

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

EXPLANATORY MEMORANDUM

FOOD BILL 2001

**Circulated by the authority of the Minister for Health,
Housing and Community Services
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FOOD BILL 2001

Introduction

The purpose of food law is to protect public health and provide information enabling consumers to make informed choices about the foods they eat. This Bill provides a framework aimed at ensuring that food, as one of the most important potential means of transmitting illness, is safe, suitable and correctly labelled.

Australian food law generally comprises three regulatory elements:

- An Act (in each jurisdiction) which establishes a framework, principles, administrative structures, offences and penalties;
- National food standards (the *Food Standards Code*) which set down compositional, microbiological, chemical, labelling and quality criteria which food is required to meet;
- Food hygiene regulations, which require food businesses to ensure that the production, processing, storage and handling of food does not result in microbiological, chemical or physical contamination.

To promote greater national uniformity of food standards in Australia, States and Territories agreed to adopt the *Food Standards Code* in 1991.

Each Australian State and Territory has previously been responsible for developing its own regulations for food hygiene, resulting in significant variation across the country. In 2000, the Australian New Zealand Food Authority (ANZFA) finalised development of national uniform *food safety standards*. These standards were incorporated into the *Food Standards Code* in February 2001.

An *Intergovernmental Agreement on Food Regulation* was signed by the Council of Australian Governments (COAG) on 3 November 2000. The 2000 Agreement ensures the continued adoption of the *food standards code* but also commits jurisdictions, including the ACT, to the adoption of the Model Food Provisions, and a new system for national food regulation.

The reviews relating to the Model Food Provisions, the *Food Standards Code* and the *Food Safety Standards* are part of a comprehensive overhaul of the way the food industry is regulated in Australia. The *Food Bill 2001*, based on the Model Food Provisions, is the culmination of this overhaul in the ACT.

EXPLANATORY MEMORANDUM

Part 1 Preliminary

Clause 1 – Name of Act

Clause 1 is a formal clause, declaring the name of the Act to be the *Food Act 2001*.

Clause 2 – Commencement

Clause 2 will commence on a day fixed by the Minister by notice in the Gazette. If a date is not fixed, or a provision has not commenced 6 months after notification, the entire Act will automatically commence from this date.

Clause 3 – Objects of Act

Clause 3 provides the objectives of this Act, which are:

- (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; and
- (c) to provide for the adoption of the *Food Standards Code* in the ACT.

Clause 4 – Dictionary

Clause 4 provides that the dictionary at the end of the Bill forms part of this Act.

Clause 5 – Notes

Clause 5 explains that a note included in the Act is only for explanation and does not form part of this Act.

Clause 6 – Application of Act to primary food production

Clause 6 provides that Part 7 (Improvement notices and prohibition orders) and Part 8 (Notification and registration of food businesses) of this Act will not apply in relation to primary food production.

This clause also limits the powers of authorised officers in relation to primary food production. The functions given to authorised officers relating to inspection, seizure, sampling and analysis (Parts 5 and 6) may only be exercised in the investigation, investigation and prosecution, or prosecution of an offence by a primary food producer.

Offence includes an offence that has, is or will be committed.

Clause 7 – Application of Act to water suppliers

Clause 7 provides that reticulated water suppliers are exempt from prosecution under certain specified offences contained with Part 3 of this Act. They are also exempt from compliance with Part 7 and Part 8 of this Act.

The exemption is provided to utilities regulated under the *Utilities Act 2000* or prescribed under the regulations for this section of this Act. The exemption is provided because the definition of food includes water and reticulated water suppliers are already regulated under the *Utilities Act 2000* and *Public Health Act 1997*.

Part 2 Key concepts

Clause 8 – meaning of *food*

Clause 8 defines 'food' as including:

- any substance or thing used, or claimed for use, for consumption by humans (whether it is live, raw, prepared or partly prepared);
- any food ingredients or food additive;
- any substances used in the preparation of food (if it comes into contact with the food);
- chewing gum; and
- any other prescribed substance or thing that has been declared under the regulations to be a food.

'Food' as defined in this clause does not include a therapeutic good. However, it may include live animals and plants.

Clause 9 – Meaning of *sell* etc

Clause 9 defines 'sell'. The definition is quite broad and includes to:

- barter;
- offer to sell;
- receive, possess or display for sale;
- dispose of to an agent for sale on consignment;
- provide under a contract of service (this includes meals provided as part of an employees award, with accommodation, care, entertainment or some other type of service);
- raffle or offer as a prize or reward;
- give away for the purpose of advertisement or promotion of trade; and
- supply food to people in an institution.

Clause 10 – Meaning of *food business*

Clause 10 defines 'food business' as a business, enterprise or activity that involves the sale of food or the handling of food intended for sale, regardless of whether the activity is of a commercial, charitable or community nature. The handling or sale must occur on one or more occasions.

The definition of 'food business' does not include primary food production.

Clause 11 – Meaning of *primary food production*

Clause 11 provides that 'primary food production' includes the growing, raising, cultivation, picking, harvesting, collection or catching of food. It includes certain activities, such as transport, packing and storing. It does not include a process that involves substantial transformation of food, the sale/service of food directly to the public, or an activity prescribed in the regulations for this section of this Act. Substantial transformation may include manufacturing, canning, pasteurisation or bottling of a food.

Clause 12 – Meaning of *unsafe* food

Clause 12 defines 'unsafe' food.

Food is unsafe if it causes physical harm to a person who consumes it, assuming certain things also occurred or did not occur. These things include that it was processed and handled according to its intended use and that it was consumed by the person as it was intended to be consumed.

Examples of unsafe food include:

- raw food ingredients that contain pathogens (in sufficient numbers to cause foodborne illness) that will not undergo a processing step which will destroy these pathogens prior to its consumption;
- raw food ingredients that contain physical or chemical contaminants (at a level which will cause harm to a person) that are not removed from the food prior to its consumption;
- a food that, prior to its sale, has been left at an inappropriate temperature and which now contains sufficiently high numbers of pathogens to cause foodborne illness but that will not be subject to further processing to destroy these pathogens.

If, after purchase, a consumer leaves food (previously considered safe and marked "keep refrigerated prior to consumption") at room temperature for more than a few hours and food poisoning bacteria grow to sufficient numbers to cause food poisoning then this food is not regarded as unsafe because the person did not handle the food in its intended manner – that is kept it refrigerated.

Food that may cause adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons is not included in the definition for unsafe food.

Clause 13 - Meaning of *unsuitable* food

Clause 13 provides that food is 'unsuitable' if it:

- contains, or is itself, damaged, deteriorated or perished;
- is from a diseased animal;
- is from an animal that was not slaughtered and declared to be suitable for human consumption; or
- contains some agent foreign to the nature of the food.

Examples of unsuitable food include food containing:

- glass;
- metal shavings;
- a band-aid;
- faeces;
- insects or rodents, either partial or whole;
- pesticides;
- mouldy or 'off' food

This clause also provides examples of when a food is not considered 'unsuitable'. Foods not considered unsuitable are those food which contain substances at levels permitted by the *Food Standards Code*.

Part 3 Offences relating to food

Division 3.1 Preliminary

Clause 14 – Application of pt 3 to food sold etc outside ACT

Clause 14 explains that Part 3 of this Act applies to all food sold or intended for sale, regardless of whether sale occurs within or outside the ACT.

The note to this clause indicates that clause 29 provides a defence for food intended for export outside of Australia.

Clause 15 - False descriptions of food

Clause 15 sets out various circumstances where food will be taken to have been 'falsely described'. These include a claim that the food:

- complies with the requirements of, or a standard contained within, the *Food Standards Code*;
- is of a particular nature but has actually been mixed so that its nutritional quality is significantly less than that expected by the consumer;
- is of a particular nature but has actually been mixed so that its commercial value is less than that expected by the consumer;
- is of a particular nature but that one of its ingredients has actually been removed (either wholly or in part) so that its properties are less than that expected by the consumer;

Also included within the definition of 'falsely described' are claims that create a false impression about the nature of the food or its commercial value, or food that is not of the nature represented by the packaging, its label or in the way it is offered for sale.

Food is also falsely described if a purchaser demands a particular type of food and they are provided with something that does not match that demand.

Division 3.2 Serious offences relating to food

Clauses 16 to 18 refer to serious offences for which the offender knew that the practice they were undertaking was unsafe, or the food they were selling was unsafe.

Clause 16 – Knowingly handling food in unsafe way

Clause 16 creates an offence for a person to knowingly handling food in a manner that renders, or is likely to render, the food unsafe.

An example of an offence under this clause would be for a person to deliberately leave cooked rice out at room temperature overnight even though the person knew that this would be likely to render the food unsafe.

The maximum penalty for an offence under this clause is 1000 penalty units and/or 2 years imprisonment for an individual or 5000 penalty units for a corporation.

Clause 17 – Knowingly selling unsafe food

Clause 17 creates an offence for a person to knowingly sell food that the person knows is unsafe.

An example of an offence under this clause would be for a person to sell food that the person knows is the subject of a food safety recall.

The maximum penalty for an offence under this clause is 1000 penalty units and/or 2 years imprisonment for an individual or 5000 penalty units for a corporation.

Clause 18 – Knowingly falsely describing food

Clause 18 creates an offence for a person to:

- knowingly falsely describe food; or
- allow the sale of food that the person knows is falsely described, if the person knows that a consumer who relies on the description will, or is likely to, suffer physical harm.

An example of an offence under this clause would be for a person to state that a food does not contain peanuts, when they know that it does and they know that certain people rely on the statement to ensure they do not become ill.

The maximum penalty for an offence under this clause is 1000 penalty units and/or 2 years imprisonment for an individual or 5000 penalty units for a corporation.

Division 3.3 Other offences relating to food

The offences in Division 3.3 are similar to clauses 16 to 18, except that the element of intent is removed.

Clause 19 – Handling of food in unsafe way

Clause 19 creates an offence for a person to handle food intended for sale in a manner that the person should reasonably know would be likely to render the food unsafe.

An example of an offence under this clause would be for a person to leave cooked rice out at room temperature overnight even though the person had previously been provided with written information detailing the risks associated with this practice.

The maximum penalty for an offence under this clause is 750 penalty units for an individual or 3750 penalty units for a corporation.

Clause 20 – Sale of unsafe food

Clause 20 creates an offence to sell food that the person should reasonably have known was unsafe.

An example of an offence under this clause would be for the same person described in the previous example (clause 19 above) to sell the rice.

The maximum penalty for an offence under this clause is 750 penalty units for an individual or 3750 penalty units for a corporation.

Clause 21 – False description of food

Clause 21 creates an offence for a person who:

- falsely describes food; or
- allows the sale of food that the person should reasonably know to be falsely described, if the person should have known that a consumer who relies on the description will, or is likely to, suffer physical harm.

A label that declares that a particular food does not contain peanuts, when it does would fall within this offence provision, even if the person did not mean to mislead the consumer, because the person should have known that peanuts are an allergen which can be life threatening to some people. The person should have known this because sufficient information regarding the allergenicity of peanuts is available within the general community.

The maximum penalty for an offence under this clause is 750 penalty units for an individual or 3750 penalty units for a corporation.

Clause 22 – Handling and sale of unsafe food

Clause 22 creates an offence to handle food intended for sale in a manner that will render, or is likely to render, the food unsafe. It will also be an offence to sell unsafe food.

An example of an offence under this clause would be to leave cooked rice out at room temperature overnight. There is no need for the prosecution to prove intent or prior knowledge.

The maximum penalty for an offence under this clause is 500 penalty units for an individual or 2500 penalty units for a corporation.

Clause 23 – Handling and sale of unsuitable food

Clause 23 provides that it is an offence to handle food intended for sale in a manner that will render, or is likely to render, the food unsuitable. It will also be an offence to sell unsuitable food.

An example of an offence under this clause would be for a food handler to let a band-aid fall into food. Another example would be for a person to sell food that has a cockroach in it

The maximum penalty for an offence under this clause is 400 penalty units for an individual or 2000 penalty units for a corporation.

Clause 24 – Misleading conduct relating to sale of food

Clause 24 creates an offence for a food business to engage in misleading or deceptive advertising, packaging, labelling or sale of food. It is also an offence to falsely describe food (via an advertisement, package or label) or to sell food that is packaged or labelled in a way that falsely describes the food.

An example of an offence under this clause would be for a person to advertise mince meat as being low fat when it contains the same amount of fat as regular mince.

The maximum penalty for an offence under this clause is 500 penalty units for an individual or 2500 penalty units for a corporation.

Clause 25 – Sale of food not complying with purchaser's demand

Clause 25 creates an offence to sell food that is not of the nature or substance demanded by the purchaser.

An example of an offence under this clause would be for a person to sell seafood extender when the consumer requested lobster.

The maximum penalty for an offence under this clause is 500 penalty units for an individual or 2500 penalty units for a corporation.

Clause 26 – Sale of unfit equipment or packaging or labelling material

Clause 26 creates an offence to sell equipment that would render, or be likely to render, food unsafe, if it was used in accordance with the manufacturer's instructions.

This clause also provides for an offence where the sale of equipment would, or would be likely to, put other equipment in such a condition that it would render, or be likely to render, food unsafe.

Under this clause there is an additional offence created for the sale of packaging or labelling material that, if used as intended by the manufacturer, would render, or be likely to render, food unsafe.

An example of an offence under this clause would be for a person to sell malfunctioning equipment which does not permit it to be effectively cleaned, thus leading to the bacterial contamination of food coming into contact with this equipment.

Another example would be for a person to sell non-food grade plastic packaging for the containment of foods, leading to the leaching of toxic compounds into the food.

The maximum penalty for an offence under this clause is 500 penalty units for an individual or 2500 penalty units for a corporation.

Clause 27 – Compliance with food standards code

Clause 27 creates an offence for a person who does not comply with the *Food Standards Code* in relation to the conduct of a food business, food intended for sale or food for sale.

An additional offence is created for a person who does not comply with any relevant requirements of the *Food Standards Code* in relation to the packaging, labelling, sale or advertisement of food.

Examples of offences under this clause would be for a person to:

- add a food additive to a food that has not been approved for use under the *Food Standards Code*;
- sell genetically modified food without labelling that food in accordance with the applicable standard contained within the *Food Standards Code*;
- fail to wash their hands after using the toilet, as required by the *Food Standards Code*;
- to operate out of a premises that could not be effectively cleaned, as required by the *Food Standards Code*.

The maximum penalty for an offence under this clause is 500 penalty units for an individual or 2500 penalty units for a corporation.

Division 3.4 Defences

Clause 28 - Defence relating to publication of advertisements

Clause 28 provides a defence in relation to the publication of an advertisement if a person proves that they published the advertisement in the ordinary course of carrying on a publishing or advertising business.

However, this defence will not apply if the person:

- should reasonably have known that publication of the advertisement would constitute an offence;
- had been warned that publication of such an advertisement would constitute an offence;
or
- is the proprietor of a food business or is connected with the conduct of a food business for which the advertisement was published.

Clause 29 – Defence in relation to food for export

Clause 29 provides a defence in connection with a contravention of the *Food Standards Code* if the person proves that the food in question is to be exported to another country and that the food complies with corresponding laws of that other country.

However, this defence does not apply to food that was originally intended for export but was later sold in the ACT.

Clause 30 – Defence of appropriate diligence

Clause 30 provides a defence to proceedings for an offence within this part if the person proves that they took all reasonable precautions and exercised all appropriate diligence to prevent the offence by the person or by another person under that person's control.

Ways that the defendant can prove that they took reasonable precautions and exercised appropriate diligence include proving:

- that the offence was committed by an act or omission of another person, or due to reliance on information received from another person; and
- that the defendant reasonably carried out checks of the food, or reasonably relied on checks carried out by the person who supplied the food to the defendant; and
- that the defendant did not import the food into the ACT from another country; and
- that the food was sold in the same condition that it was in when the defendant purchased it (or the different condition in which it was sold did not contravene the Act); and
- that the defendant was unaware, and had no reason to suspect, that the defendant's act or omission was an offence.

It is also a defence if the defendant proves they complied with a food safety program that the premises is required to have, or with some other quality assurance program or industry code of practice, based on national or international standards.

Clause 31 – Defence in relation to handling food

Clause 31 provides a defence to proceedings for an offence concerning the handling of food in a way that renders it unsafe or unsuitable, if the person proves that the food was destroyed or otherwise disposed of immediately after the food was handled in the unlawful manner.

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

Clause 32 provides a defence in relation to an offence involving the sale of equipment or material, if the person proves that they believed that the equipment or material was not intended for use in connection with the handling of food.

Division 3.5 Other matters

Clause 33 – Defence of mistaken and reasonable belief not available

Clause 33 provides that it is not a defence that the person had a mistaken but reasonable belief about the facts that constituted an offence against Division 3.3 (Other offences relating to food).

Clause 34 – Onus on defendant to prove certain statements about food

Clause 34 provides that, if it is alleged that a statement on a package or in an advertisement relating to the origin or composition or properties of food has caused the food to be falsely described, the onus of proving the correctness of the statement will be on the defendant.

Clause 35 – Alternative verdicts for handling food in unsafe way

Clause 35 provides for alternative verdicts. Where a person is charged with knowingly handling food in an unsafe way (Clause 16), and the Court is not satisfied that the person committed the offence, but is satisfied that they committed a lesser food handling offence, the Court may find the person not guilty of the original offence but guilty of the lesser food handling offence.

Clause 36 – Alternative verdicts for selling unsafe food

Clause 36, similar to Clause 35, provides that a person can be found not guilty of an offence, as charged, but guilty of an alternative (and lesser) offence.

In this case, if the Court is not satisfied that a person knowingly sold unsafe food, they may find the person guilty of a lesser offence of selling food that is unsafe or of selling food that they should have known was unsafe.

Part 4 Emergency powers

Clause 37 – Definitions for pt 4

Clause 37 provides definitions for terms appearing in this Part.

Clause 38 – Making of emergency orders

Clause 38 provides for the Minister to make an emergency order if the Minister believes that the order is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate adverse consequences of such a danger.

Clause 39 – Nature of emergency orders

Clause 39 describes what an emergency order can do. An order may, for example, require the publication of warnings about the safety of food, prohibit the harvesting of particular food in a specified area, prohibit the sale of particular food, or direct that food be recalled.

It may also require that food be disposed of in a specified manner, prohibit the carrying on of an activity involving food or limit its activity by placing conditions on the operation of the activity.

Clause 40 – Special provisions relating to recall orders

Clause 40 relates specifically to recall orders. It provides that the recall order may require a person to disclose certain information to the public including the food to be recalled, reasons why and when the food is considered unsafe and methods of disposal of the food.

This clause also requires that the person to whom the recall order is subject must, as soon as practicable, notify the chief health officer in writing that the recall has been completed.

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. Also a certificate signed by the chief health officer explaining the costs is evidence of the debt.

Clause 41 – How orders are made

Clause 41 provides that an emergency order may be addressed to a particular person, several people, a class of people, or all people.

This clause details the procedure to be followed when making an order. An order will expire after 90 days, unless revoked sooner. However, it is possible to make a further order.

Clause 42 – Operation of emergency orders

Clause 42 provides that a person bound by an emergency order may apply to the Supreme Court for an order halting or otherwise affecting the operation of the order. If satisfied that it will not create or worsen a serious danger to public health, the Supreme Court can make such an order.

In considering whether to make an order to halt or otherwise affect an emergency order, the Supreme Court must have regard to clause 44 (Compensation for emergency order).

Clause 43 – Failure to comply with emergency order

Clause 43 provides that a person must not, without reasonable excuse, contravene or fail to comply with an emergency order.

The maximum penalty for an offence under this clause is 500 penalty units for an individual or 2500 penalty units for a corporation.

Clause 44 – Compensation for emergency order

Clause 44 provides that a person who is bound by an emergency order and has suffered loss or damage as a result of an order may apply in writing to the Minister for compensation, if the person considers that there were insufficient grounds for making the order.

The Territory must pay reasonable compensation to the person if there were insufficient grounds for making the emergency order. However, subclause (4) includes some circumstances in which compensation is not payable. These include that the person contributed or caused the danger which lead to the issuing of the emergency order.

The Minister must decide whether to pay compensation and then advise the person of the decision. A decision made by the Minister under this clause is reviewable by the Administrative Appeals Tribunal.

Part 5 Inspection and seizure powers

Division 5.1 General

Clause 45 – Definitions for pt 5

Clause 45 defines certain terms used within this Part.

Division 5.2 Powers of authorised officers generally

Clause 46 – Power to enter premises

Clause 46 describes the powers of an authorised officer in relation to the entry of premises.

An authorised officer may, at any reasonable time, enter premises that they believe are used in relation to handling/sale of food or the holding of documents relating to food. Officers may also enter any premises that the public are entitled to use. In both these instances consent from the occupier is not required.

The occupier's consent, or the authority provided by a warrant, will be required by an authorised officer if they wish to enter a premises at a time other than a reasonable time. If the authorised officer believes that the circumstances are both serious and urgent, the officer may enter those premises without the occupier's consent or the authority of a warrant with such assistance and force as they consider necessary.

A reasonable time is defined as being during business hours or, in relation to the handling or sale of food, at any time the premises is being used.

This clause does not authorise entry into any part of a premises that is being used solely for residential purposes, except if that part of the premises is being used for the preparation or service of meals provided with paid accommodation, or the preparation of food intended for sale, or the sale of food.

This clause provides that an authorised officer may stop and detain a vehicle that the officer believes is a food transport vehicle or a vehicle where there are documents relating to the handling of food intended for sale, or the sale of food or equipment. However, the authorised officer must not detain the vehicle for longer than is reasonably necessary.

This clause also provides for an authorised officer to enter the land around premises to ask for consent to enter the premises. And also, for them to enter premises without payment of any entry fee or other charge.

Clause 47 – Production of identity card

Clause 47 provides that, if an authorised officer does not produce their identity card for inspection when asked by the occupier of premises, the officer will be required to leave the premises.

Clause 48 – Consent to entry

Clause 48 describes the procedure to be taken by an authorised officer when seeking the consent of an occupier to enter a premises and the consequences of not following the procedure.

Clause 49 – Warrants

Clause 49 provides that an authorised officer may apply to a magistrate for a warrant to enter premises. This clause provides details on the application process, the considerations that a magistrate must make, and the contents of a warrant.

Clause 50 – Warrants—application made other than in person

Clause 50 provides that an application for a warrant can be made other than in person (by phone, fax, radio or other form of communication) if necessary due to urgent or special circumstances. The requirements for such an application are outlined in this clause.

Clause 51 – General powers of authorised officers

Clause 51 sets out the powers of an authorised officer to carry out inspections and to undertake other activities for the purposes of the Act. The powers include the ability to:

- examine food, equipment or other things;
- copy documents;
- open containers or packages;
- open or operate equipment;
- take measurements;
- make recordings (including photographs or video);
- do tests on things, including food;
- take samples of food, water or other things; and
- seize things.

An authorised officer is also able to require a person to provide information, answer questions or to produce documents. Under subclause (2), it is an offence for a person to fail to comply with such a requirement. Although a person does not need to comply with a requirement if the officer does not produce their identity card when asked by the person.

The maximum penalty for an offence under this clause is 50 penalty units for an individual or 250 penalty units for a corporation.

This clause also provides that the powers conferred upon an authorised officer are also able to be exercised in a public place which the officer believes is being used to sell food.

Clause 68 establishes an offence for obstructing or hindering an authorised officer in their exercise of the powers provided to them under this Act.

Clause 52 – Power to seize things

Clause 52 sets out the powers of authorised officers to seize things. Things can be seized if specified in a warrant or if the authorised officer is satisfied on reasonable grounds that the thing is connected with an offence.

Under subclause 4, authorised officers can also seize food if it is unsafe or unsuitable; consists partly or completely of decomposed, filthy, putrid or spoiled matter; or if it otherwise poses an immediate risk to health or property.

This provision outlines options for what to do with seized things and also specifies that it is an offence to interfere with seized things.

The maximum penalty for an offence under this clause is 50 penalty units and/or 6 months imprisonment for an individual or 250 penalty units for a corporation.

Clause 53 – Power to destroy decomposed food etc

Clause 53 provides for the destruction of food that is unsafe, unsuitable, decomposing, filthy, putrid, spoiled, or otherwise poses an immediate risk to health or property.

The proprietor of the food business can be directed to dispose of or destroy the food, or, if the food has been seized, the authorised officer can dispose of or destroy the food. If the authorised officer makes arrangements for its disposal the proprietor is liable for the costs of disposal.

The maximum penalty for a not complying with a direction issued by an authorised officer under this clause is 50 penalty units for an individual or 250 penalty units for a corporation.

Clause 54 – Power to require name and address

Clause 54 provides that an authorised officer may require a person to disclose their name and home address if the officer finds the person committing an offence against this Act or has reasonable grounds for believing that a person has just committed an offence against this Act. It is an offence for the person, without reasonable excuse, to fail to provide their name and address when asked under this provision (unless the officer does not produce their identity card when asked).

The requirements of an authorised officer in making such a request are set out in this provision.

The maximum penalty for an offence under this clause is 5 penalty units.

Division 5.3 Return and forfeiture of things seized

Clause 55 – Receipt for things seized

Clause 55 sets out the requirements for providing a receipt for things that have been seized by an authorised officer.

Clause 56 – Access to things seized

Clause 56 provides that, where something has been seized, a person can inspect the seized thing and take copies if it is a document. This clause only applies if they are a person who would normally be entitled to inspect the thing if it were not seized under this part.

This clause does not apply if the seizure related food that was unsafe or unsuitable, or consisted partly or completely of decomposed, filthy, putrid or spoiled matter (as described in clause 52 (4)).

Clause 57 – Return of things seized

Clause 57 sets out the circumstances in which a seized thing must be returned to its owner, or compensation must be paid. This includes if an infringement notice for an offence relating to the seized thing is withdrawn; or liability is disputed and the chief health officer decides not to pursue the matter; or a prosecution is not commenced within 6 months; or if a court does not find the offence proved.

However, subclause 57 (2) (a) provides that this clause does not apply to things seized under clause 52 (4) which relates to the seizure of putrid, unsafe or unsuitable food. Subclause 57 (2) (b) also provides that this clause does not apply if the chief health officer considers that the offence would continue if the thing were returned.

A decision made by the chief health officer under subclause 57 (2) (b) may be overturned by a magistrate's decision under clause 59.

Clause 58 – Application for order disallowing seizure

Clause 58 provides that, within 10 days of something being seized, a person claiming to be entitled to the thing can apply to the Magistrates Court for an order disallowing the seizure – except in relation to food seized under clause 52 (4).

This clause requires that the applicant must serve a copy of the application on the chief health officer. The chief health officer is entitled to appear at a hearing convened to consider the application.

Clause 59 – Order for return of seized thing

Clause 59 sets out the circumstances in which the Magistrates Court must make an order disallowing the seizure if an application is made under clause 58. This clause requires the Magistrate to disallow the seizure if the applicant would ordinarily be entitled to the seized thing and the offence to which the seizure applied is not proven.

It also allows for the Magistrates Court to make ancillary orders requiring the thing to be returned, or the Territory to pay compensation, and also covers payment of costs in relation to the application.

Clause 60 – Adjournment pending hearing of other proceedings

Clause 60 provides that, in relation to an application for disallowance of a seizure, the hearing may be adjourned if it appears to the Magistrates Court that the seized thing is required to be produced in evidence in a pending proceeding that relates to an offence against a Territory law.

Clause 61 – Forfeiture of seized things

Clause 61 provides that if any seized thing has not already been destroyed, disposed of or returned, and if no application for disallowance has been made within 10 days after the seizure, the thing is forfeited to the Territory and can be sold, destroyed or disposed of at the discretion of the chief health officer.

Clause 62 – Return of forfeited things

Clause 62 requires that if a thing has been forfeited but has not yet been disposed of, and the chief health officer becomes satisfied that the thing is not connected with an offence against the Act, the thing must be returned to the person it was seized from or to someone else who appears to be entitled to it.

Clause 63 – Cost of disposal of things forfeited

Clause 63 provides that if a person is found guilty of an offence relating to a thing that has been forfeited to the Territory under clause 61, and the person was the owner of the thing immediately before it was forfeited, the person must pay the Territory all costs incurred for storage and disposal of the thing.

Division 5.4 Miscellaneous

Clause 64 – Selfincrimination

Clause 64 provides that a person must provide information or produce documents when required to do so under this part, even if the information or document may incriminate the person. However, information or documents obtained are not admissible in evidence against the person in a criminal proceeding.

Subclause (3) provides for occasions when this information may be admissible. These occasions only apply in relation to offences relating to:

- clause 66 and 67 (providing false or misleading information and documents);
- any other offence relating to the provision of false or misleading information or documents by the person; or
- an offence under part 8 of the *Crimes Act 1900* (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relate to the above mentioned offences.

Clause 65 – Legal professional privilege

Clause 65 provides that if a person claims (and is entitled to claim) legal professional privilege, they do not have to provide information, produce a document, or answer a question when requested by an authorised officer.

Clause 66 – Providing false or misleading information

Clause 66 states that it will be an offence for a person to provide any information that the person knows is false or misleading.

The maximum penalty for an offence under this clause is 50 penalty units and/or 6 months imprisonment for an individual or 250 penalty units for a corporation.

Clause 67 – Providing false or misleading documents

Clause 67 states that it will be an offence for a person to provide a document that the person knows is false or misleading.

The maximum penalty for an offence under this clause is 50 penalty units and/or 6 months imprisonment for an individual or 250 penalty units for a corporation.

Clause 68 – Hindering or obstructing authorised officer

Clause 68 provides that it will be an offence for a person to hinder or obstruct an authorised officer in their functions under this Act.

The maximum penalty for an offence under this clause is 50 penalty units and/or 6 months imprisonment for an individual or 250 penalty units for a corporation.

Clause 69 – Pretending to be an authorised officer

Clause 69 provides that it will be an offence for a person to pretend to be an authorised officer.

The maximum penalty for an offence under this clause is 100 penalty units and/or 1 year imprisonment for an individual or 500 penalty units for a corporation.

Clause 70 – Damage etc to be minimised

Clause 70 provides that, in exercising their functions under the Act an authorised officer must take all reasonable steps to ensure that they, and any person assisting them, cause as little inconvenience, detriment and damage as is practicable.

This clause outlines the steps for an authorised officer to take if damage is caused.

Clause 71 – Compensation to be paid in certain circumstances

Clause 71 provides that a person may claim for compensation to be paid in relation to loss or expense resulting from the exercise of an authorised officer's functions.

This clause requires that a court may only order compensation to be paid if they are satisfied that it is just to do so. The regulations may prescribe things that the court must consider when determining if it is just.

Part 6 Taking and analysis of food samples

Clause 72 – Samples for routine monitoring of Act

Clause 72 provides for authorised officers to take samples by means other than the sampling procedure set out in Part 6 of this Act. Samples referred to in this clause are routine or survey samples which are not used for the purpose of gathering evidence of an offence against this Act.

Clause 135 provides that a sample taken under this clause is inadmissible in evidence in a proceeding for an offence against this Act.

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

Clause 73 requires an authorised officer to inform the proprietor of a business that a food sample has been, or is to be, taken for analysis. This clause does not apply if the food is obtained from a vending machine and the authorised officer cannot determine who, at that time, is in charge of the machine.

Clause 74 – Payment for samples

Clause 74 requires an authorised officer to pay the person from whom the sample is taken, or tender for payment, either an amount prescribed by the regulations or the current sale price of the sample. This clause does not apply if the food is obtained from a vending machine.

Clause 75 – Samples from packaged food

Clause 75 requires that when sampling a food in a closed package, the authorised officer must take the entire package, unless the package contains 2 or more smaller packages of the food.

Clause 76 – Procedure for dividing food samples

Clause 76 describes the formal procedure for taking samples of food for analysis.

Samples are to be divided into 3 parts and sealed. One part is given to the person referred in clause 73, one is kept by the authorised officer for analysis and one is kept by the authorised officer for future comparison if so ordered by the court under clause 137 (power of court to order further analysis).

This clause also describes the procedure for dividing samples in different circumstances including for different types or sizes of food or packaging in order that appropriate samples are obtained for analysis.

Clause 76 (4) and (5) provide that if 3 part sampling would, in the opinion of the authorised officer, impair the composition or quality of the sample, or result in the insufficient size of the sample, or otherwise make the sample unsuitable for analysis, then

the authorised officer may take as many samples as they consider necessary to allow for the accurate analysis of the sample.

The first situation would include the division of samples for microbiological analysis. Samples should not be divided into 3 parts because they impair the composition of the sample and make them unsuitable for accurate analysis. The latter situation would include sampling a food which is the subject of a consumer complaint where it may not be possible to leave a part with the person who sold the sample.

Clause 77 – Analysis to comply with food standards code

Clause 77 requires that a person who analyses a sample of food under this Act must do so in accordance with any requirements specified in the food standards code. The food standards code sets out methods of analysis to be followed in certain circumstances.

Clause 78 – Certificates of analysis by authorised analysts

Clause 78 provides that analysis of a sample of food for the chief health officer must be undertaken by an authorised analyst or under the supervision of an authorised analyst. This clause sets out the details that are required in the certificate of analysis that is provided to the chief health officer.

Clause 134 (evidence of analysts) refers to the evidentiary status of a certificate issued under this clause.

Part 7 Improvement notices and prohibition orders

Clause 79 – Service of improvement notices

Clause 79 provides that an authorised officer may issue an improvement notice if they consider it necessary. This clause sets out the circumstances in which an improvement notice can be issued and includes that:

- the premises or equipment are in an unclean or insanitary condition;
- the premises is unfit for the purpose for which it was designed or intended;
- this Act, including the regulations or the food standards code, has been, is being or will be contravened by the food business in relation to the handling or sale of food; or
- a food safety program required by the regulations has not been complied with.

Examples of the second circumstance above would include a premises which is in disrepair, or a premises which did not have an adequate number of hand basins available for use by staff.

Examples of the third circumstance above would include where a business stores food requiring refrigeration at temperature other than that required by the food standards code, or where foods manufactured on the premises are not labelled in accordance with the food standards code.

Clause 80 – Contents of improvement notices

Clause 80 sets out the things that an improvement notice can require a proprietor to do. These may include to clean the premises, replace equipment or a vehicle, destroy or dispose of food, undertake food handler training, or replace food packaging or labelling, etc.

This clause also describes additional information that is required on an improvement notice and includes the time period within which the proprietor must comply with the notice, the relevant provisions of this Act that the authorised officer believes have been contravened, and any particular action required to be taken by the proprietor to comply with this Act.

The authorised officer may extend the period of compliance either on their own initiative or at the request of the proprietor.

Clause 81 – Compliance with improvement notices

Clause 81 provides that if an improvement notice is complied with, the date of compliance is to be noted on a copy of the notice by an authorised officer. An authorised officer is required to provide a copy of the annotated notice to the proprietor.

Clause 82 – Service of prohibition orders

Clause 82 provides that if an improvement notice has not been complied with, or that action must be taken to prevent or mitigate a serious danger to public health, then an authorised officer may issue a prohibition order.

Examples of a serious danger to public health include where the investigation of an incidence of food poisoning has epidemiologically linked the poisoning to the food sold at the premises, or where the proprietor has a demonstrated to the authorised officer a total lack of understanding of food safety and hygiene principles or practices.

Clause 83 – Contents of prohibition orders

Clause 83 describes the contents of a prohibition order. A prohibition order issued on a proprietor may prohibit the proprietor from using a particular premises or equipment, a type of food or a method of food handling, or anything else in relation to food intended for sale, or the sale of food. This clause may also direct the proprietor to dispose of food.

This clause also describes information that is required on a prohibition order and includes the relevant provisions of this Act that the authorised officer believes have been contravened, any particular action required to be taken by the proprietor to comply with this Act, and the fact that the proprietor may request a reinspection by the authorised officer.

Clause 84 – Scope of improvement notices and prohibition orders

Clause 84 describes the things that improvement notices and prohibition orders can be issued in relation to. These include the entire premises, or part of any premises, equipment or vehicle; the handling of food intended for sale by the food business in a particular way or for a particular purpose; and any or all food intended for sale or sold.

A notice or order may also state the timeframe and the manner within which food is to be kept, destroyed or disposed of.

Clause 85 – Request for reinspection

Clause 85 provides that the proprietor of a food business affected by a prohibition order may request that an authorised officer conduct an inspection of the relevant premises, vehicle or equipment.

If an inspection is not undertaken (through no fault of the proprietor) within 48 hours of the chief health officer receiving the written request, a clearance certificate for the prohibition order is taken to have been issued.

Clause 86 – Clearance certificates

Clause 86 provides that, if an authorised officer reinspects the things for which a prohibition order was served, they must issue a clearance certificate for the prohibition order if the things are no longer a serious danger to public health and the proprietor has

complied with the prohibition order or any improvement notice in relation to the food business.

A decision by an authorised officer to refuse to issue a clearance certificate is reviewable by the Administrative Appeals Tribunal.

Clause 87 – Contravention of improvement notices and prohibition orders

Clause 87 establishes an offence for a proprietor of a food business to contravene an improvement notice or a prohibition order.

The maximum penalty for an offence under this clause is 100 penalty units for an individual or 500 penalty units for a corporation.

Clause 88 – Compensation for prohibition order

Clause 88 provides that a person who has suffered loss or expense as the result of a prohibition order may apply to the Minister in writing for compensation, if the person believes there were insufficient grounds for the making of the order.

The Territory must pay reasonable compensation to the person if there were insufficient grounds for issuing the prohibition order. However, subclause (4) includes some circumstances in which compensation is not payable. These include that the person contributed or caused the making of the prohibition order.

The Minister must decide whether to pay compensation and then advise the person of the decision. A decision made by the Minister under this clause is reviewable by the Administrative Appeals Tribunal.

Part 8 Notification and registration of food businesses

Clause 89 – Food businesses exempt from registration

Clause 89 provides that a food business prescribed under the regulations for this section will be exempt from the requirement to be registered.

Examples of exemptions that may be prescribed under the regulations for this clause include:

- a business which operates on no more than five occasions each year (of up to 3 days duration for each occasion) - preparing food that is not 'potentially hazardous', or which is to be consumed immediately after thorough cooking; or
- a business that sells food from a food van that is registered under the food law of another State or Territory.

For example – temporary fetes, cake stalls, raffles, stalls at festivals and interstate food vans.

Clause 90 – Notification of conduct of exempt food businesses

Clause 90 provides that a food business that is exempt from registration will not be able to operate until the notifiable information that is required by the *Food Safety Standards* is given to the chief health officer.

The maximum penalty for an offence under this clause is 50 penalty units for an individual or 250 penalty units for a corporation.

Clause 91 – Food businesses to be registered

Clause 91 provides that all food businesses must be registered (unless they are exempt under section 89 and the regulations).

The maximum penalty for an offence under this clause is 50 penalty units, imprisonment for 6 months, or both (250 penalty units for a corporation).

Food businesses requiring registration may include food businesses that manufacture or prepare food on the premises (eg. restaurants, take-aways, bakeries), businesses that sell food that has already been prepared (eg. service stations, supermarkets, market stalls), and food businesses that make food at one place and transport it elsewhere (eg. caterers and market stalls).

Clause 92 – Registration of food businesses

Clause 92 sets out the procedure for registration of a food business. An application must include any information reasonably required by the chief health officer. A fee may be payable. The registration is issued for one year.

In deciding whether to register a food business, the chief health officer may consider the appropriateness of the premises, any contraventions by the person, or other relevant matters.

A decision by the chief health officer to refuse to register a food business is reviewable by the Administrative Appeals Tribunal.

Clause 93 – Renewal of registration

Clause 93 provides for renewal of a food business registration. A renewal lasts for one year.

A decision by the chief health officer to refuse to renew the registration of a food business is reviewable by the Administrative Appeals Tribunal.

Clause 94 – Issue or renewal of registration subject to conditions

Clause 94 provides for conditions to be placed on a food business registration. A condition of registration can be imposed, amended or revoked by the chief health officer. For example, conditions might be imposed in relation to the type of food that is prepared by a particular food business, due to the limitations of the premises where the business operates.

A decision by the chief health officer to refuse to register a food business, or renew registration, or to impose, amend or revoke a condition under which the registration is issued are all reviewable by the Administrative Appeals Tribunal.

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

Clause 95 sets out the process for the chief health officer to impose, amend or revoke a condition of an existing registration. The chief health officer must give the proprietor written notice of the condition and matters relating to the condition. The notice may provide an opportunity for the proprietor to put forward reasons why the proposed action should not be taken.

Clause 96 – Certificate of registration

Clause 96 requires the Chief Health Officer to issue a certificate of registration for new registrations and renewals. This provision sets out the details that must be provided on the certificate.

Clause 97 – Change in details of registration or operation of food business

Clause 97 relates to changes to a food business and to the registration of a food business. The chief health officer must be advised of a change that affects the details of registration or the operation of a food business.

Notice must be given as soon as practicable, but no later than 7 days after the day the change. The maximum penalty for an offence under this clause is 50 penalty units for an individual or 250 penalty units for a corporation.

If the change affects particulars shown on the certificate of registration, the proprietor must return the certificate to the chief health officer with the notice.

The Chief Health Officer may refuse to amend the registration of the food business if satisfied that the change of circumstances will render the premises unfit for use as food premises or will have an adverse effect on the safety of food.

Examples of changes that may apply under this section include a change in ownership, a change in the kind of food business, or a change in the structure of the premises where a business is conducted.

A decision by the chief health officer to refuse to amend the registration a food business is reviewable by the Administrative Appeals Tribunal.

Clause 98 – Replacement of certificates of registration

Clause 98 allows for replacement of a certificate of registration that is lost, stolen or destroyed.

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

Clause 99 prohibits the proprietor of a registered food business from conducting the food business in contravention of a condition of the registration.

The maximum penalty for an offence under this clause is 50 penalty units for an individual or 250 penalty units for a corporation.

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

Clause 100 provides that the chief health officer may either suspend or cancel the registration of a food business or impose or amend a condition under which a registration is issued if the operation of the food business has resulted in a breach of this Act.

Clause 101 – Procedure for taking action in relation to registration

Clause 101 provides that, if the chief health officer proposes to either suspend or cancel the registration of a food business or impose or amend a condition under which a registration is issued, the chief health officer must give the proprietor a disciplinary notice stating certain information.

The proprietor may respond within a specified period and the chief health officer, considering any response received from the proprietor, may either suspend the registration (for a specified time of not more than 1 year), cancel the registration, or impose or amend a condition under which the registration is issued.

A decision by the chief health officer to suspend/cancel registration of a food business, or to lengthen the suspension of a registration, or impose or amend a condition of registration, are all reviewable by the Administrative Appeals Tribunal.

Clause 102 – Immediate suspension of registration

Clause 102 provides that the chief health officer may immediately suspend a registration, prior to fully complying with the requirements of section 101 (Procedure for taking action in relation to registration) if the chief health officer believes it is necessary to do so and they have served an immediate suspension notice on the proprietor. This notice expires once the chief health officer has made a decision on the disciplinary notice served under section 101.

A decision by the chief health officer to suspend registration of a food business is reviewable by the Administrative Appeals Tribunal.

Clause 103 – Return of certificate of registration

Clause 103 provides that if the registration of a food business has been suspended or cancelled, the proprietor must return the certificate of registration to the chief health officer within 7 days of the suspension or cancellation.

The maximum penalty for an offence under this clause is 5 penalty units for an individual or 25 penalty units for a corporation.

Clause 104 – Surrender of registration

Clause 104 provides that the proprietor of a food business may surrender their registration by returning it to the chief health officer with a written statement to that effect.

Clause 105 – Registers of food businesses

Clause 105 provides that the chief health officer must keep registers of food businesses that have, under this Act, notified of their existence, as well as businesses that are registered under this Act. The registers must contain certain information.

Clause 106 – Publication and inspection of food business registers

Clause 106 provides that the chief health officer must make available a food business register and that the register can be published if the chief health officer considers that to be appropriate.

Part 9 Infringement notices for certain offences

Division 9.1 Preliminary

Clause 107 – Definitions for pt 9

Clause 107 defines certain terms which are referred to within this Part.

Clause 108 – Purpose and effect of pt 9

Clause 108 states that this Part creates a system of infringement notices for certain offences and that they act as an alternative to prosecution. Prosecution is not always appropriate because it can be time consuming, costly and of inappropriate magnitude for a smaller offence. Infringement notices will apply where an offence is serious enough for a penalty, but not so serious as to warrant a court case.

This Part does not require a person to be served with an infringement notice or a reminder notice. If served a notice, a person is liable to be prosecuted if they do not comply with the notice, in the same way as if they had never been served a notice for the alleged offence.

Clause 109 – Regulations about infringement notice offences

Clause 109 provides that the regulations may prescribe an offence against this Act which is declared to be an infringement notice offence. Penalties for the infringement notices can be prescribed as well.

Division 9.2 Infringement and reminder notices

Clause 110 – Service of infringement notices

Clause 110 provides that, if an authorised officer believes that a person has committed an infringement notice offence, the officer may serve an infringement notice on the person.

Clause 111 – Contents of infringement notices

Clause 111 provides that an infringement notice served on a person for an infringement notice offence must contain certain information, including details of the offence.

Clause 112 – Additional information in infringement notices

Clause 112 provides that additional information is also required on the infringement notice, such as the time in which the notice must be paid, how to pay the notice, that the person may dispute liability for the offence, and other matters.

Clause 113 – Time for payment of infringement notice penalty

Clause 113 provides that an infringement notice penalty is payable within a specified time.

Clause 114 – Extension of time to pay penalty

Clause 114 provides that a person who has been served an infringement notice or reminder notice may, within 28 days, apply to the chief health officer for additional time to pay the notice. If the chief health officer refuses additional time then they must tell the person why.

Clause 115 – Effect of payment of infringement notice penalty

Clause 115 provides that if a person pays an infringement notice that has been served on them, any liability for the offence is discharged and the person cannot be prosecuted for the offence.

Clause 116 – Application for withdrawal of infringement notice

Clause 116 allows a person on whom an infringement notice has been served to, within 28 days, apply to have the notice withdrawn. This gives the opportunity for a person to challenge the infringement notice if they think it was not justified.

If the chief health officer refuses to withdraw the notice they must tell the person why.

Clause 117 – Withdrawal of infringement notice

Clause 117 provides that the chief health officer may withdraw an infringement notice.

Clause 118 – Guidelines about withdrawal of infringement notices

Clause 118 provides that the Minister may issue guidelines on the exercise of the chief health officer's functions in regard to the withdrawal of an infringement notice and the extension of time to dispute liability. The guidelines are a disallowable instrument and must be presented to the Legislative Assembly.

Clause 119 – Reminder notices

Clause 119 provides that an authorised officer may, in certain circumstances, serve a reminder notice on a person who has been served an infringement notice.

Clause 120 – Contents of reminder notices

Clause 120 provides that a reminder notice served on a person for an infringement notice offence must contain certain information.

Clause 121 – Additional information in reminder notices

Clause 121 provides that additional information is required on the reminder notice.

Division 9.3 Disputing liability

Clause 122 – Disputing liability for infringement notice offence

Clause 122 provides that a person who has been served an infringement notice or reminder notice may dispute liability for the offence by giving written notice to the chief health officer within a specified time. This is to give the opportunity for a person to challenge the infringement notice if they think it was not justified.

Clause 123 – Extension of time to dispute liability

Clause 123 provides that a person who has been served an infringement notice or reminder notice may, within 28 days, apply to the chief health officer for an extension of time to dispute liability for the offence. The chief health officer may approve or refuse this extension of time. If refused, the chief health officer must explain the reasons for the refusal.

Clause 124 – Procedure if liability disputed

Clause 124 outlines the procedure for dealing with a situation where a person disputes their liability for an infringement notice. If a person disputes their liability (see section 122 above) and the chief health officer does not lay an information in the Magistrates Court within 60 days, then the chief health officer must not take any further action against that person for that offence.

If the infringement notice and any other costs incurred are paid before the hearing, the proceedings for the offence must be stopped.

Division 9.4 Miscellaneous

Clause 125 – Evidentiary certificates

Clause 125 relates to proceedings for infringement notice offences and provides that, unless there is evidence to the contrary the Court is to accept that certificates appearing to be signed by or on behalf of the chief health officer, and stating any matter relevant to this Part, are evidence of the matter.

Part 10 Procedural and evidentiary provisions

Clause 126 – Liability of employees and agents

Clause 128 provides that it is not a defence in proceedings for an offence to claim that the defendant was acting as an employee or agent of another person. However, it is a defence for the person to prove that they were acting under the personal supervision of the proprietor of a food business.

This provision could be used to protect an employee who has committed an offence, but only by way of following instructions from the proprietor.

Clause 127 – Acts and omissions of representatives

Clause 127 provides that if an employee or agent commits an offence, the employer is also taken to have committed the offence.

Clause 128 – Offences by corporations

Clause 128 provides that an executive officer of a corporation will be taken to have contravened the provision if the person knowingly authorised or permitted the contravention.

Clause 129 – Right of defendant to have third person before court

Clause 129 provides that a person charged with an offence may have another person brought before the Court if the person alleges it was this other person who committed the offence. This clause sets out the procedure that the original defendant must follow to have this other person appear. The Court may convict either person or both.

The Court may convict the other person if the person originally charged is able to satisfy the Court that the other person committed the offence. If the defendant also 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, then the court must dismiss the charge against the defendant.

If the other person is found not guilty then the original person must pay the costs of the other person.

Clause 130 – Alternative defendants

Clause 130 provides that the chief health officer may pursue legal proceedings against a person, even though someone else has been charged (or could be charged) with the offence. This may occur if the chief health officer is satisfied that the offence was committed by this other person. If this person is acquitted, the person who may have originally been charged may still be prosecuted for the offence.

Clause 131 – Renewal or amendment of registration not to affect prosecution

Clause 131 provides that just because a business registration is renewed under section 93 (Renewal of registration) or amended under section 97 (Change in details of registration or operation of food business) does not affect the prosecution of a person for an offence against this Act.

Clause 132 – Presumptions

Clause 132 provides that various presumptions will apply for the purposes of proceedings under this Act, unless proved to the contrary.

For example, it is presumed that a substance capable of being used as food was intended for human consumption. It is presumed that part of a batch of food is representative of the whole batch.

Clause 133 – Certificate evidence etc

Clause 133 provides that unless there is evidence to the contrary the Court is to accept that documents appearing to be copies of documents produced under this Act are those documents; and that certificates appearing to be signed by, or on behalf of the chief health officer, are signed by the chief health officer.

Clause 134 – Evidence of analysts

Clause 134 deals with the status of certificates of the results of an analysis carried out under this Act. An analyst who provides the certificate does not need to be called as a witness unless ordered so by the Court. A certificate of analysis must be provided to the other party at least 14 days before the hearing, to ensure the other party is aware of the evidence.

Clause 135 – Admissibility of analysis of food sample taken by authorised officer

Clause 135 requires that a sample taken from a food business be taken in accordance with Sections 73, 74, 75 and 76, in order for analysis of that sample to be admissible in evidence in a proceeding for an offence against this Act. Sections 73, 74, 75 and 76 relate to sampling procedures – informing the proprietor of the intention to have a sample analysed; payment for a sample; sampling of packaged food; and dividing samples into parts.

Clause 136 – No defence to claim deterioration of sample

Clause 136 states that it is not a defence for a defendant to allege that a sample of food retained for future comparison has, from natural causes, deteriorated, perished or undergone any material change in constitution.

If this was not the case, all defendants could make this claim. It is the defendant's responsibility to have their sample analysed if they want to, or to store the sample appropriately if keeping it for future analysis.

Clause 137 – Power of court to order further analysis

Clause 137 provides that a Court may order that a sample retained under this Act be analysed by an independent analyst. This is to deal with situations where there is difference between the results of the analyst for the defendant and the analyst for the Territory. The retained part of a sample shall be analysed by an independent analyst at the Territory's expense.

Clause 138 – Disclosure by witnesses

Clause 138 relates to confidentiality and the obligations of witnesses. It provides that ordinarily a witness is not required to disclose certain information. However, a Court may order a witness to disclose certain information (which may be confidential) if it is necessary in the interests of justice.

Clause 139 – Court may order costs and expenses

Clause 139 provides that a Court is able to make orders in respect of the costs and expenses for examination, seizure, storage, analysis, disposal, etc of anything that is the subject of proceedings for an offence under this Act.

Clause 140 – Court may order forfeiture

Clause 140 provides that when a person is convicted, or found guilty, of an offence, the court may order forfeiture to the Territory of anything that was used in the commission of the offence.

Clause 141 – Court may order corrective advertising

Clause 141 provides that a court may order a person convicted of an offence relating to food to disclose specified information to all people, or to a specified class of people, or to pay for advertisements containing material specified by the court.

Part 11 Miscellaneous

Clause 142 – Joint liability for amounts payable to the Territory

Clause 142 provides that if a debt is owed to the Territory by 2 or more people, then their debt is joint and several.

This means that they are each fully liable for debt. The debt does not have to be shared equally between the people who are liable - the entire amount can be collected from one of the people, or a share from each person.

Clause 143 – Bribery

Clause 143 prohibits bribery. This is to prevent a person from trying to influence a person in exercising their functions under this Act.

The maximum penalty for an offence under this clause is 200 penalty units imprisonment for 2 years or both (1,000 penalty units for a corporation).

Clause 144 – Protection from liability

Clause 144 provides protection from liability for persons exercising a function under this Act, where the exercise was done honestly and without negligence. The Territory assumes any liability that does apply.

Clause 145 – Secrecy

Clause 145 provides for the protection of information in relation to manufacturing secrets, commercial secrets or working processes.

A person who has exercised their function under this Act must not make a record of protected information or divulge 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).

The maximum penalty for an offence under this clause is 50 penalty units, imprisonment for 6 months or both (or 250 penalty units for a corporation).

Clause 146 – Publication of details of food businesses related to offences

Clause 146 provides that the chief health officer may publish, in a newspaper, the name of the person, the name and address of the business, and details of the offence, in relation to person found guilty of an offence relating to the handling or sale of food.

This should encourage food businesses to strive for good food safety performance, in order to protect their 'good name'. It will also assist the community to be aware of problems with specific premises.

Clause 147 – Decisions reviewable by administrative appeal tribunal

Clause 147 allows a person to apply to the administrative appeals tribunal for the review of certain decisions. These decisions are listed in Schedule 1 of this Act. They include the Minister's decision not to pay compensation for an emergency order or prohibition order (or how much the Minister did agree to pay); an authorised officer's decision to not issue a clearance certificate; the chief health officer's decision to register or renew, or to refuse to register or renew registration of a food business.

This is so that the person affected is aware of their right to have a decision reviewed.

Clause 148 – Notification of reviewable decisions

Clause 148 requires that the person who made a decision that is reviewable by the administrative appeals tribunal must notify the relevant person of the decision. (The relevant person is specified in Column 4 of Schedule 1).

Clause 149 – Codes of Practice

Clause 149 provides that the Minister may approve codes of practice which set out minimum standards or guidelines for this Act. An approved code of practice may adopt a law by reference.

The approval would be a disallowable instrument and would therefore need to be presented to the Legislative Assembly.

It is an offence not to comply with a requirement in relation to the handling of food intended for sale, or the sale of food or equipment. The maximum penalty for this offence is 50 penalty units for an individual or 250 penalty units for a corporation.

Clause 150 – Determination of fees

Clause 150 provides that the Minister may determine fees for the purposes of this Act. A fee is a disallowable instrument and must be presented to the Legislative Assembly. Examples of fees could include registration application fees, registration amendment fee, notification fee, inspection fees.

Clause 151 – Approved forms

Clause 151 provides that the Minister may approve forms, and specify their function, for the purposes of this Act. The approval form is a notifiable instrument and must be published or notified in the Gazette. An example would be an application form for registration of a food business.

Clause 152 – Regulation-making power

Clause 152 provides for the ability to make regulations for the purposes of this Act. The regulations may relate to food safety programs, notification of the operation of businesses, adoption of the *Food Standards Code* or other laws.

The maximum penalty for an offence prescribed in the regulations will be limited to 20 penalty units.

Clause 153 – Temporary emergency regulation

Clause 153 provides the ability to make regulations which are in addition to or in substitution of provisions of the *Food Standards Code*. However, such regulations may only deal with matters of public health significance and cannot apply for a period greater than 12 months.

This will allow a means to deal with situations where action is needed in order to protect public health and safety, and it needs to be dealt with sooner than it would take to go through the process of amending the national *Food Standards Code*.

Part 12 Transitional and consequential provisions

Division 12.1 General

Clause 154 – Definitions for Pt 12

Clause 154 defines certain terms that appear within this Part of the Act.

Clause 155 – Transitional regulation

Regulations may be prescribed for savings or transitional matters necessary because of the commencement of this Act, to enable a smooth transition between the *Food Act 1992* and the *Food Act 2001*.

Clause 156 – Modification of pt 12's operation

The regulations may modify the operation of this part to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this part. The regulations under this Part may make provision regarding any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this part be made to allow for the effective operation of this Part.

Division 12.2 Existing food businesses

Divisions 12.2 and 12.3 includes provisions to deal with the commencement of this Act. As this Act will replace the *Food Act 1992*, there needs to be a way to deal with proceedings and other issues that begin during the operation of the *Food Act 1992* but are not finalised when this Act commences.

The provisions contained within these two divisions provide for things to overlap between the two Acts.

Clause 157 – Proprietor of food businesses licensed under former Food Act

Clause 157 provides that a business licensed under the *Food Act 1992* is taken to be registered under this Act (but only for 3 months from commencement of this Act).

Clause 158 – Food businesses exempt from registration under former Food Act

Clause 158 provides that a food business that is exempt from the requirement to be licensed under the *Food Act 1992* does not have to notify the chief health officer of their operation under clause 90 until 3 months after this clause commences.

Clause 159 – Expiry of div 12.2

Clause 159 provides that as this division is part of the transitionals, it and the notes after the heading to part 8 (Notification and registration of food businesses) will expire 3 months after the commencement of this division.

Division 12.3 Other transitional matters

Clause 160 – Applications for licences

Clause 160 provides that an application under the *Food Act 1992* for a food business licence, which has yet to be determined, is taken to be an application for registration made under clause 92 of this Act.

Clause 161 – Applications renewal of licences

Clause 161 provides that an application under the *Food Act 1992* for a food business licence renewal, which has yet to be determined, is taken to be an application for the renewal of registration made under clause 93 (2) of this Act.

Clause 162 – Applications for approval for alteration of food premises

Clause 162 provides that an application to alter a premises under the *Food Act 1992* is taken to have been made under clause 97 (Change in details of registration or operation of food business) of this Act.

Clause 163 – Applications for variation of licences

Clause 163 provides that an application to vary a licence under the *Food Act 1992* is taken to have been made under clause 97 (Change in details of registration or operation of food business) of this Act.

Clause 164 – Action to suspend or cancel licences

Clause 164 provides that a notice to suspend or cancel a licence under the *Food Act 1992* is taken to have been made under clause 101 (Procedures for taking action in relation to registration) of this Act.

Clause 165 – Improvement notices

Clause 165 provides that an improvement notice issued to a person and in force under the *Food Act 1992* is taken to have been an improvement notice issued and in force under clause 79 (Service of improvement notices) of this Act.

Clause 166 – Prohibition notices

Clause 166 provides that a prohibition notice issued to a person and in force under the *Food Act 1992* is taken to have been a prohibition order issued and in force under clause 82 (Service of prohibition orders) of this Act.

Also, a request for reinspection from a person under the *Food Act 1992* is taken to have been a request for reinspection under clause 85 (Request for reinspection) of this Act.

Clause 167 – Search warrants

Clause 167 provides that a search warrant issued under the *Food Act 1992* is taken to be a search warrant issued under this Act.

Clause 168 – Things seized

Clause 168 provides that anything seized under the *Food Act 1992* which has yet to be resolved is taken to have been seized under this Act. This includes applications for an order to disallow seizure.

Clause 169 – Food samples

Clause 169 provides that a food sample taken under the *Food Act 1992* is taken to be a food sample that was taken under this Act.

Clause 170 – Analysis of food samples

Clause 170 provides that a certificate of analysis of a food under the *Food Act 1992* is taken to be a certificate of analysis under this Act.

An order to analyse the spare sample issued under the *Food Act 1992* is taken to be an order under clause 137(2) (Power of court to order further analysis) under this Act.

Clause 171 – Review of decisions under former Food Act

Clause 171 provides that any review, by the administrative appeals tribunal, of a decision made under the *Food Act 1992* is continued under this Act.

Clause 172 – Chief health officer may give effect to decisions of Minister etc

Clause 172 provides that any decision previously made by the Minister, under the *Food Act 1992*, may be taken to have been a decision of the chief health officer for a corresponding provision under this Act.

Clause 173 – Directions under Food Regulations

Clause 173 provides that any direction issued under Regulation 8 (2) of the *Food Regulations 1994*, is taken to be a direction issued under section 113 (1) (c) (Public Health directions – issue) of the Public Health Act 1997.

Any direction issued under Regulation 9 (1) (b) of the *Food Regulations 1994*, is taken to be a direction issued under section 113 (1) (b) (Public Health directions – issue) of the Public Health Act 1997.

Also, any direction issued under Regulation 22 (1) of the *Food Regulations 1994*, is taken to be an improvement notice issued under clause 79 (Service of improvement notices) of this Act.

Division 12.4 Expiry

Clause 174 – Expiry of pt 12

Clause 174 provides that Part 12 (Transitional and consequential provisions) expires 1 year after it commences.

Part 13 Repeals and miscellaneous provisions

Clause 175 – Repeal of laws

Clause 175 repeals the *Food Act 1992*, *Meat Act 1931*, *Food Regulations 1994* and *Meat Regulations 1931* because this Act and the *food standards code* will replace these legislative instruments.

Clause 176 – Amendment of Act – sch 2

Clause 176 provides for the consequential amendment of the *Animal Diseases Act 1993*, *Hawkers Act 1936* and *Public Health Act 1997*. These amendments will improve compatibility with, or operation of, these Acts in relation to the *Food Act 2001*.

Schedule 1 Decisions reviewable by administrative appeals tribunal

This schedule lists those decisions which are reviewable by the Administrative Appeals Tribunal

Schedule 2 Miscellaneous provisions

This schedule contains amendments to the *Animal Diseases Act 1993*, *Hawkers Act 1936* and *Public Health Act 1997*.

Dictionary

The dictionary provides definitions for terms which appear in this Act.

For example:

- An “authorised analyst” is an analyst under the Public Health Act 1997, section 15A (2) (Functions of analysts) who is authorised to exercise a function under this Act.
- An “authorised officer” is a public health officer who is authorised under the Public Health Act 1997, section 14 (2).
- The “food standards code” refers to the Australia New Zealand Food Standards Code.
- The definition of “premises” includes land; a structure or part of a structure such as a building, tent or stall (permanent or temporary); a pontoon; and a vehicle.
- This act defines “handling” of food to include making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.
- The “proprietor”, of a food business is the person conducting the food business or, if that person cannot be identified, the person in charge of the food business.