

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

EXPLANATORY MEMORANDUM

FOOD REGULATIONS AMENDMENT

Subordinate Law No. 26 of 2000

Distributed by Authority of the Minister for Health and
Community Care

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Clause 1 Commencement

Clause 1 provides that the Food Regulations (Amendment) 2000 commence on the day they are notified in the *Gazette*.

Clause 1 further provides that Paragraph (5) (c) commence 3 months after the day it is notified in the *Gazette*.

Clause 2 Regulations amended

Clause 2 provides that the Food Regulations (Amendment) 2000 amend the Food Regulations 1994.

Clause 3 Insertion

Clause 3 provides that before regulation 1 of the Food Regulations, the heading 'PART 1—PRELIMINARY' is inserted.

Clause 4 Substitution

Clause 4 provides that regulation 3 of the Food Regulations is repealed and a new regulation 3 is substituted being regulation '3 Dictionary'. This new regulation 3 provides that the dictionary at the end of the Food Regulations forms part of the regulations.

Clause 4 further amends the Food Regulations by the addition of notes that provide direction to the reader.

Clause 4 also adds the part heading 'PART 2—EXEMPTIONS' to the Food Regulations after regulation 3.

Clause 5 Exemptions from licensing requirements

Clause 5 amends Regulation 4 of the Food Regulations by:

- making minor changes to the referencing of section numbers in the *Food Act 1992* to reflect new numbering in the *Food Act 1992*; and
- repealing the exemption of milk vendors from requiring a licence under the *Food Act 1992*. (Note: this repeal does not take effect until 3 months after the commencement of these regulations).

Clause 6 Insertion

Clause 6 amends the Food Regulations by inserting after regulation 4 the part heading

'PART 3—EGG LABELLING'

Clause 7 Insertion

Clause 7 amends the Food Regulations by inserting after regulation 5:

- **PART 4—FOOD SAFETY** and its Divisions;
- **PART 5—EQUIPMENT**;
- **PART 6—FOOD PREMISES**;
- **PART 7—TRANSPORT**;
- **PART 8—FOOD PROTECTION**;
- **PART 9—MISCELLANEOUS**; and
- the **Dictionary**.

Parts 4 to 9 and the Dictionary are explained in detail below.

PART 4—FOOD SAFETY

Division 4.1—Compliance by proprietors

Regulation 6 Proprietor's obligation to comply

Regulation 6 provides that the proprietor of a food business must take reasonable steps to ensure that all persons engaged in the food business comply with the Food Regulations. If a proprietor of a food business fails to take reasonable steps to ensure that all persons engaged in the food business comply with the Food Regulations, they may be penalised a maximum of 10 penalty units.

Division 4.2—Inspections

Regulation 7 Inspection of food

Regulation 7 provides that a public health officer may inspect food which is advertised, or offered, for sale to find out its composition and properties, compare his/her findings against any advertisement relating to that food, prepare a report of the results of the inspection and comparison, and with the Minister's written approval publish the report in a newspaper or other form. This regulation ensures food that is advertised for a particular purpose reflects the actual composition and properties of that food.

Regulation 7 also provides that no legal action may be brought against the Territory or anyone in regard to the publication of a report under this regulation.

Division 4.3—Food business activity

Regulation 8 Medical examination of food workers

Subregulation 8(1) provides that this regulation applies if the chief health officer or an authorised medical officer suspects, on reasonable grounds, that a person engaging in a food business activity has a condition that may be transmitted to someone else because of that activity.

Subregulation 8(2) provides that a person must not, without a reasonable excuse, fail to comply with a written direction by the chief health officer or an authorised medical officer to have an examination by the chief health officer or authorised medical officer and/or a specified clinical or bacteriological examination on a day, time and place, specified in the direction. This subregulation ensures that a person engaging in a food business activity who is suspected of having a condition that may be transmitted to someone else because of that activity has the necessary medical examinations to confirm whether the person does or does not have the condition. If a person who fails to comply with a written direction by the chief health officer or an authorised medical officer to have such an examination, that person may be penalised a maximum of 10 penalty units.

Regulation 9 Directions to food workers with transmissible conditions

Subregulation 9(1) provides that this regulation applies if a the chief health officer or an authorised medical officer believes, because of an examination mentioned in regulation 8, that the person examined has a condition mentioned in regulation 8 and gives the person a written direction not to engage in the food business activity.

Subregulation 9(2) provides that a person must comply with the direction (referred to subregulation 9(1)(b)) until the chief health officer or an authorised medical officer gives the person written notice withdrawing the direction or the person gives a the chief health officer or authorised medical officer a certificate from a doctor certifying that the person does not have the condition mentioned in regulation 8. This subregulation ensures that a person who has a condition mentioned in regulation 8 does not engage in a food business activity until authorised to do so by the chief health officer or an authorised medical officer or has proof from a doctor that s/he does not have the condition. If a person fails to comply the direction from the chief health officer or authorised medical officer or does not have a certificate certifying that s/he does not have the condition before engaging in food business activity, that person may be penalised a maximum of 10 penalty units.

Regulation 10 Transmissible conditions and bandages

Subregulation 10(1) provides that a person must not engage in food business activity if s/he has a condition that may be transmitted to someone else because of that activity or is wearing unclean or medicated bandages and there is a reasonably significant risk of contamination of the food. If the person engages in food business activity while s/he has a condition that may be transmitted to someone else because of that activity or is wearing unclean or medicated bandages and there is a reasonably significant risk of contamination of food, s/he may be penalised a maximum of 10 penalty units.

Subregulation 10(2) provides that subregulation 10(1)(b) does not apply if the person hands or wrists are covered by clean gloves suitable for the food business activity being carried on.

Regulation 11 Personal cleanliness

Regulation 11 provides that a person must be clean and wear clean clothes while engaging in food business activity. If a person fails to be clean and wear clean clothes while engaging in food business activity, s/he may be penalised a maximum of 10 penalty units.

Regulation 12 Contact with food

Subregulation 12(1) provides that a person must avoid unnecessary contact with food while engaging in food business activity. If a person fails to avoid unnecessary contact with food while engaging in food business activity, s/he may be penalised a maximum of 10 penalty units.

Subregulation 12(2) details certain activities that a person must, or must not, do while engaging in food business activity. If a person does not carry out an activity that s/he must do, or does carry out an activity that s/he must not do, then s/he may be penalised a maximum of 10 penalty units.

Subregulation 12(3) provides that subregulation 12(2) does not apply if the food is in hermetically sealed containers at all times while the person is carrying out food business activity.

Subregulation 12(4) provides that a person engaged in food business activity must not, without a reasonable excuse, fail to wash his/her hands immediately before beginning such activity, after a break, or after any other significant interruption such as going to the toilet or smoking a cigarette. This subregulation also requires that the person wash his/her hands immediately after touching his/her body or clothing while engaged in food business activity. A person that fails to wash his/her hands at such times while engaged in food business activity may be penalised a maximum of 10 penalty units.

PART 5—EQUIPMENT

Regulation 13 Keeping equipment clean

Regulation 13 provides that a person who engages in food business activity, or who handles food in the course of food business, must keep all equipment used for such activity or handling clean and free from odours. If a person who engages in food business activity, or who handles food in the course of a food business, fails to keep all equipment used for such activity or handling clean and free from odours, s/he may be penalised a maximum of 10 penalty units.

Regulation 14 Prevention of food contamination

Subregulation 14(1) provides that a person who engages in food business activity must properly use all available equipment to prevent contamination of food. If a person fails to properly use all available equipment to prevent contamination of food while engaging in food business activity, s/he may be penalised a maximum of 10 penalty units.

Subregulation 14(2) provides that a person who engages in food business activity must not expose food to contamination by act, neglect or omission in the use of associated equipment. A person who engages in food business activity that exposes food to contamination by act, neglect or omission in the use of associated equipment may be penalised a maximum of 10 penalty units.

Regulation 15 Equipment cleaning method

Subregulation 15(1) provides that the proprietor of a food business must take reasonable steps to ensure equipment used in the food business is cleaned regularly using either the specified equipment cleaning method or other method approved by a public health officer. If the proprietor of a food business fails to take reasonable steps to ensure that equipment used in the food business is cleaned regularly using either the specified equipment cleaning method or other method approved by a public health officer, then s/he may be penalised a maximum of 10 penalty units.

Subregulation 15(2) provides that, in relation to food business activity, the proprietor must ensure that anything used for the consumption of food is cleaned using an equipment cleaning method as soon as practicable after it is used, no item used in consuming food is made available to a customer if it has not been cleaned since it was last used, and, if a mechanical dishwasher or glass-washer is used, that it is capable of cleaning equipment using an equipment cleaning method and is installed and maintained in a way that enables such cleaning to take place. If the proprietor fails to ensure that anything used in the consumption of food is not cleaned as soon as practicable after use or before re-use, or that a mechanical dishwasher or glass-washer is used that is not capable of cleaning to the required method or is not installed and maintained in such a way that enables cleaning to take place, they may be penalised a maximum of 10 penalty units.

Subregulation 15(3) provides that a person may serve liquor in a glass in a bar-room for consumption on the premises only if the glass has been cleaned in a mechanical glass-washer since it was last used. If a person serves liquor in glass in a bar-room for consumption on the premises in glass that has not been cleaned in a mechanical glass-washer since it was used, s/he may be penalised a maximum of 10 penalty units.

Subregulation 15(4) defines the phrase *mechanical glass-washer*.

Regulation 16 Chipped and cracked equipment

Regulation 16 provides that the proprietor of a food business must ensure that no container or other utensil used for the preparation of food, or for the consumption of food, in the course of the food business is chipped, cracked, broken or otherwise defective that it cannot be thoroughly cleaned. If the proprietor of a food business does not ensure that containers or utensils used in the preparation or consumption of food are not chipped, cracked, broken or otherwise defective that they cannot be thoroughly cleaned, the proprietor may be penalised a maximum of 10 penalty units.

Regulation 17 Accessory articles

Regulation 17 provides that the proprietor of a food business must ensure that accessory articles used for the consumption of food are kept clean and in a sanitary condition. If the proprietor of a food business fails to ensure that accessory articles used for the consumption of food are kept clean and in a sanitary condition, they may be penalised a maximum of 10 penalty units.

Regulation 18 Water filters

Subregulation 18(1) provides that the proprietor of a food business must ensure that only water filter approved by a public health officer are used for preparing food or any article in association with food, or for filtering water for supply to the public. If a proprietor of a food business fails to ensure that they use only water filters approved by a public health officer for preparing food or any article in association with food, or for filtering water for supply to the public, they may be penalised a maximum of 10 penalty units.

Subregulation 18(2) provides that subregulation 18(1) applies only to water filters acquired after the commencement of these regulation.

Subregulation 18(3) provides that subregulations 18(2) and 18(3) cease to have effect 12 months after the date of commencement.

Subregulation 18(4) provides that if water filters are used in a food business, the proprietor must provide any information reasonable required by a public health officer relating to the performance and cleaning of filters. A proprietor that fails to provide information reasonably required by a public health officer relating to the performance and cleaning of the filters in a water filter, the proprietor may be penalised a maximum of 10 penalty units.

Subregulation 18(5) provides that the proprietor of a food business must take reasonable steps to ensure that all water filters used in the business are kept in a clean and sanitary condition at all times and in good repair. If the proprietor of a food business fails to take reasonable steps to ensure that all water filters used in the business are kept in a clean and sanitary condition at all times and in good repair, the proprietor may be penalised a maximum of 10 penalty units.

Regulation 19 Table linen and condiments

Subregulation 19(1) provides that the proprietor of a food business must take reasonable steps to ensure that table linen used in the business is clean and that reusable table napkin or serviette for use by a person has been washed since it was last used by someone else. If the proprietor of a food business fails to take reasonable steps to ensure that table linen used in the business is clean and that reusable table napkin or serviette for use by a person has been washed since it was last used by someone else, the proprietor may be penalised a maximum of 10 penalty units.

Subregulation 19(2) provides that the proprietor of a food business must take reasonable steps to ensure that condiment containers used in the business are kept with the lid or stopper in place when not being used, the contents of the container used in the business are fit for human consumption, and condiments for customers of the business consuming food outdoors adjacent to the premises are supplied in single-serve disposable containers. If the proprietor of a food business fails to take reasonable steps to ensure that condiment containers used in the business are kept with the lid or stopper in place when not being used, the contents of the container used in the business are fit for human consumption, and condiments for customers of the business consuming food outdoors adjacent to the premises are supplied in single-serve disposable containers, the proprietor may be penalised a maximum of 10 penalty units.

PART 6—FOOD PREMISES

Regulation 20 Prohibited food premises

Regulation 20 details premises that are not to be used as food premises. A proprietor of a food business that use such premises as food premises may be penalised a maximum of 10 penalty units.

Regulation 21 Food premises—cleanliness

Regulation 21 provides that the proprietor of a food business must take reasonable steps to ensure that the food premises complies with certain conditions. A proprietor of a food business that fails to take reasonable steps to ensure that that the food premises food complies with the conditions, the proprietor of the food business may be penalised a maximum of 10 penalty units.

Regulation 22 Food premises—structure

Subregulation 22(1) provides that a public health officer may, in writing, direct the proprietor of a food business to take reasonable steps to ensure that food premises comply with regulation 21. If the proprietor of a food business fails to take reasonable steps to ensure that the food premises complies with regulation 21 after a written direction from a public health officer, the proprietor of the food business may be penalised a maximum of 10 penalty units.

Subregulation 22(2) provides that the proprietor of a food business must not, without a reasonable excuse, fail to comply with a direction given under subregulation 22(1). If the proprietor of a food business fails to comply with a written direction given under subregulation 22(1) and does not have a reasonable excuse, the proprietor of the food business may be penalised a maximum of 10 penalty units.

Regulation 23 Animals on food premises

Subregulation 23(1) provides that the proprietor of a food business must not allow an animal on any food premises. A proprietor that allows an animal on a food premises, may be penalised a maximum of 10 penalty units.

Subregulation 23(2) provides that subregulation 23(1) does not apply to an animal trained to assist a person to alleviate the effect of a disability that is accompanying a person with the disability or an aquatic animal.

PART 7—TRANSPORT

Regulation 24 Vehicles and containers—cleanliness

Subregulation 24(1) provides that a person must use a clean vehicle and containers for transporting food for sale. A person that fails to use a clean vehicle and containers for transporting food for sale may be penalised a maximum of 10 penalty units.

Subregulation 24(2) provides that a person must not use a vehicle for transporting food for sale that contains anything that would contaminate the food or cause it to deteriorate. A person that uses a vehicle for transporting food for sale that contains anything that would contaminate the food or cause it to deteriorate may be penalised a maximum of 10 penalty units.

Regulation 25 Construction of vehicles

Subregulation 25(1) provides that a person must not use a vehicle for transporting food for sale unless the vehicle is especially built or modified to protect food from contamination and is the primary use of that vehicle. A person who uses a vehicle for transporting for sale in a vehicle that is not especially built or modified to protect food from contamination and is not the primary use of the vehicle, the person may be penalised a maximum of 10 penalty units.

Subregulation 25(2) provides that subregulation 25(1) does not apply if the food is in a sealed or fully enclosed package that is transported in a separate closed container.

Regulation 26 Prohibited vehicles

Regulation 26 details vehicles that are not to be used as vehicles for transporting food for sale. A person who transports food for sale in a vehicle that is not to be used for transporting food may be penalised a maximum of 10 penalty units.

Regulation 27 Protection of food in transit

Subregulation 27(1) provides that a person transporting food for sale that is intended to be consumed in the state in which it is sold must not do so on the exterior of a vehicle unless it is fully enclosed in a container that will protect the food from contamination. A person that transports food for sale that is intended to be consumed in the state in which it is sold and does so on the exterior of a vehicle but does not protect the food from contamination by enclosing it fully in a container may be penalised a maximum of 10 penalty units.

Subregulation 27(2) provides that subregulation 27(1) does not apply to unprocessed fruit or vegetables.

Subregulation 27(3) provides that a person transporting food for sale in a vehicle must not, without a reasonable excuse, fail to ensure that while food is in the vehicle it is kept under temperature control. A person transporting food for sale in a vehicle that, without a reasonable excuse, fails to ensure that while the food is in the vehicle it is under temperature control may be penalised a maximum of 10 penalty units.

Subregulation 27(4) provides that subregulation 27(3) does not apply to the transport of food for sale by a person with a licence to sell milk by retail, or to transport of milk or cream by any other proprietor of a food business activity that is concerned with the processing or distribution of milk or cream for sale, before 8 am or after 5 pm on any day. This subregulation ensures that if milk or cream from a transport vehicle is sold between the hours of 8 am and 5 pm on any day, the vehicle has sufficient temperature control to prevent spoilage of the milk or cream and is delivered in the most temperate part of the day.

Regulation 28 Display of vendor's name

Regulation 28 provides that a person transporting food for sale in a vehicle used primarily for that purpose must have the name and licence number of the licensee of the food business conspicuously and indelibly printed on the outside of the vehicle. A person who transports food for sale in a vehicle used primarily for that purpose who fails to have the name and licence number of the licensee of the food business conspicuously and indelibly printed on the outside of the vehicle may be penalised a maximum of 10 penalty units.

PART 8—FOOD PROTECTION

Regulation 29 Protecting exposed food

Subregulation 29(1) provides that a person selling food intended to be consumed in the state in which it is sold must effectively protect the food from contamination. A person selling food intended to be consumed in the state in which it is sold who fails to protect the food from contamination may be penalised a maximum of 10 penalty units.

Subregulation 29(2) provides that subregulation 29(1) does not apply to the display of unprocessed fruit or vegetables for sale.

Subregulation 29(3) provides that a person must not carry food for sale, or for delivery, through a public place, unless the food is protected as required by subregulation 29(1). A person that carries food for sale, or for delivery, through a public place that is not protected as required by subregulation 29(1) may be penalised a maximum of 10 penalty units.

Regulation 30 Unattended food on a counter or bar

Subregulation 30(1) provides that the proprietor of a food business must take reasonable steps to ensure that exposed food is not left unattended on a counter or bar in the food premises, unless it is protected from contamination by an adequate cover or other method approved in writing by a public health officer. If the proprietor of a food business fails to take reasonable steps to ensure that exposed food is not left unattended on a counter or bar in the food premises, unless it is protected from contamination by an adequate cover or other method approved in writing by a public health officer, the proprietor of the food business may be penalised a maximum of 10 penalty units.

Subregulation 30(2) provides that subregulation 30(1) does not apply to unprocessed fruit or vegetables.

Regulation 31 Temperature control

Subregulation 31(1) provides that the proprietor of a food business must ensure that the equipment for keeping food under temperature control is installed and adequately maintained. If the proprietor of a food business fails to ensure that the equipment for keeping food under temperature control is installed and adequately maintained, the proprietor may be penalised a maximum of 10 penalty units.

Subregulation 31(2) provides that a person responsible for storing food in the course of a food business must not, without a reasonable excuse, fail to keep the food under temperature control. If a person responsible for storing food in the course of a food business that fails, without a reasonable excuse, to keep the food under temperature control, s/he may be penalised a maximum of 10 penalty units.

Regulation 32 Storage of food

Regulation 32 provides that the proprietor of a food business must take reasonable steps to ensure that food is stored so that it is adequately protected against contamination and, if the food is stored outdoors, more than 750 mm above the ground. If the proprietor of a food business fails to take reasonable steps to ensure that food is stored so that it is adequately protected against contamination and, if the food is stored outdoors, more than 750 mm above the ground, the proprietor may be penalised a maximum of 10 penalty units.

Regulation 33 Protection from vermin and insects

Subregulation 33(1) provides that the proprietor of a food business must take reasonable steps to ensure that the food premises are free from insects, vermin and anything else that might contaminate the food. If a proprietor of a food business fails to take reasonable steps to ensure that the food premises are free from insects, vermin and anything else that might contaminate the food, the proprietor may be penalised a maximum of 10 penalty units.

Subregulation 33(2) provides that a person who engages in food business activity must protect the food from insects, vermin and anything else that might contaminate the food. A person who engages in food business activity that fails to protect food from insects, vermin or anything else, s/he may be penalised a maximum of 10 penalty units.

Regulation 34 Packing material

Regulation 34 provides that a person packing food for selling in the state in which it will be consumed must not pack the food so that it touches printed paper, or paper or other material that is dirty. A person that packs food for selling in the state in which it will be consumed that packs the food so that it touches printed paper, or paper or other material that is dirty, s/he may be penalised a maximum of 10 penalty units.

Regulation 35 Extraneous items in food packages

Subregulation 35(1) provides that the proprietor of a food business must take reasonable steps to ensure that nothing is placed in a package of food that could contaminate the food, or cause harm of an adult or child. If the proprietor of a food business fails to take reasonable steps to ensure that nothing is placed in a package of food that could contaminate the food, or cause harm of a adult or child, the proprietor may be penalised a maximum of 10 penalty units.

Subregulation 35(2) provides that subregulation 35(1) does not prevent a thing being placed in a package of food if it is in a separate sealed container that is reasonably unlikely to accidentally broken or punctured, and the package is large enough to ensure that it would be reasonably unlikely to be swallowed accidentally by an adult or child.

This regulation ensures that adults and children are protected from extraneous items in the food package that could reasonably harm them if swallowed.

Regulation 36 Garbage and food withdrawn from sale

Subregulation 36(1) provides that the proprietor of a food business must take reasonable steps to ensure that all garbage kept indoors on the food premises is contained within bags inside a bin, the contents is cleared at least once daily and the bin is cleaned at least once per week. If a proprietor of a food business does not take reasonable steps to ensure that all garbage kept indoors on the food premises is contained within bags inside a bin, the contents is cleared at least once daily and the bin is cleaned at least once per week, they may be penalised a maximum of 10 penalty units.

Subregulation 36(2) provides that the proprietor of a food business must take reasonable steps to ensure that all garbage kept outside of the food premises is contained in bags in a bin, the contents are cleared at least once per week and the bin is cleaned after it is cleared. If the proprietor of a food business does not take reasonable steps to ensure that all garbage kept outside of the food premises is contained in bags in a bin, the contents are cleared at least once per week and the bin is cleaned after it is cleared, they may be penalised a maximum of 10 penalty units.

Subregulation 36(3) provides that the proprietor of a food business must take reasonable steps to ensure that any food withdrawn for sale is immediately put into a bin or separated from food that is for sale and clearly marked as withdrawn from sale. If the proprietor of a food business does not take reasonable steps to ensure that any food withdrawn for sale is immediately put into a bin or separated from food that is for sale and clearly marked as withdrawn from sale, they may be penalised a maximum of 10 penalty units.

Subregulation 36(4) provides that any food that is purported to be withdrawn from sale that is not put into a bin, or separated and marked, as required by subregulation 36(3), then that food is taken to be exposed for sale. This subregulation ensures that food that is withdrawn from sale is withdrawn as required to minimise the risk to public health.

Regulation 37 Waste beer

Regulation 37 provides that the proprietor of a food business involved in the sale of beer for consumption on the food premises must take reasonable steps to ensure that a spill tray is installed, and connected to the sewerage network, to catch waste beer. If the proprietor of a food business involved in the sale of beer for consumption on the food premises does not take reasonable steps to ensure that a spill tray is installed, and connected to the sewerage network, to catch waste beer, they may be penalised a maximum of 10 penalty units.

Regulation 37 also provides that this regulation only applies to spill trays installed on or after the date of commencement of these regulations and ceases to have effect three years after the date of commencement of these regulations.

Further, regulation 37 provides that waste beer must not be supplied to a person for human consumption and defines the terms *beer* and *waste beer*.

Regulation 38 Re-serving food

Regulation 38 provides that a person must not, in the course of a food business, serve food to a member of the public if the food has been used before or has been already served to someone else. If a person, in the course of a food business, serves food to a member of the public if the food has been used before or has been already served to someone else, s/he may be penalised a maximum of 10 penalty units.

PART 9—MISCELLANEOUS

Regulation 39 Selling by self or as agent or employee

Regulation 39 provides that a person is taken to sell food if the person sells it on his/her own account or an agent or employee of someone else.

DICTIONARY

The Dictionary defines certain terms and phrases commonly used in the regulations.

The terms and phrases defined in the Dictionary are:

authorised medical officer

bar-room

contamination

doctor

equipment

equipment cleaning method

food business activity

food premises

liquor

sewerage network

temperature control

the Act

wash