

Australian Capital Territory

Food Regulations 2002

SUBORDINATE LAW No. 10 OF 2002 SL2002-10

Explanatory Statement

The *Food Act 2001* (Act) section 152 provides that regulations may be drafted in certain circumstances, particularly in relation to clarifying the intent or function of a section or part of the Act.

In early 2001 an ACT-specific Regulation Impact Assessment was undertaken on proposed amendments to the *Food Act 1992*. The Assessment, which was undertaken in consultation with the ACT food industry, considered those issues covered within the *Food Act 2001* and the *Food Regulations 2002*. The Assessment found that:

“The proposed outcome should maintain, or possibly enhance, the already high [food safety] standards in force in the ACT and have minimal disruptive effect on the operation of food businesses...[because]...the proposals do not involve major departures from the status quo and basically maintain the existing balance between public health requirements and requirements for business.”

PART 1- PRELIMINARY

Regulations 1 & 2 - Name of regulations & Commencement

Regulations 1 & 2 are formal requirements of all regulations, specifying the title of the regulations and the commencement date.

PART 2-GENERAL

Regulation 3 - Excluded reticulated water systems

As ‘water’ falls within the definition of ‘food’, this regulation exempts certain reticulated water systems from certain sections of the Act, specifically those relating to:

- offences for the handling of food or false description of food;
- the issuing of improvement notices and prohibition orders; and
- the notification and registration of food businesses.

The Act already exempts operators regulated under the *Utilities Act 2000* from these requirements, however, certain other operators are not regulated under the *Utilities Act 2000*. The operators of systems specified in the regulations are already regulated via the ‘insanitary

conditions' part of the *Public Health Act 1997* (Part 4). Additionally, they will still have to supply safe and suitable water, as required by the *Food Act 2001*.

Regulation 4 - Excluded primary food production activities

Businesses which are defined as primary food production are exempt from parts of the *Food Act 2001* because they are not considered to be food businesses.

This regulation includes the following food production activities within the meaning of 'food business': dairy farming and milk processing, producing hen eggs commercially, producing wine and slaughtering livestock. These businesses were regulated under the previous Food Act (included within the meaning of 'food business'). The new definition of 'primary food production' (section 11 of the *Food Act 2001*) means that they would be exempt from the Registration, Improvement Notice and Prohibition Order provisions of the *Food Act 2001*. Within other jurisdictions, these businesses are regulated by primary industry legislation, which does not exist in the ACT. This regulation ensures that the above specified businesses are treated the same as other food businesses.

Regulation 5 - Food businesses exempt from registration

This regulation exempts certain businesses from the requirement to be registered. This exemption is similar to the one which operated under the previous Food Act and applies to businesses which are considered to represent a very low risk to the public. While exempt from registration, these businesses will still need to produce safe and suitable food, and notify the department that they are operating (as required under the national *Food Safety Standards*, adopted as part of the *Food Standards Code*). The primary differences between notification and registration are that:

- notification does not require a food business to have a safety assessment prior to its operation,
- there is no renewal of notification,
- there is no fee for notification, and
- notification does not require businesses to determine their priority classification (high-risk, medium-risk or low-risk).

Regulation 6 - Food standards code - incorporation

This regulation adopts the *Food Standards Code* under Section 152 of the *Food Act 2001*. The *Food Standards Code* was adopted under the previous Food Act and is a core component of the *2000 Intergovernmental Agreement on Food Regulation*.

Regulation 7 - Food standards code – meaning of appropriate enforcement agency

This regulation defines the term 'appropriate enforcement agency', which appears in Section 90 (2) of the *Food Act 2001* and also within Chapter 3 of the *Food Standards Code*. Appropriate enforcement agency is the agency which enforces the *Food Act 2001*. This agency falls within the responsibility of the office of the chief health officer.

PART 3-INFRINGEMENT NOTICES

The *Food Act 2001* provides for the operation of the infringement notice system (on-the-spot fines). This regulations prescribes the types of offences for which an infringement notice may be served and also their associated penalty.

Regulation 8 - Infringement notice offences

This regulation prescribes offences under certain sections of the Act as infringement notice offences. These offences are detailed in schedule 1, column 2 of the regulations. The proposed infringement notice offences relate to non-compliance with the *Food Standards Code* (including the *Food Safety Standards*) and less serious offences relating to the handling and sale of unsafe or unsuitable food.

Regulation 9 - Infringement notice penalties

This regulation prescribes penalties associated with infringement notice offences. These penalties are set at either \$400 or \$500, depending on offences. The penalties are detailed in schedule 1, column 4 of the regulations.

Regulation 10 - Cost of serving reminder notice

This regulation prescribes the amount payable by a person for the cost of serving a reminder notice for an infringement notice offence determined under subsection 109 (3) of the Act, served under Section 119 (Reminder notices) of the Act. The cost of serving a reminder notice for an infringement notice offence is \$34 (the same cost applies to all similar reminder notices issued under ACT legislation).

Regulation 11 - Identifying particulars for person served with infringement notice

This regulation provides that the infringement notice specifies identifying particulars of the person to whom an infringement notice is served.

Regulation 12 - Identifying particulars for authorised officer for infringement notice

This regulation provides for the identification of the authorised officer (the officer's name is sufficient to meet the requirement of the Act) who served the infringement notice.

Regulation 13 - Other information

This regulation provides that each provision of the food standards code that the person has contravened is mentioned in the infringement notice.

Regulation 14 - Identifying particulars for authorised officer for reminder notice

This regulation provides for the identification of the authorised officer (the officer's name is sufficient to meet the requirement of the Act) who served the reminder notice for an infringement notice offence.

Regulation 15 - Costs if liability disputed

The Act provides that if a person disputes liability for an infringement notice offence by giving the chief health officer a notice in accordance with the Act, the costs of beginning the proceeding may be prescribed. This regulation prescribes the amount payable by the person for the costs of disputing liability for an infringement notice offence. The cost to the person of beginning a proceeding is \$200.