence against—

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

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

36 Alternative verdicts for selling unsafe food

- (1) This section applies to a defendant charged with an offence against section 17 (Knowingly selling unsafe food).
- (2) If the trier of fact is not satisfied that the defendant committed the offence but is satisfied that the defendant committed a lesser food selling offence, the trier of fact may find the defendant not guilty of the offence charged but guilty of the lesser food selling offence.
- (3) In this section:

lesser food selling offence means an offence against—

- (a) section 20 (Sale of unsafe food); or
- (b) section 22 (2) (which is about the sale of unsafe food etc).

Part 4 Emergency powers

37 Definitions for pt 4

In this part:

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

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

38 Making of emergency orders

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

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

39 Nature of emergency orders

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

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

- (e) direct that a food or other primary produce intended to be used for human consumption be disposed of and state how the disposal is to be done;
- (f) prohibit absolutely the carrying on of an activity in relation to a food, or permit the carrying on of the activity in accordance with conditions stated in the order;
- (g) without limiting paragraph (f), impose conditions relating to the taking and analysis of samples of the food or of water, soil or anything else that is part of the environment in which the activity is carried on in relation to the food;
- (h) state 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.

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

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

40 Special provisions relating to recall orders

- (1) A recall order may require a person bound by the order to disclose to the public (or a stated part of the public), in a stated way, any 1 or more of the following:
 - (a) the food to be recalled or disposed of;
 - (b) the reasons why the food is considered to be unsafe;
 - (c) the circumstances in which consumption of the food is unsafe;
 - (d) procedures for disposing of the food.
- (2) A person who is required by a recall order to conduct a recall of food must give written notice to the chief health officer of the completion of the recall as soon as practicable after its completion.

- (3) A person bound by a recall order is liable for any cost incurred by or on behalf of the Territory in relation to the recall order and the cost is taken to be a debt owing to the Territory.
- (4) In a proceeding for the recovery of the debt, a certificate signed by the chief health officer stating the amount of the costs, and how they were incurred, is evidence of the matters stated in the certificate.

41 How orders are made

- (1) An emergency order may be addressed to—
 - (a) the person or people intended to be bound by it; or
 - (b) several people, a class of people, or all people.
- (2) A copy of an emergency order mentioned in subsection (1) (a) must be served on the person or people intended to be bound by it.

Note For how documents may be served, see *Legislation Act 2001*, pt 19.5.

- (3) Notice of an emergency order mentioned in subsection (1) (b) must be published as soon as practicable after the order is made in a newspaper that, in the Minister's opinion, will be most likely to bring the order to the attention of the people to be bound by it.
- (4) The notice must set out the terms of the order and the people to be bound by it.
- (5) An emergency order, when it takes effect, is binding on the person or people to whom it is addressed.
- (6) An emergency order that is served on a person takes effect when it is served on the person.
- (7) An emergency order that is notified under subsection (3) takes effect at the beginning of the 1st day when the order is notified under that subsection.
- (8) An order expires at the end of 90 days after the day when it takes effect unless it is sooner revoked.

- (9) Subsection (8) does not prevent a further order being made in the same terms as an order that has expired.

42 Operation of emergency orders

- (1) A person bound by an emergency order may apply to the Supreme Court for an order staying or otherwise affecting the operation of the order.
- (2) The Supreme Court may make an order staying or otherwise affecting the operation of an emergency order only if satisfied that the making of the order will not—
- (a) create or increase the possibility of a serious danger to public health; or
 - (b) aggravate the adverse consequences of a serious danger to public health.
- (3) In deciding whether to make an order under this section, the Supreme Court must have regard to section 44 (Compensation for emergency order).

43 Failure to comply with emergency order

- (1) A person must not, without reasonable excuse—
- (a) conduct an activity in contravention of a prohibition imposed on the person by an emergency order; or
 - (b) fail to comply with a direction given by an emergency order; or
 - (c) fail to comply with a condition stated in an emergency order.

Maximum penalty: 500 penalty units.

- (2) In this section:

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

44 Compensation for emergency order

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

Part 5 Inspection and seizure powers

Division 5.1 General

45 Definitions for pt 5

In this part:

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

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

occupier, of premises, includes—

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

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

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

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

Division 5.2 Powers of authorised officers generally

46 Power to enter premises

- (1) For this Act, an authorised officer may—
 - (a) at any reasonable time, enter premises that the authorised officer believes, on reasonable grounds, are—

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

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

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

- (2) However, subsection (1) (a) does not authorise entry into any part of premises that is being used solely for residential purposes except if that part of the premises is being used for—
 - (a) the preparation or service of meals provided with paid accommodation; or
 - (b) the preparation of food intended for sale or the sale of food.

Example of par (b)

A food catering service conducted from a house.

- (3) For subsection (1), an authorised officer may stop and detain a vehicle that the officer believes, on reasonable grounds, is—
 - (a) a food transport vehicle; or

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

47 Production of identity card

An authorised officer must not remain on premises entered under this part if the authorised officer does not produce his or her identity card for inspection when asked by the occupier.

48 Consent to entry

- (1) When seeking the consent of an occupier for entering premises under section 46 (1) (c) (Power to enter premises), an authorised officer must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised officer must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time, and date, when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised officer must immediately give a copy to the occupier.
- (4) A court must find that an occupier of premises did not consent to an entry to the premises by an authorised officer under this part if—
 - (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and

- (b) an acknowledgment of consent for the entry is not produced in evidence for the entry; and
- (c) it is not proved that the occupier consented to the entry.

49 Warrants

- (1) An authorised officer may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity is at the premises, or may be at the premises within the next 14 days.
- (5) The warrant must state—
 - (a) that an authorised officer may, with any necessary assistance and force, enter the premises and exercise the authorised officer's powers under this part; and
 - (b) the offence for which the warrant is sought; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 14 days after the warrant's issue, the warrant ends.

50 Warrants—application made other than in person

- (1) An authorised officer may apply for a warrant by phone, fax, radio or other form of communication if the authorised officer considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised officer if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised officer—
 - (a) the magistrate must—
 - (i) tell the authorised officer what the terms of the warrant are; and
 - (ii) tell the authorised officer the date and time the warrant was issued; and
 - (b) the authorised officer must complete a form of warrant (*warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the authorised officer's powers under this part.

- (7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the authorised officer completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by an authorised officer was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

51 General powers of authorised officers

- (1) An authorised officer who enters premises (including a vehicle) under this part may, for this Act, do any 1 or more of the following in relation to the premises or anything on the premises:
 - (a) examine any food sold or intended for sale or any equipment;
 - (b) examine and copy, or take extracts from, any documents relating to food intended for sale, the sale of food or equipment;
 - (c) examine and copy, or take extracts from, any packaging, labelling or advertising material;
 - (d) examine any system of work in or on the premises;
 - (e) examine anything else in or on the premises;

- (f) open (or require to be opened) any container or package that the authorised officer believes, on reasonable grounds—
 - (i) contains any food sold or intended for sale or any equipment; or
 - (ii) is used in relation to the transport of food;
- (g) open or operate (or require to be opened or operated) any equipment;
- (h) subject to part 6 (Taking and analysis of food samples), take for analysis samples of any food sold or intended for sale;
- (i) take for analysis samples of water, soil or anything else that is part of the environment in which food is handled to find out whether that environment poses a risk to the safety of the food for human consumption;
- (j) take for analysis samples of or from anything else in or on the premises;
- (k) conduct any other examination to find out whether this Act (including the food standards code) is being complied with;
- (l) take measurements, conduct tests and make sketches, drawings or any other kind of record (including photographs, films, or audio, video or other recordings);
- (m) under section 52 (Power to seize things), seize a thing in or on the premises;
- (n) require the occupier, or a person on the premises, to provide information, answer questions, or produce documents or anything else, reasonably needed for the authorised officer's functions under this Act;

- (o) require the occupier, or a person on the premises, to give the authorised officer reasonable assistance to exercise a power under this part.

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

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

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

Maximum penalty: 50 penalty units.

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (3) An authorised officer may exercise all or any of the powers mentioned in subsection (1) (a) to (o) in relation to food in a public place that the officer suspects, on reasonable grounds, is food sold or intended for sale (whether or not the food was sold or intended for sale in the public place).
- (4) This Act applies in relation to the exercise of a power under subsection (3) as if—
- (a) the public place were premises entered by the authorised officer under this part; and
 - (b) the proprietor of the food business concerned were the occupier of the premises; and
 - (c) all other necessary changes were made.
- (5) Without limiting subsection (4), if a person is required to do something by an authorised officer under subsection (3), the person is not obliged to comply with the requirement if the authorised officer does not produce his or her identity card for inspection when asked by the person.

52 Power to seize things

- (1) An authorised officer who enters premises under this part with the occupier's consent may seize a thing in or on the premises if—
 - (a) the authorised officer is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when seeking the occupier's consent.
- (2) An authorised officer who enters premises under a warrant issued under this part may seize anything in or on the premises that the authorised officer is authorised to seize under the warrant.
- (3) An authorised officer who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything in or on the premises if satisfied, on reasonable grounds, that—
 - (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Also, an authorised officer who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize any food in or on the premises if satisfied, on reasonable grounds, that the food—
 - (a) is unsafe or unsuitable; or
 - (b) consists partly or completely of decomposed, filthy, putrid or spoiled matter; or
 - (c) otherwise poses an immediate risk to health or property.

- (5) The powers of an authorised officer under subsection (3) or (4) are additional to any powers of the authorised officer under subsection (1) or (2) or any other Territory law.
- (6) Having seized a thing, an authorised officer may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it; or
 - (c) for food mentioned in subsection (4)—destroy or otherwise dispose of the food under section 53 (5) (Power to destroy decomposed food etc).

Example of how access may be restricted

The authorised officer may—

- (a) place the seized thing in a room or other enclosed area, compartment or cabinet at the place of seizure; and
 - (b) fasten and seal the door or opening providing access to the room, area, compartment or cabinet; and
 - (c) mark the door or opening in a way that indicates that access to it has been restricted under this Act.
- (7) A person must not, without an authorised officer's approval, interfere with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (5).

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

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

53 Power to destroy decomposed food etc

- (1) This section applies to food inspected or seized under this part by an authorised officer if the authorised officer is satisfied, on reasonable grounds, that the food—
- (a) is unsafe or unsuitable; or

- (b) consists partly or completely of decomposed, filthy, putrid or spoiled matter; or
 - (c) otherwise poses an immediate risk to health or property.
- (2) The authorised officer may direct the proprietor of the food business concerned to destroy or otherwise dispose of the food.
- (3) The direction may state any 1 or more of the following:
- (a) how the food must be destroyed or otherwise disposed of;
 - (b) how the food must be kept until it is destroyed or otherwise disposed of;
 - (c) the period within which the food must be destroyed or otherwise disposed of.
- (4) The proprietor of the food business must not, without reasonable excuse, contravene a direction given to the proprietor under subsection (2).
- Maximum penalty: 50 penalty units.
- (5) Alternatively, if the food has been seized under this part, the authorised officer may destroy or otherwise dispose of the food.
- (6) Costs incurred by or on behalf of the Territory in relation to the disposal of food under subsection (5) are a debt owing to the Territory by the proprietor of the food business.

54 Power to require name and address

- (1) An authorised officer may require a person to state the person's name and home address if the authorised officer—
- (a) finds a person committing an offence against this Act; or
 - (b) has reasonable grounds for believing that a person has just committed an offence against this Act.

- (2) If the authorised officer requires the person to state the person's name and home address, the authorised officer must—
 - (a) tell the person the reasons for the requirement; and
 - (b) as soon as practicable, record those reasons.
- (3) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1).

Maximum penalty: 5 penalty units.
- (4) However, a person is not obliged to comply with a requirement under subsection (1) if the authorised officer does not produce his or her identity card for inspection when asked by the person.

Division 5.3 Return and forfeiture of things seized

55 Receipt for things seized

- (1) As soon as practicable after a thing is seized by an authorised officer under this part, the authorised officer must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised officer must leave the receipt, secured conspicuously, at the place of seizure.
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation why the thing was seized;
 - (c) an explanation of the person's right to apply to a court under section 58 (Application for order disallowing seizure) for an order disallowing the seizure;
 - (d) if the thing is removed from the premises where it is seized—where the thing is to be taken to;

- (e) the authorised officer's name, business address and telephone number.

56 Access to things seized

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

57 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
 - (a) an infringement notice for an offence relating to the thing is not served on its owner within 6 months after the day of the seizure and either—
 - (i) a prosecution for an offence relating to the thing is not begun within the 6 month period; or
 - (ii) a prosecution for an offence relating to the thing is begun within the 6 month period and the court does not find the offence proved; or
 - (b) an infringement notice for an offence relating to the thing is served on its owner within 6 months after the day of the seizure, the infringement notice is withdrawn and either—

- (i) a prosecution for an offence relating to the thing is not begun within 6 months after the day of the seizure; or
 - (ii) a prosecution for an offence relating to the thing is begun within 6 months after the day of the seizure and the court does not find the offence proved; or
- (c) an infringement notice for an offence relating to the thing is served on its owner within 6 months after the day of the seizure, liability for the offence is disputed in accordance with section 122 (Disputing liability for infringement notice offence) and either—
- (i) the chief health officer does not lay an information in the Magistrates Court against the person for the offence within 60 days after being given notice under section 122 that liability is disputed; or
 - (ii) the Magistrates Court does not find the offence proved; or
- (d) before the thing is forfeited to the Territory under section 61 (Forfeiture of seized things), the chief health officer—
- (i) becomes satisfied that there has been no offence against this Act with which the thing was connected; or
 - (ii) decides not to prosecute the offence.
- (2) However, this section does not apply—
- (a) to food mentioned in section 52 (4) (which is about the seizure of contaminated or putrid food etc); or
 - (b) if the chief health officer believes, on reasonable grounds, that the only practical use of the thing in relation to a food business would be an offence under this Act.

58 Application for order disallowing seizure

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

59 Order for return of seized thing

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 58 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if—
 - (a) it is proved that the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
 - (b) it is not proved there is an offence against this Act with which the thing is connected.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make any 1 or more of the following ancillary orders:
 - (a) an order directing the chief health officer to return the thing to the applicant or to someone else that appears to be entitled to it;

- (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
 - (c) an order about the payment of costs in relation to the application.
- (5) The awarding of costs is at the discretion of the Magistrates Court.
- (6) If the Magistrates Court makes an order for the payment of compensation or for costs, the order is enforceable as a judgment of the court.

60 Adjourment pending hearing of other proceedings

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

61 Forfeiture of seized things

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

- (ii) has been made within that period, but the application has been refused or has been withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
 - (a) it is forfeited to the Territory; and
 - (b) it may be sold, destroyed or otherwise disposed of as the chief health officer directs.

62 Return of forfeited things

- (1) This section applies to a thing forfeited under section 61 that has not been disposed of in a way that would prevent its return.
- (2) If the chief health officer becomes satisfied that there has been no offence against this Act with which the thing was connected, the chief health officer must, as soon as practicable, return the thing to the person from whom it was seized or someone else who appears to the chief health officer to be entitled to it.
- (3) On its return, any proprietary and other interests in the thing that existed immediately before its forfeiture are restored.

63 Cost of disposal of things forfeited

- (1) This section applies if—
 - (a) a person is convicted, or found guilty, of an offence against this Act in relation to a thing forfeited to the Territory under this part; and
 - (b) the thing was connected with an offence against this Act; and
 - (c) the person was the owner of the thing immediately before its forfeiture.
- (2) If this section applies, costs incurred by or on behalf of the Territory in relation to the lawful disposal of the thing (including storage costs) are a debt owing to the Territory by the person.

Division 5.4 Miscellaneous

66 Providing false or misleading information

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

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

67 Providing false or misleading documents

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

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

68 Hindering or obstructing authorised officer

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

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

69 Pretending to be an authorised officer

A person must not pretend to be an authorised officer.

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

70 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an authorised officer must take all reasonable steps to ensure that the authorised officer, and any person assisting the authorised officer,

causes as little inconvenience, detriment and damage as is practicable.

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

71 Compensation to be paid in certain circumstances

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

Part 6 Taking and analysis of food samples

72 Samples for routine monitoring of Act

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

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

73 Other samples—proprietor to be told sample to be analysed

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

74 Payment for samples

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

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

75 Samples from packaged food

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

76 Procedures for dividing food samples

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

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

77 Analysis to comply with food standards code

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

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

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

78 Certificates of analysis by authorised analysts

- (1) The analysis of a sample of food for the chief health officer must be carried out by an authorised analyst or under the supervision of an authorised analyst.
- (2) The authorised analyst must give to the chief health officer a certificate of analysis that—
 - (a) is signed and dated by the analyst; and
 - (b) contains a written report of the analysis that sets out the findings; and
 - (c) states the requirements (if any) of the food standards code relating to the carrying out of the analysis and certifies that the analysis was carried out in accordance with those requirements.

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

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

Part 7 Improvement notices and prohibition orders

79 Service of improvement notices

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

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

Examples of par (b)

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

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

Note 2 For how documents may be served, see *Legislation Act 2001*, pt 19.5.

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

80 Contents of improvement notices

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

Example of par (h)

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

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

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

81 Compliance with improvement notices

- (1) If an improvement notice is complied with, an authorised officer must note the date of compliance on a copy of the notice (the *compliance copy*) and, as soon as practicable, give a copy of the compliance copy to the proprietor of the food business in relation to which the improvement notice was served.

- (2) An improvement notice ceases to apply to the food business in relation to which it was served if an authorised officer notes the date of compliance with the notice by the food business on a copy of the notice.

82 Service of prohibition orders

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

- (a) that any of the circumstances mentioned in section 79 (a), (b) or (c) (Service of improvement notices) apply in relation to the food business; and
- (b) that—
- (i) the proprietor of the food business has not complied with an improvement notice in relation to the circumstances within the period for compliance for the notice under section 80 (Contents of improvement notices); or
 - (ii) service of the order is necessary to prevent or mitigate a serious danger to public health.

Note For how documents may be served, see *Legislation Act 2001*, pt 19.5.

83 Contents of prohibition orders

- (1) A prohibition order may direct the proprietor of the food business on whom the order is served not to do any 1 or more of the following until the proprietor is given a clearance certificate for the order:
- (a) use particular premises or equipment in relation to the handling or otherwise of food intended for sale or the sale of food;
 - (b) handle food intended for sale in a particular way or for a particular purpose;
 - (c) do anything else in relation to food intended for sale or the sale of food.

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

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

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

84 Scope of improvement notices and prohibition orders

- (1) An improvement notice or prohibition order may be made in relation to any 1 or more of the following:
- (a) any or all premises, or any part of any premises, used by the food business concerned in relation to the handling or otherwise of food intended for sale or the sale of food;
 - (b) any or all equipment or vehicles used by the food business in relation to the handling or otherwise of food intended for sale or the sale of food;
 - (c) the handling of food intended for sale by the food business in a particular way or for a particular purpose;

(d) any or all food intended for sale or sold.

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

(2) A direction under section 80 (1) (g) (Contents of improvement notices) or section 83 (2) (Contents of prohibition orders) may state any 1 or more of the following:

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

85 Request for reinspection

- (1) This section applies to the proprietor of a food business on whom a prohibition order has been served if the proprietor considers that the food business complies with this Act.
- (2) The proprietor may, in writing, ask the chief health officer to arrange for an authorised officer to reinspect the things in relation to which the prohibition order was served.
- (3) If the request relates to a vehicle or equipment, the vehicle or equipment must be made available for reinspection where it was originally inspected or at another place agreed to by an authorised officer.
- (4) If, through no fault of the proprietor, an authorised officer does not make the reinspection within the relevant period, a clearance certificate for the prohibition order is taken to have been given to the proprietor.
- (5) Subsection (4) does not prevent an improvement notice or another prohibition order being served on the proprietor in relation to the same premises, equipment or anything else.

(6) In this section:

relevant period means 48 hours from the receipt by the chief health officer of the request for reinspection.

86 Clearance certificates

- (1) This section applies if an authorised officer reinspects the things in relation to which a prohibition order was served on the proprietor of a food business.
- (2) The authorised officer must issue a clearance certificate for the prohibition order if the authorised officer finds that—
 - (a) the reinspected things are no longer a serious danger to public health; and
 - (b) the proprietor has complied with the prohibition order and any improvement notices served on the proprietor in relation to the food business.

87 Contravention of improvement notices and prohibition orders

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

Maximum penalty: 100 penalty units.

88 Compensation for prohibition order

- (1) This section applies if—
 - (a) a person was bound by a prohibition order; and
 - (b) the person suffers loss or expense because of the making of the order; and
 - (c) the person considers that there were insufficient grounds for the making of the order.

- (2) The person may apply in writing, with reasons for the application, to the Minister for compensation.
- (3) If there were insufficient grounds for the making of the order, the Territory must pay reasonable compensation to the person.
- (4) However, compensation is not payable to the person—
 - (a) in relation to any loss or expense suffered by the person because of an act or omission of the person; or
 - (b) if the person caused or contributed to the making of the prohibition order.
- (5) The Minister must—
 - (a) decide whether to pay any compensation to the person and, if so, the amount of the compensation; and
 - (b) give the person written notice of the Minister's decision.
- (6) If the Minister has not decided the application within 28 days after the day the Minister received the application, the Minister is taken to have refused to pay any compensation.

Part 8 Notification and registration of food businesses

89 Food businesses exempt from registration

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

90 Notification of conduct of exempt food businesses

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

Maximum penalty: 50 penalty units.

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

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

- (2) In this section:

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

91 Food businesses to be registered

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

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

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

92 Registration of food businesses

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

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

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

- (2) The chief health officer may require the person to give the chief health officer any information that the chief health officer reasonably requires to decide the application (including, for example, the design and fit-out specifications of the premises proposed to be used in relation to the handling of food intended for sale or the sale of food).
- (3) The chief health officer may register or refuse to register the food business.
- (4) In deciding whether to register the food business, the chief health officer may have regard to—
- (a) whether the proposed premises are fit for their intended use; and
 - (b) any contraventions of this Act by the person; and

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

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

- (5) For subsection (4) (a), premises are not fit for their intended use if a certificate of occupancy or certificate of regularisation under the *Building Act 1972* has not been issued for the premises or the part of the premises proposed to be used in relation to the handling of food intended for sale or the sale of food.
- (6) The registration of a food business is for 1 year beginning on the day the chief health officer registers the food business.

93 Renewal of registration

- (1) This section does not apply if—
- (a) the registration of a food business is suspended under this part; or
- (b) the chief health officer has decided to cancel the registration of a food business under section 101 (3) (Procedure for taking action in relation to registration).
- (2) The chief health officer must renew the registration of a food business if, before the expiry of the registration, the proprietor of the food business gives the chief health officer a properly completed application form for the renewal of the registration.

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

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

94 Issue or amendment of registration subject to conditions

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

- (2) The registration of a food business may be amended by the chief health officer to impose a condition to which the registration is to be subject or to amend or revoke a condition to which the registration is already subject.
- (3) A condition mentioned in subsection (1) or (2) may be imposed, amended or revoked by the chief health officer—
 - (a) on the chief health officer's own initiative or on the application of the applicant for, or the holder of, the registration; and
 - (b) for a stated period or indefinitely.

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

- (1) This section applies if the chief health officer proposes, on the chief health officer's own initiative, to take action under section 94 (2) to amend the registration of a food business to impose, amend or revoke a condition (the *proposed action*).
- (2) The chief health officer must give the proprietor of the food business a written notice stating—
 - (a) the proposed action; and
 - (b) if the proposed action is to impose a condition to which the registration is to be subject—the proposed condition; and
 - (c) if the proposed action is to amend a condition to which the registration is subject—the proposed condition as amended; and
 - (d) if the proposed action is to impose or amend a condition—the grounds for the proposed action; and
 - (e) if appropriate, any action that must be taken by the proprietor of the food business to avoid or reverse the proposed action; and

- (f) the date when the proposed imposition, amendment or revocation of the condition takes effect (the *date of effect*); and
 - (g) that the proposed action takes effect on the date of effect unless the notice is revoked by the chief health officer before that date; and
 - (h) whether and, if so, by when the proprietor is required to return the certificate of registration to the chief health officer if the proposed action takes effect.
- (3) The notice may, but need not, provide an opportunity for the proprietor of the food business to make representations about why the proposed action should not be taken.
 - (4) The date of effect must not be earlier than 14 days after the notice is given to the proprietor.
 - (5) This section does not affect the taking of action under section 101 (Procedure for taking action in relation to registration).

96 Certificate of registration

- (1) If the chief health officer registers, or renews the registration, of a food business, the chief health officer must give the proprietor of the food business a certificate of registration for the food business.
- (2) The certificate of registration must show—
 - (a) the name of the proprietor of the food business; and
 - (b) the trading name of the food business; and
 - (c) the type of the food business (as decided by the chief health officer) to which the registration relates; and
 - (d) the address of the premises at or from which the food business is mainly conducted; and
 - (e) the registration number allocated to the business; and
 - (f) the conditions (if any) to which the registration is subject; and

- (g) when the registration expires; and
- (h) any other information that the chief health officer considers appropriate.

97 Change in details of registration or operation of food business

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

Examples of changes in circumstances

- 1 A change in the proprietor of the food business.
 - 2 For a food business that is not operated from a vehicle—a change in the location of the premises from which the food business is conducted.
 - 3 A change in the kind of food business conducted by the food business.
 - 4 A structural change in the premises or a change in the fixtures and fittings for the premises.
- (2) The proprietor of the food business must give the chief health officer written notice of the change as soon as practicable (but no later than 7 days) after the day the change happens and, if the change affects particulars shown on the certificate of registration, return the certificate to the chief health officer with the notice.

Maximum penalty: 50 penalty units.

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

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

- (3) If the change relates to the registration of the food business, the chief health officer may amend or refuse to amend the registration of the food business.
- (4) The chief health officer may require the proprietor to give the chief health officer any information that the chief health officer reasonably requires to decide whether to amend the registration of the food business.
- (5) In deciding whether to amend the registration of the food business, the chief health officer may have regard to—
 - (a) whether, because of the change of circumstances, the premises are, or will be, fit for their intended use; and
 - (b) whether the change of circumstances will have an adverse effect on the safety of food intended for sale or the sale of food; and
 - (c) for a change in the proprietor of a food business—any contraventions of this Act by the new proprietor of the food business; and
 - (d) any other matter relevant to the handling of food intended for sale or the sale of food.
- (6) For subsection (5) (a), premises are not fit for their intended use if a certificate of occupancy or certificate of regularisation under the *Building Act 1972* has not been issued for the premises or the part of the premises proposed to be used in relation to the handling of food intended for sale or the sale of food.
- (7) If the chief health officer amends the registration of a food business in a way that changes the particulars shown in the certificate of registration and the certificate is returned to the chief health officer, the chief health officer must amend the certificate or issue another certificate for the remainder of the period of the certificate that it replaces.

98 Replacement of certificates of registration

- (1) The chief health officer may issue a replacement certificate of registration of a food business to the proprietor of the business if satisfied that the certificate has been lost, stolen or destroyed.
- (2) A certificate of registration issued under this section must be issued for the remainder of the period of the certificate that it replaces.

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

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

Maximum penalty: 50 penalty units.

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

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

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

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

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

101 Procedure for taking action in relation to registration

- (1) If the chief health officer proposes to take action under this section in relation to the registration of a food business, the chief health officer must give the proprietor of the business a notice (a *disciplinary notice*) that—
 - (a) states the proposed action, including any proposed suspension period or condition or a condition as proposed to be amended; and
 - (b) states the grounds for the proposed action; and
 - (c) tells the proprietor that the proprietor may, within 14 days beginning the day after receiving the notice, give a written response to the chief health officer about the matters in the notice.
- (2) In deciding whether to suspend or cancel the registration, the chief health officer must consider any response given to the chief health officer in accordance with subsection (1) (c).
- (3) If the chief health officer is satisfied that grounds for taking action under this section have been established, the chief health officer may—
 - (a) if the proposed action was to cancel the registration—cancel the registration, suspend the registration for a period of not longer than 1 year or impose a condition on, or amend a condition of, the registration; or
 - (b) if the proposed action included suspending the registration for a stated period—either suspend the registration for a period of not longer than that period or impose a condition on, or amend a condition of, the registration; or
 - (c) if the proposed action included imposing a condition on, or amending a condition of, the registration—impose a condition on, or amend a condition of, the registration that is no more

onerous than the proposed condition or a condition as proposed to be varied.

- (4) The chief health officer must give the proprietor of the food business written notice of the chief health officer's decision.
- (5) The suspension or cancellation of the registration of a food business takes effect on the day when notice of the suspension or cancellation is given to the proprietor of the food business or, if the notice states a later date of effect, that date.
- (6) The renewal or amendment of the registration of a food business under section 93 (Renewal of registration) or section 97 (Change in details of registration or operation of food business) does not prejudice or otherwise affect any action being taken, or proposed action, in relation to the registration of the food business under this section.

102 Immediate suspension of registration

- (1) This section applies if the chief health officer—
 - (a) has decided to give, or has given, a disciplinary notice to the proprietor of a registered food business; and
 - (b) believes, on reasonable grounds, that it is in the public interest that the person's registration be suspended as soon as practicable before a decision is made to take action under section 101 (3) (Procedure for taking action in relation to registration).
- (2) In forming the belief, the chief health officer must consider—
 - (a) the circumstances leading to the decision to issue the disciplinary notice; and
 - (b) the grounds for proposing to take the action to be stated, or stated, in the disciplinary notice.

Section 103

- (3) If this section applies, the chief health officer may give the person a notice (an *immediate suspension notice*) suspending the person's registration.
- (4) If an immediate suspension notice is given to the person, the person's registration is suspended on the receipt of the notice by the person.
- (5) The immediate suspension notice expires when the person is told under section 101 (4) (Procedure for taking action in relation to registration) of the decision made on the disciplinary notice.

103 Return of certificate of registration

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

Maximum penalty: 5 penalty units.

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

104 Surrender of registration

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

105 Registers of food businesses

- (1) The chief health officer must keep registers (a *food business register*) of—

- (a) food businesses that have given notifications under section 90 (Notification of conduct of exempt food businesses); and
 - (b) food businesses that have been registered under section 92 (Registration of food businesses) or whose registration has been renewed under section 93 (Renewal of registration).
- (2) The register mentioned in subsection (1) (a) must include—
- (a) the name of the proprietor of the food business to which a notification under section 90 relates; and
 - (b) the trading name of the food business; and
 - (c) the type of food business (as decided by the chief health officer) to which the registration relates; and
 - (d) the address of the premises at or from which the food business is conducted.
- (3) The register mentioned in subsection (1) (b) must include the information mentioned in section 96 (2) (Certificate of registration).
- (4) A food business register may contain any other information that the chief health officer considers appropriate.
- (5) A food business register may be kept in the form of, or as part of, 1 or more computer databases or in any other form that the chief health officer considers appropriate.
- (6) The chief health officer may correct any mistake, error or omission in a food business register subject to the requirements (if any) of the regulations.

106 Publication and inspection of food business registers

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

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

Part 8 Notification and registration of food businesses

Section 106

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

Part 9 **Infringement notices for certain offences**

Division 9.1 **Preliminary**

107 **Definitions for pt 9**

In this part:

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

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

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

infringement notice penalty, for a person for an infringement notice offence, means—

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

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

108 Purpose and effect of pt 9

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

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

- (2) This part does not—
- (a) require an infringement or reminder notice to be served on a person; or
 - (b) affect the liability of a person to be prosecuted for an offence if—
 - (i) an infringement or reminder notice is not served on the person for the offence; or
 - (ii) the person does not comply with an infringement or reminder notice served on the person for the offence; or
 - (iii) an infringement notice served on the person for the offence is withdrawn; or
 - (c) prevent the service of 2 or more infringement notices on a person for an offence; or
 - (d) limit or otherwise affect the penalty that may be imposed by a court on a person for an offence.

109 Regulations about infringement notice offences

- (1) The regulations may prescribe an offence against this Act, other than an offence for which a penalty of imprisonment may be imposed, for the definition of infringement notice offence in section 107 (Definitions for pt 9) by—
- (a) stating the offence; or
 - (b) referring to the provision creating the offence.

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

Division 9.2 Infringement and reminder notices

110 Service of infringement notices

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

111 Contents of infringement notices

- (1) An infringement notice served on a person by an authorised officer for an infringement notice offence must—
 - (a) be identified by a unique number; and
 - (b) state the date of service of the notice; and

- (c) state—
 - (i) the full name, or surname and initials, and address of the person on whom the notice is served; or
 - (ii) the particulars that are, under the regulations, identifying particulars for the person; and
 - (d) give brief details of the offence, including the provision contravened by the person, and—
 - (i) if the offence took place over a period—the period, or approximate period, when the offence was committed; or
 - (ii) in any other case—the place where the offence was committed and the date and approximate time of the offence; and
 - (e) state the infringement notice penalty payable by the person for the offence; and
 - (f) contain the information required by section 112; and
 - (g) identify the authorised officer in accordance with the regulations; and
 - (h) include any other information required under the regulations and any additional information that the chief health officer considers appropriate.
- (2) The regulations may provide that subsection (1) (c) does not apply to an infringement notice.

112 Additional information in infringement notices

- (1) The infringement notice must also tell the person on whom it is served that—
 - (a) the person may pay the infringement notice penalty for the offence or dispute liability for the offence within 28 days after

the day when the notice is served on the person (the *date of service* of the notice); and

- (b) the person may apply to the chief health officer for additional time in which to pay the penalty or dispute liability for the offence; and
- (c) the notice may be withdrawn before or after the penalty is paid; and
- (d) if the person pays the penalty within the 28 days (or any additional time allowed by the chief health officer), then, unless the infringement notice is withdrawn and any penalty refunded—
 - (i) any liability of the person for the offence is discharged; and
 - (ii) the person will not be prosecuted in court for the offence; and
 - (iii) the person will not be taken to have been convicted of the offence; and
- (e) if the person wishes to dispute liability for the offence, the issue may be referred to the Magistrates Court; and
- (f) if the Magistrates Court finds against the person or the person is prosecuted in court for the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to other court orders; and
- (g) if the person does not pay the infringement notice penalty, or disputes liability for the offence, within the 28 days (or any additional time allowed by the chief health officer), a reminder notice may be served on the person for the offence or the person may be prosecuted in court for the offence; and

- (h) if a reminder notice is served on the person, the infringement notice penalty is increased by the amount payable by the person for the cost of serving the reminder notice.
- (2) In addition, the infringement notice must—
 - (a) explain how the person may pay the infringement notice penalty or dispute liability for the offence; and
 - (b) explain how the person may apply for additional time to pay the infringement notice penalty or dispute liability for the offence.

113 Time for payment of infringement notice penalty

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

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

114 Extension of time to pay penalty

- (1) The person on whom an infringement notice or reminder notice is served may apply, in writing, to the chief health officer, within 28 days after the date of service of the notice, for a stated additional time (of not longer than 6 months) in which to pay the infringement notice penalty.

- (2) The chief health officer must—
- (a) allow or refuse to allow the additional time; and
 - (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

115 Effect of payment of infringement notice penalty

This section applies if—

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

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

- (2) If this section applies—
- (a) any liability of the person for the offence is discharged; and
 - (b) the person must not be prosecuted in a court for the offence; and
 - (c) the person is not taken to have been convicted of the offence.
- (3) If 2 or more infringement notices were served on the person for the offence, then, unless all the infringement notices have been withdrawn, subsection (2) applies to the person in relation to the offence if the person pays, in accordance with this part, the infringement notice penalty in relation to any of the notices

(together with any costs and disbursements payable under this part in relation to the notice).

116 Application for withdrawal of infringement notice

- (1) The person on whom an infringement notice for an infringement notice offence is served may apply to the chief health officer, in writing, for the withdrawal of the notice within 28 days after the day when the infringement notice, or a reminder notice for the offence, is served on the person (or any additional time allowed by the chief health officer).
- (2) The chief health officer must—
 - (a) withdraw the notice or refuse to withdraw the notice; and
 - (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

117 Withdrawal of infringement notice

- (1) This section applies to an infringement notice that has been served on a person for an infringement notice offence.
- (2) The chief health officer may, by notice served on the person, withdraw the infringement notice, whether or not—
 - (a) the person has made an application for the withdrawal of the infringement notice; or
 - (b) the infringement notice penalty (or part of it) has been paid for the offence; or
 - (c) the person has disputed liability for the infringement notice offence.
- (3) The notice must—
 - (a) include the number of the infringement notice and the date of service of the infringement notice; and

- (b) tell the person that the infringement notice is withdrawn and, in general terms, about subsection (4).
- (4) On service of the notice—
 - (a) this part ceases to apply to the infringement notice; and
 - (b) if the infringement notice penalty (or part of it) has been paid—the amount paid must be repaid by the chief health officer; and
 - (c) if section 115 (Effect of payment of infringement notice penalty) applies to the offence—the section ceases to apply, and is taken never to have applied, to the offence; and
 - (d) a proceeding for the offence may be taken in a court against anyone (including the person) as if the infringement notice had not been served on the person.

118 Guidelines about withdrawal of infringement notices

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

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

119 Reminder notices

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

- (a) an infringement notice has been served on the person for an infringement notice offence; and

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

120 Contents of reminder notices

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

- (a) be identified by a unique number; and
- (b) include the following information:
 - (i) the provision contravened by the person;
 - (ii) the number of the infringement notice served on the person for the offence;
 - (iii) the date of service of the infringement notice; and
- (c) state the date of service of the reminder notice; and
- (d) state the infringement notice penalty that is now payable by the person for the offence; and
- (e) contain the information required by section 121; and
- (f) identify the authorised officer in accordance with the regulations; and
- (g) include any other information required under the regulations and any additional information that the chief health officer considers appropriate.

121 Additional information in reminder notices

- (1) The reminder notice must also tell the person on whom it is served that—
- (a) the infringement notice penalty for the offence has not been paid; and
 - (b) the infringement notice has not been withdrawn; and
 - (c) written notice disputing liability has not been received by the chief health officer from the person for the offence; and
 - (d) the infringement notice penalty for the offence has been increased by the amount payable by the person for the cost of serving the reminder notice; and
 - (e) the person may pay the infringement notice penalty that is now payable by the person for the offence or dispute liability for the offence within 28 days after the day when the reminder notice is served on the person (the *date of service* of the notice); and
 - (f) the person may apply to the chief health officer for additional time in which to pay the penalty or dispute liability for the offence; and
 - (g) the infringement notice may be withdrawn before or after the penalty is paid; and
 - (h) if the person pays the penalty within the 28 days (or any additional time allowed by the chief health officer), then, unless the infringement notice is withdrawn and any penalty refunded—
 - (i) any liability of the person for the offence is discharged; and
 - (ii) the person will not be prosecuted in court for the offence; and

- (iii) the person will not be taken to have been convicted of the offence; and
 - (i) if the person wishes to dispute liability for the offence, the issue may be referred to the Magistrates Court; and
 - (j) if the Magistrates Court finds against the person or the person is prosecuted in court for the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to other court orders; and
 - (k) if the person does not pay the infringement notice penalty, or dispute liability for the offence, within the 28 days (or any additional time allowed by the chief health officer), the person may be prosecuted in court for the offence.
- (2) In addition, the reminder notice must—
- (a) explain how the person may pay the infringement notice penalty or dispute liability for the offence; and
 - (b) explain how the person may apply for additional time to pay the infringement notice penalty or dispute liability for the offence.

Division 9.3 Disputing liability

122 Disputing liability for infringement notice offence

- (1) A person on whom an infringement notice or reminder notice has been served for an infringement notice offence may dispute liability for the offence by written notice given to the chief health officer.
- (2) The notice must set out the grounds on which the person relies.
- (3) The notice must be given to the chief health officer—
 - (a) within 28 days after the date of service of the infringement notice or reminder notice; or

- (b) if the person applies to the chief health officer within the 28 days for additional time to dispute liability for the offence and the additional time is allowed—within the additional time allowed by the chief health officer; or
- (c) if the person applies to the chief health officer within the 28 days for additional time to dispute liability for the offence and the application is refused—within 7 days after the day the person is told of the refusal or 28 days after the date of service of the infringement notice or reminder notice, whichever is later.

123 Extension of time to dispute liability

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

124 Procedure if liability disputed

- (1) This section applies if a person disputes liability for an infringement notice offence by giving the chief health officer a notice in accordance with section 122 (Disputing liability for infringement notice offence).
- (2) The chief health officer may lay an information in the Magistrates Court against the person for the offence within 60 days after being given the notice.

- (3) The chief health officer must discontinue a proceeding brought against the person for the offence if, before the hearing of the proceeding, the person pays the total of—
 - (a) the infringement notice penalty; and
 - (b) the costs (if any) prescribed under the regulations for beginning the proceeding; and
 - (c) the disbursements (if any) incurred by the chief health officer up to the day payment is made.
- (4) If subsection (3) applies, section 115 (Effect of payment of infringement notice penalty) also applies to the person in relation to the offence, even though the person paid the infringement notice penalty for the offence after an information had been laid in the Magistrates Court against the person for the offence.
- (5) If the chief health officer does not lay an information in the Magistrates Court against the person for the offence within 60 days after being given the notice, the chief health officer must—
 - (a) tell the person, in writing, that no further action will be taken against the person for the offence; and
 - (b) take no further action against the person for the offence.

Division 9.4 Miscellaneous

125 Evidentiary certificates

- (1) This section applies to a proceeding for an infringement notice offence.
- (2) A certificate that appears to be signed by or on behalf of the chief health officer, and states any matter relevant to anything done or not done under this part in relation to the offence, is evidence of the matter.

- (3) Without limiting subsection (2), a certificate given under that subsection may state any of the following:
- (a) a stated infringement notice or reminder notice was served by a stated authorised officer in a stated way on a stated person on a stated date for a stated infringement notice offence;
 - (b) the chief health officer did not allow additional time, or allowed stated additional time, for payment of the infringement notice penalty or to dispute liability for the offence;
 - (c) the infringement notice penalty was not paid within the time in which it was required to be paid under this part;
 - (d) the infringement notice has not been withdrawn or was withdrawn on a stated date;
 - (e) a stated address was, on a stated date, the latest business, home or email address, or fax number, of a stated person recorded in a register or other record kept by the chief health officer;
 - (f) an infringement notice penalty has not been paid by, or a penalty has not been imposed on, a stated person or anyone for the offence.
- (4) A court must accept a certificate given under this section as proof of the matters stated in it if there is no evidence to the contrary.

Part 10 Procedural and evidentiary provisions

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

126 Liability of employees and agents

- (1) It is not a defence in a proceeding for an offence against this Act that the defendant was, at the time of the commission of the offence, an employee or agent of someone else.
- (2) However, it is a defence if the defendant proves that the defendant was under the personal supervision of the proprietor of the food business, or the owner or person in charge of the premises, in relation to which the offence was committed, or of someone else representing the proprietor, owner or person in charge.

127 Acts and omissions of representatives

- (1) In this section:

representative, of a person, means—

- (a) if the person is an individual—an employee or agent of the person; or
- (b) if the person is a corporation—an employee, agent or executive officer of the person.

state of mind, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) An act done or omitted to be done on behalf of a person by a representative of the person is also taken to have been done or omitted to be done by the person if the representative was acting within the scope of the representative's actual or apparent authority.
- (3) However, subsection (2) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.

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

- (4) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission was made by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (2) or (4).

128 Offences by corporations

- (1) If a corporation contravenes, whether by an act or omission, a provision of this Act, each person who is an executive officer of the corporation is taken to have contravened the provision if the person knowingly authorised or allowed the contravention.
- (2) For subsection (1), an executive officer of the corporation may be prosecuted for, and convicted of, the offence whether or not the corporation has been prosecuted for, or convicted of, the offence.
- (3) This section does not affect any liability imposed on a corporation for an offence committed by the corporation against this Act.

129 Right of defendant to have third person before court

- (1) A defendant charged with an offence against this Act who alleges that the contravention constituting the offence was caused by the act or omission of someone else (the *other person*) may, in accordance with subsection (2), have the other person brought before the court hearing the charge.
- (2) The defendant must—
 - (a) give the informant (the *original informant*) and the court written notice at least 7 days before the return date of the summons (the *original summons*) issued to the defendant of the defendant's intention to have the other person brought before the court; and
 - (b) include in the notice particulars of the defendant's claim that the contravention was caused by the act or omission of the other person and that the defendant took all reasonable precautions and exercised all appropriate diligence to prevent the commission of the offence by the other person; and
 - (c) lay an information against the other person for an offence against this Act.
- (3) The court must—
 - (a) 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 stated in the summons (the *other summons*); and
 - (b) order that a copy of the information laid against the defendant be served on the other person.
- (4) If the date stated in the later summons is not the return date for the original summons, the court must—
 - (a) adjourn the hearing of the charge against the defendant to the return date of the later summons; or

- (b) adjourn the hearing of the charges against both the defendant and the other person to a later date and notify the parties accordingly.
- (5) On the hearing of the charges, the original informant and the other person—
 - (a) if the defendant gives evidence—may cross-examine the defendant; and
 - (b) may cross-examine any witness called by the defendant; and
 - (c) may call evidence in rebuttal.
- (6) The court—
 - (a) may convict only the other person if the contravention of the Act is proved and the defendant satisfies the court that the contravention was caused by the act or omission of the other person; and
 - (b) must dismiss the charge against the defendant if, in addition to satisfying the court that the contravention was caused by the act or omission of the other person, the defendant satisfies the court that the defendant took all reasonable precautions and exercised all appropriate diligence to prevent the commission of the offence by the other person.
- (7) This section does not prevent the court from—
 - (a) convicting either the defendant or the other person or both; or
 - (b) ordering that the proceeding against the other person be heard separately if the court considers that it is necessary in the interests of justice to do so.
- (8) If the other person is not found guilty of an offence against this Act, the court must order the defendant to pay the costs of the other person or, if the court thinks that it would be unjust to make such an order, the court may order the defendant to pay such part of the costs of the other person as the court considers appropriate.

130 Alternative defendants

- (1) This section applies if the chief health officer is of the opinion that an offence against this Act has been committed in relation to which a person (the *defendant*) may be charged and the chief health officer is satisfied, on reasonable grounds, that—
 - (a) the offence was caused by the act or omission of someone else (the *alternative defendant*); and
 - (b) the defendant could successfully defend a proceeding using section 129 (Right of defendant to have third person before court).
- (2) The chief health officer may arrange for a proceeding to be begun against the alternative defendant for the offence without a proceeding first being begun against the defendant.
- (3) In a proceeding in accordance with this section, the alternative defendant may be charged with the offence with which the defendant might have been charged and, on proof that the offence was caused by the act or omission of the alternative defendant, the alternative defendant may be convicted of the offence.
- (4) If the alternative defendant is acquitted, the defendant may be prosecuted for, and convicted of, the offence.

131 Renewal or amendment of registration not to affect prosecution

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

132 Presumptions

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

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

133 Certificate evidence etc

- (1) This section applies in relation to a proceeding for an offence against this Act.
- (2) A document that appears to be a copy of a registration, approval, order, notice or authority under this Act is evidence of the registration, approval, order, notice or authority.
- (3) A certificate that appears to be signed by or on behalf of the chief health officer, and that states any of the following matters, is evidence:
 - (a) that there was, or was not, in force a registration, approval, order, notice or authority in relation to a stated person or persons;
 - (b) that a registration, approval, order, notice or authority was or was not subject to stated conditions;
 - (c) of the receipt or otherwise of a notice, application or payment;
 - (d) that an amount of fees or another amount is payable under this Act by a stated person.
- (4) A certificate that appears to be signed by or on behalf of the chief health officer, and states any matter prescribed under the regulations for this section, is evidence of the matter.
- (5) A certificate mentioned in subsection (3) or (4) may state a matter by reference to a date or period.
- (6) A court must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.
- (7) In this section:

authority includes an appointment as an authorised analyst or authorised officer or a clearance certificate.

notice includes an improvement notice.

order means an emergency order (including a recall order) or a prohibition order.

registration means registration as a food business.

134 Evidence of analysts

- (1) A certificate of the results of an analysis is admissible in a proceeding for an offence against this Act, and is evidence of the facts stated in it, if a copy of the certificate is served by the party who obtained the analysis on the other party to the proceeding at least 14 days before the hearing.
- (2) However, a court may order, at the request of a party to the proceedings or on its own initiative, that the period mentioned in subsection (1) be reduced to the period stated in the court's order.
- (3) An analyst who carried out an analysis in relation to which a certificate is produced as evidence in a proceeding for an offence against this Act need not be called as a witness in the proceedings by the party producing the certificate unless the court hearing the proceedings orders, at the request of a party to the proceedings or on its own initiative, that the analyst be called as a witness.

135 Admissibility of analysis of food sample taken by authorised officer

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

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

136 No defence to claim deterioration of sample

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

137 Power of court to order further analysis

- (1) This section applies if the court before which a person is being prosecuted for an offence against this Act is satisfied that there is a disagreement between the evidence of the analysts for the parties to the proceeding.
- (2) The court may order that the part or parts of a sample kept under section 76 (Procedures for dividing food samples) be sent by the chief health officer to an independent analyst.
- (3) For subsection (2), the order may require the sample to be sent to a particular analyst or to an analyst agreed to by the parties.
- (4) An analyst who is sent a part or parts of a sample for analysis under this section is to make an analysis for the information of the court.
- (5) Subject to section 139 (Court may order costs and expenses), the cost of an analysis under this section is payable by the Territory.

138 Disclosure by witnesses

- (1) In a proceeding for an offence against this Act, a witness for the prosecution is not compelled to disclose the fact that the witness received information, the nature of the information received or the name of the person from whom the information was received.
- (2) An authorised officer appearing as a witness in a proceeding is not compelled to produce any document containing any confidential matter made or received in the authorised officer's capacity as an authorised officer.

- (3) Despite subsections (1) and (2), a court hearing a proceeding for an offence against this Act may order the disclosure of a matter or the production of a document mentioned in subsection (1) or (2) if the court considers that it is necessary in the interests of justice.

139 Court may order costs and expenses

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

140 Court may order forfeiture

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

141 Court may order corrective advertising

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

Example of kind of order that court may make

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

Part 11 Miscellaneous

142 Joint liability for amounts payable to the Territory

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

143 Bribery

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

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

144 Protection from liability

(1) In this section:

official means—

- (a) the Minister; or
 - (b) the chief health officer; or
 - (c) an authorised officer; or
 - (d) anyone else exercising functions under this Act.
- (2) An official does not incur civil or criminal liability for an act or omission done honestly and without negligence for this Act.
- (3) A civil liability that would, apart from this section, attach to an official attaches instead to the Territory.

145 Secrecy

- (1) In this section:

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

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

- (a) an authorised officer; or
- (b) anyone else who has exercised a function under this Act.

produce includes permit access to.

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

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

- (a) make a record of protected information; or
- (b) directly or indirectly, divulge or communicate to a person protected information about someone else;

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

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

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

- (a) with the consent of the person from whom the information was obtained; or
- (b) to a person administering or enforcing a law of another jurisdiction that corresponds to this Act or another law prescribed under the regulations for this paragraph; or

- (c) to the food authority; or
 - (d) to a law enforcement authority.
- (4) A person to whom this section applies is not required—
- (a) to divulge or communicate protected information to a court; or
 - (b) to produce a document containing protected information to a court;
- unless it is necessary to do so for this Act or another Act.

146 Publication of details of food businesses related to offences

- (1) In this section:
- representative of the person* means—
- (a) if the person is an individual—an employee or agent of the person; or
 - (b) if the person is a corporation—an employee, agent or executive officer of the person.
- (2) This section applies to a person if the person, or a representative of the person, is convicted, or found guilty, of an offence against this Act in relation to the handling of food intended for sale or the sale of food.
- (3) The chief health officer may publish a notice under this section in a newspaper circulating in the ACT.
- (4) The notice may contain—
- (a) the person's name; and
 - (b) the business name under which the person conducts the food business in relation to which the offence was committed; and
 - (c) the address of the food business concerned; and

- (d) a description of the offence, the decision of the court and the penalty imposed on the person or a representative of the person (including the forfeiture of anything under this Act); and
 - (e) any other information in relation to the safety of the food concerned that the chief health officer considers is appropriate.
- (5) The notice must be published within 21 days after—
- (a) the time for making an appeal against the conviction, or finding of guilt, ends without an application for an appeal being made; or
 - (b) if an appeal is made against the conviction or finding of guilt—the defendant’s conviction, or the finding of guilt, is confirmed on appeal, and the time for making any further appeal in relation to the conviction ends without an application for an appeal being made; or
 - (c) if on appeal a court directs that the defendant be retried and the defendant is convicted, or found guilty, of an offence against this Act—paragraph (a) or (b) applies to that conviction or finding of guilt.
- (6) No liability is incurred by a person for publishing honestly—
- (a) a notice under this section; or
 - (b) a fair report or summary of such a notice.

147 Decisions reviewable by administrative appeals tribunal

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

148 Notification of reviewable decisions

- (1) A person who makes a decision mentioned in schedule 1 must give written notice of the decision to the person mentioned in that schedule, column 4.

- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

149 Codes of practice

- (1) The Minister may, in writing, approve codes of practice setting out minimum standards or guidelines for this Act.
- (2) An approved code of practice may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the *Legislation Act 2001*, s 47 (5) or (6) is not disappplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the *Legislation Act 2001*.

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

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

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

Maximum penalty: 50 penalty units.

- (5) In this section:

law includes a law of another jurisdiction.

150 Determination of fees

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

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

- (2) A determination is a disallowable instrument.

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

151 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

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

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

152 Regulation-making power

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

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

- (2) The regulations may make provision in relation to—
- (a) the preparation, carrying out, maintenance and monitoring of food safety programs for food businesses to ensure that the provisions of this Act (including the food standards code) are complied with; and
 - (b) the notification by food businesses of information relating to the conduct of those food businesses.
- (3) The regulations may—
- (a) apply, adopt or incorporate the food standards code (but only in whole) without change and as in force from time to time; and

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

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the *Legislation Act 2001*, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 20 penalty units for offences against the regulations.
- (5) In this section:

law includes a law of another jurisdiction.

153 Temporary emergency regulations

- (1) Despite section 152 (3) (a), regulations may be made under this section that contain provisions that are in addition to, or in substitution for, 1 or more of the provisions of the food standards code as those provisions of the code apply in the ACT.
- (2) A regulation mentioned in subsection (1) may be made only if the Minister has certified that such a regulation is necessary as it relates to an issue of public health and safety.
- (3) A provision of a regulation mentioned in subsection (1) does not continue in force—
- (a) except as provided by paragraph (b)—for longer than 1 year; or
- (b) if the provision is the same in substance as a provision of a regulation that was previously in force under this Act—for a period that, when added to the period for which that previous provision was in force, is longer than 1 year.

Schedule 1 Decisions reviewable by administrative appeals tribunal

(see s 147 and s 148)

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

Schedule 1 Decisions reviewable by administrative appeals tribunal

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

Dictionary

(see s 4)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- chief health officer
- exercise
- function.

advertisement means—

- (a) any words, whether written or spoken; or
- (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 includes any examination or testing of food or anything else.

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

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

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

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

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

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

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

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

date of service, for part 9 (Infringement notices for certain offences)—see section 107.

disciplinary notice—see section 101 (1) (Procedure for taking action in relation to registration).

displayed for sale—see section 9 (2) (Meaning of *sell* etc).

dispose, of food, for part 4 (Emergency powers)—see section 37.

emergency order—see section 38 (Making of emergency orders).

equipment means all or any part of—

- (a) any utensil, machinery, instrument, device, apparatus or appliance that is used, or that is designed or intended for use, in relation to 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 mentioned in paragraph (a).

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

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

falsely described, for part 3 (Offences relating to food)—see section 15 (False descriptions of food).

food—see section 8 (Meaning of *food*).

food authority—see the Commonwealth Act, section 3 (1), definition of *authority*.

Note ***Authority*** is defined as the Australia New Zealand Food Authority but legislation has been introduced into the Commonwealth Parliament to change its name to Food Standards Australia New Zealand.

food business—see section 10 (Meaning of *food business*).

food business register—see section 105 (Registers of food businesses).

food safety standard—see the Commonwealth Act, section 3 (1), definition of *standard*.

food standards code means the Australia New Zealand Food Standards Code as defined in the Commonwealth Act, section 3 (1), as that code is applied, adopted or incorporated under the regulations.

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

handling, of food, includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.

identity card means an identity card issued under the *Public Health Act 1997*, section 16 (Identity cards).

improvement notice means an improvement notice served under section 79 (Service of improvement notices).

infringement notice—see section 107 (Definitions for pt 9).

infringement notice offence—see section 107 (Definitions for pt 9).

infringement notice penalty, for part 9 (Infringement notices for certain offences)—see section 107.

label includes any 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 relation to or accompanying any food or package.

occupier, for part 5 (Inspection and seizure powers)—see section 45.

offence, for part 5 (Inspection and seizure powers)—see section 45.

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

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

premises includes—

- (i) land (whether or not vacant); or
- (ii) all or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature); or
- (iii) a pontoon; or
- (iv) a food transport vehicle or any other vehicle.

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

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

proprietor, of a food business, means—

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

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

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

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

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

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

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

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

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

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Food Act 2001 No 66

notified 10 September 2001 (Gaz 2001 No S66)

s 1, s 2 commenced 10 September 2001 (IA s 10B)

remainder commenced 10 March 2002 (s 2 and LA s 79)

as modified by

Food Regulations 2002 SL No 10

as amended by

Food Amendment Regulations 2002 SL No 14 reg 4, reg 5

notified LR 11 June 2002

commenced 11 June 2002 (reg 2)

Note mod exp 10 March 2003 (SL 2002 No 10 reg 17)

as amended by

Statute Law Amendment Act 2002 No 30 pt 3.31

notified LR 16 September 2002

s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))

pt 3.31 commenced 17 September 2002 (s 2 (1))

4 Amendment history

Commencement

s 2 om R1 LA

How orders are made

s 41 am 2002 No 30 amdt 3.375

General powers of authorised officers

s 51 am 2002 No 30 amdt 3.376

Selfincrimination

s 64 om 2002 No 30 amdt 3.377

Legal professional privilege

s 65 om 2002 No 30 amdt 3.377

Service of improvement notices

s 79 am 2002 No 30 amdt 3.378

Service of prohibition orders

s 82 am 2002 No 30 amdt 3.379

Endnotes

4 Amendment history

Notification and registration of food businesses

pt 8 hdg notes exp 10 June 2002 (s 159)

Issue or amendment of registration subject to conditions

s 94 hdg sub 2002 No 30 amdt 3.380

Procedure for taking action in relation to registration

s 101 am 2002 No 30 amdt 3.381

Codes of practice

s 149 am 2002 No 30 amdt 3.382

Approved forms

s 151 am 2002 No 30 amdt 3.383

Regulation-making power

s 152 am 2002 No 30 amdt 3.382

Transitional provisions

pt 12 hdg exp 10 March 2003 (s 174)

General

div 12.1 hdg exp 10 March 2003 (s 174)

Definitions for pt 12

s 154 exp 10 March 2003 (s 174)

Transitional regulations

s 155 exp 10 March 2003 (s 174)

Modification of pt 12's operation

s 156 exp 10 March 2003 (s 174)

Existing food businesses

div 12.2 hdg exp 10 June 2002 (s 159)

Food businesses licensed under former Food Act not registered on 11 June 2002

s 157 exp 10 June 2002 (s 159)
ins as mod SL 2002 No 14 sch 2
exp 10 March 2003 (SL 2002 No 10 reg 17)

Food businesses exempt from registration under former Food Act

s 158 exp 10 June 2002 (s 159)

Expiry of div 12.2

s 159 exp 10 June 2002 (s 159)

Other transitional matters

div 12.3 hdg exp 10 March 2003 (s 174)

Applications for licences

s 160 exp 10 March 2003 (s 174)

Applications for renewal of licences

s 161 exp 10 March 2003 (s 174)

Applications for approval for alteration of food premises

s 162 exp 10 March 2003 (s 174)

Applications for variation of licences

s 163 exp 10 March 2003 (s 174)

Action to suspend or cancel licences

s 164 exp 10 March 2003 (s 174)

Improvement notices

s 165 exp 10 March 2003 (s 174)

Prohibition notices

s 166 exp 10 March 2003 (s 174)

Search warrants

s 167 exp 10 March 2003 (s 174)

Things seized

s 168 exp 10 March 2003 (s 174)

Food samples

s 169 exp 10 March 2003 (s 174)

Analysis of food samples

s 170 exp 10 March 2003 (s 174)

Review of decisions under former Food Act

s 171 exp 10 March 2003 (s 174)

Chief health officer may give effect to decisions of Minister etc

s 172 exp 10 March 2003 (s 174)

Directions under Food Regulations

s 173 exp 10 March 2003 (s 174)

Expiry

div 12.4 hdg exp 10 March 2003 (s 174)

Expiry of pt 12

s 174 exp 10 March 2003 (s 174)

Repeals and miscellaneous amendments

pt 13 hdg om R1 (LA s 89 (3))

Repeal of laws

s 175 om R1 (LA s 89 (3))

Amendment of Acts—sch 2

s 176 om R1 (LA s 89 (3))

Endnotes

5 Earlier republications

Miscellaneous provisions

sch 2 om R1 (LA s 89 (3))

Dictionary

dict am 2002 No 30 amdt 3.384

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	not amended	10 March 2002
2	not amended	11 June 2002
3	Act 2002 No 30	23 September 2002

Authorised when accessed at www.legislation.act.gov.au or in authorised printed form

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