

**1993**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**FOOD (AMENDMENT) BILL 1993**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of Wayne Berry MLA**

**Minister for Health**

## OUTLINE

The Food (Amendment) Bill is the result of the second stage of a program to review and modernise food law in the ACT. Stage 1, the Food Act 1992, was enacted in August 1992. This Bill makes substantial additions to the Act by addressing food safety issues.

The main purpose of the Bill is to ensure that food is safe to eat. It makes it unlawful to render food injurious to health during any stage of its manufacture or storage. The Bill also provides the offence to sell food that is injurious to health or in another way considered to be inedible; that is, unfit for consumption or so contaminated that it would be unreasonable to expect it to be eaten in that condition.

This is a separate issue from the provisions of the principal Act which requires food to comply with the Australian Food Standards Code. The code provides compositional, labelling and packaging requirements produced by the National Food Authority after industry and government consultation and which are automatically adopted into ACT legislation.

Many foods provide a suitable growth media for organisms if prepared from unsafe ingredients or contaminated during preparation, storage or sale. Such food may satisfy all requirements of the Food Standards Code but, because it is microbiologically unsound or contaminated by foreign material, it may cause food poisoning or be of such a nature that consumers reject the food as being inedible; for example contaminated by insects. In addition food may be chemically contaminated or under processed or subjected to some other fault in manufacture or storage that makes the food unsafe to eat. The Bill ensures that manufacturers have the responsibility to ensure that their treatment of food and ingredients results in food that is marketed safe to eat.

The Bill provides for food safety by tackling three problem areas.

Firstly, in proposed Part IIA, the Bill addresses difficulties in achieving satisfactory standards in manufacturing practices and design and construction of food premises by enabling the Minister to approve codes of practice relevant to food safety. Food businesses will need to comply with such codes if they wish to avoid the risk of infringing their obligation to produce and sell safe food.

It may be necessary to include some food safety matters in regulations and the regulation making powers in the principal Act are extended to cover food safety. Importantly they provide for training of food handlers, preparation and observance of food safety plans in food businesses and inclusion of codes of practice into regulations.

Secondly, in proposed Part IIB, it addresses the difficulty of identifying food businesses to enable surveillance to ensure compliance with hygiene and safety requirements by requiring all food businesses to be licensed and attaching conditions of approval to each licence. This is intended to replace the existing system whereby only some types of premises are licensed and specific types are excluded, such as licensed

clubs and restaurants which provide meals for a considerable proportion of the population.

Provisions to determine licence fees will permit a variable scale to ensure that businesses that are included yet require a low level of surveillance, due to the low risk nature of the food they sell, pay a nominal fee. Charities operating fund-raising programs based on food sales would pay no fee for a licence in recognition of the intent behind their business. Their identification as part of the food scene in the ACT is vital but there is no intention to use fees to subsidise high risk operators or to financially hinder activities of charitable organisations

The third area to be addressed by the Bill, in proposed Part IIC, is the provision of powers to remedy situations in the field that contravene food safety matters. The Bill provides for an inspector (an inspector appointed under the Public Health Act 1928) to require a proprietor to remedy contraventions of the Act, codes of practice or regulations relating to structural and cleanliness defects in a food premises, operations taking place or the use being made of the premises by service of improvement notices.

There are additional provisions for notices prohibiting operations and activities that pose an imminent risk to health or taking place in a premises the state of which poses such a risk. These notices are termed "prohibition notices".

It is an offence to fail to comply with an improvement or prohibition notice.

The Bill includes provisions for application of defence provisions in the principal Act to offences under the Bill and procedures in relation to licence applications, suspensions, cancellations, varying a licence and transferring a licence.

There are administrative provisions necessary for efficient effective operation of this Bill which at present are found in existing legislation to a limited extent. Examples include appointment of health officers, analysts and powers of entry.

### **FINANCIAL CONSIDERATIONS**

The cost of administering the legislation will be met from within existing funding levels.

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## CLAUSE NOTES

### Clause 1, 2 and 3

Clauses 1, 2 and 3 deal with citation and commencement. Commencement is delayed to enable training of enforcement staff, establishing administrative procedures particularly for the licensing provisions and advising the food industry.

### Clause 4 Interpretation

Certain words are defined for the purposes of the Bill. In the following cases the definitions are extensions of the usual accepted meaning.

"appliance" is widely defined to include machinery, equipment and all other devices used in preparing food or in the sale of food or cleaning of other appliances.

"food business" is defined as any business that involves food; the manufacture, preparation, processing, treatment, handling (which includes storage of food) are included. This ensures that all food preparation and sale are within the scope of the Bill. "Sale" is defined in the Principal Act and includes "possession for sale".

### Clause 5 Presumptions

An additional presumption is added to Section 7 of the Principal Act to ensure that samples taken of a batch of food are considered to be representative of the whole of the batch. Sampling methods endeavour to achieve uniformity between samples and product sampled. Without the presumption, and after the event, representation would be impossible to prove. Section 7 provides that the presumption is rebuttable.

### Clause 6 Insertion

This clause inserts a heading "Division 1 - SUBSTANDARD FOOD" before Section 9 of the Principal Act. This (along with a similar provision in Clause 8) divides Part II- UNLAWFUL PRACTICES of the Act into three Divisions; "Substandard Food", "Food Safety Requirements" and "Miscellaneous".

### **Division 1 - Substandard Food**

#### Clause 7 Labelling requirements

The purpose of this clause is to exempt food that is packed in front of the purchaser, for example hot bake bread, from requirements that the package be labelled with information about ingredients, manufacturer or other requirements that apply to packaged food under Section 14 of the Principal Act. Food that is prepared, packed and delivered to the consumer, ready for consumption at the request of the purchaser is also exempt. Examples are Chinese take-away and pizzas. Labelling such foods is unnecessary because the purchaser is in a position to obtain information at the time of sale. Any purchaser who is sold something contrary to what is demanded is protected by the Principal Act.

### **Clause 8 Insertion**

Two new divisions, entitled "Division 2 - Food safety requirements" and "Division 3 - Miscellaneous" are inserted after section 18 of the Principal Act. "Division 2 - Food safety requirements" makes it unlawful to render food unsafe to eat during the course of all aspects of its manufacture and preparation to the point of sale. The concept of food safety is broader than simply the preparation of food in hygienic surroundings and using sound ingredients. It is intended to place a responsibility on manufacturers and any person preparing food for sale to ensure that their personal hygiene, food processing practices and handling are such that there is no risk of contaminating or affecting the food so that the food might cause illness if eaten.

The Division also makes it unlawful to sell such food.

Division 3 makes provision in relation to evidence.

### **Division 2 - Food safety requirements**

#### **Proposed section 18A Interpretation**

Unsafe food can cause acute illness or give rise to a chronic illness arising from accumulation of chemicals in the body. In considering whether or not a particular food would cause illness regard is to be to either effect. Injury must not be rejected because the effect from the amount of food in question would be insufficient to cause immediate harm. In addition, regard is to be had to the *probable* effect of consuming the food as the incidence of illness will depend on susceptibility of individual consumers.

The proposed section also presumes that certain types of food are unfit for human consumption even though there is no evidence that they are injurious to health. For example animals that have died due to disease or some injury rather than slaughtered are considered unfit as is food that is damaged, deteriorated or perished. Food that contains foreign matter that is socially unacceptable, for example a cooked fly, or animal or vegetable matter that is decomposed or dirt contaminated and food that contains an animal part not normally sold for human consumption are also deemed to be unfit.

#### **Proposed section 18B Rendering food injurious to health**

(1) The sub-section makes it unlawful to render food for sale injurious to health, unfit for human consumption or so contaminated that it would be unreasonable to expect the food to be consumed in that condition. The contamination may be due to extraneous matter or otherwise and a high bacterial load would be considered as falling within this category.

The offence is not to be confused with Section 9 of the Principal Act which makes it an offence to manufacture sub-standard food. Such food fails to meet composition, labelling and packaging standards of the Australian Food Standards Code. Food that

satisfies the standards may, due to a processing fault or contamination with bacteria due to unhygienic handling cause illness if consumed and as such would not satisfy the requirements of this proposed section.

(2) As a guide to the interpretation of (1) acts or omissions that may render food injurious to health are provided in (2) (a)-(e) with examples in italics.

(a) adding or failing to add a substance to food

*Failing to add a preservative that is necessary to prevent bacterial growth may allow growth of pathogens thus rendering the food injurious to health.*

(b) using or failing to use an ingredient

*failure to add vinegar to a food to lower the acid level to restrict bacterial growth.*

(c) abstracting a constituent from food

*Subjecting the food to inappropriate storage whereby vitamins are destroyed.*

(d) subjecting or failing to subject the food to a process or treatment

*under processing canned food or holding food that requires chilled storage at room temperature.*

(e) any other acts or omissions relevant to the safety of food.

#### **Proposed section 18C Sale of unsafe food**

It is an offence to sell food that is injurious to health, unfit for human consumption or so contaminated that it would not be reasonable to expect to be consumed in that state. The contamination may be due to extraneous matter or otherwise and a high bacterial load would be considered as falling within this category.

Food may not be found to be unsafe or damaged or contaminated until the point of sale or after sale takes place. In relation to contamination, the danger of consuming such food may not be apparent to the purchaser because food poisoning organisms do not alter the taste, smell or appearance of the food. In the case of food containing foreign material such as grit the customer may not discover the grit until trying to eat the food. The consumer is protected against sale of such foods by this proposed section. It should be noted that "sale" is given a broad definition including "possession for sale" in the Principal Act.

Again note should be taken that the provisions of Section 10 of the Principal Act relate to the sale of *substandard* food, that is the sale of food that fails to meet the requirements of the Australian Food Standards Code.

#### **Division 3 - Miscellaneous**

##### **Proposed section 18D Certificate evidence**

Information on unsafe food is received from government agencies of the States, the Northern Territory and the Commonwealth. The purpose of this section is to provide

that a certificate signed by the Minister is evidence of information received from such agencies concerning unsafe food.

#### **Clause 9 Defences**

Section 19 of the Principal Act, which provides defences under the Act, is amended to apply the provisions to the offences in this Part. A person will not be guilty of an offence if the contravention was due to the fault of another person, to an accident or to some other cause beyond the person's control. The person must have taken all reasonable precautions and exercised due diligence to avoid the contravention.

The amendment also provides that it is a defence for offences under this Part that the food was not sold for human consumption.

#### **Clause 10 Insertion**

After Part II of the Principal Act the following Parts are inserted; "Part IIA - CODES OF PRACTICE", "Part IIB - LICENCES", "Part IIC - IMPROVEMENT AND PROHIBITION NOTICES" and "Part IID - REVIEW OF DECISIONS".

#### **Proposed Part IIA - CODES OF PRACTICE**

This part enables the Minister to approve Codes of Practice or variations to approved Codes on a range of matters that will give effect to the provisions of the Bill. It is intended that the codes will prescribe mandatory matters with advice and explanation on ways to meet such requirements provided to assist compliance. It is proposed that some codes will be industry specific and will depend for content on codes produced by Government and other specialist agencies including the National Health and Medical Research Council, the National Food Authority and the Australian Quarantine and Inspection Service of the Commonwealth Department of Primary Industries and Energy. It is anticipated that guidance to food business proprietors on designing and implementing programs to document their food safety measures (referred to as food safety plans) will be prepared, as Codes under the powers in this Section, to assist the industry with their responsibility to satisfy food safety requirements. For example, a food safety plan would include cleaning schedules, temperature monitoring of food in hot and chilled storage and procedures for preventing contamination.

A proposed code will be the National Food Premises Code produced by the Australian Institute of Environmental Health Officers and already used as basis for construction standards by local government which will specify requirements on siting, size and construction of food premises.

#### **Proposed section 19A Preparation**

Powers are provided for the Minister to approve by instrument codes of practice or variations to codes of practice on all matters relevant to food safety.



**Proposed section 19B Disallowance**

The Codes of Practice are disallowable instruments for purposes of the Subordinate Laws Act 1989.

**Proposed section 19C Publication**

The public will be advised of new Codes or variations in the newspaper and gazette; the notice specifying the date when the code was approved and places where copies may be purchased or viewed. The Minister must ensure that copies are available for public inspection during office hours at those specified places. If another document forms part of the code then that document must also be available.

**Proposed Part IIB - LICENCES.****Proposed Section 19D Requirement to be licensed**

(1) It is unlawful to carry on a food business except in accordance with a licence.

Licences give the discretion to apply different conditions to different premises, giving the necessary flexibility to target problems without disadvantaging all businesses.

Licences have been required for businesses selling meat and permits have been issued to sell meat products and to operate eating houses in the ACT for many years. However, dangers to public health are not restricted to these types of premises but, to a varying degree, to all types of premises selling food for human consumption. The requirement is that all food businesses must be licensed because identification of businesses, the type of operations they employ and the associated controls to ensure food safety are necessary to safeguard public health.

Premises previously excluded from existing licensing arrangements included premises licensed under the Liquor Act. These premises are now included and the inclusion is vital to food safety because they provide the majority of meals consumed outside the home.

Non profit organisations such as schools and church groups will also be required to be licensed as will certain premises that sell a limited range of foods such as wholesalers of low risk packaged food. This will facilitate food recalls and control the current practice whereby the types of food change without suitable safeguards.

Premises in New South Wales are not subject to a licensing system but pay on a fee-for-service basis for local authority inspection.

(2) (a) Allows regulations to be made exempting a specified class of persons from any or all of the licensing requirements. This gives the flexibility to exempt premises or businesses from licensing requirements. It would be used in circumstances where a licence is not considered necessary to achieve food safety.

It is proposed to exempt persons operating businesses that, although they fall within the definition of a food business, it is not the primary purpose of the business. The exemptions proposed will cover;

- transport companies
- retail sale of low risk, prepackaged food (eg banks selling charity sweets, newsagents selling prepackaged confectionary)

It is also proposed to exempt operators who sell food only at one-off functions such as food fairs.

This exemption only applies to licensing and will not exempt them from other requirements of the Bill such as the necessity for cleanliness.

(b) enables the circumstances that apply to licensing exemptions to be specified.

**Proposed section 19E Application for licence**

The application shall be in the form approved by the Minister, made by or on behalf of the proprietor and executed by the applicant. The applicant will be required to provide information about the layout and use of the premises and lodge the application with the determined fee.

Although charities, school associations and other fund raising organisations are not exempt from the licensing arrangements, in recognition of their aim to raise money licence fees will be nil.

Persons selling low risk foods, for example whole fruit and vegetables will have the low risk nature of their operation recognised by a low licence fee compared with operators selling food that by its nature is more likely to cause illness.

**Proposed section 19F Further information on licence application**

The Minister may require by writing to an applicant that he or she provides additional information about the application. The applicant may reply in writing or orally.

**Proposed section 19G Grant or refusal**

(1) On receiving an application made in accordance with proposed section 19E the Minister shall grant or refuse the application. If granted there may be conditions attached to the licence that will ensure that the premises is suitable for the purpose and operated in a manner that has regard to food safety.

(2) A licence may include a condition requiring compliance with an approved code of practice.

The type or scope of the conditions are not restricted by these proposed sub - sections but will of course be relevant to the use of that particular premises and operations proposed to be carried on in the premises. For example, if the application proposes to use a premises as wholesaler of packaged food and the premises design and finish is

such that it is not suitable for the preparation of raw food then a condition of the licence will be that the premises is restricted to the intended use specified in the application.

(3) In effect any conditions attached to a licence are limited by the responsibilities placed on the Minister by this sub section. In deciding to grant or refuse a licence the Minister is required to consider food safety factors that are relevant to the application. Regard shall be had to the suitability of the premises, any regulations, standards or codes of practice that would apply to the operations and the competency and experience of the proprietor or manager to operate the business. Regard must also be had to the desirability of implementing a food safety plan (ie a program describing food safety operations undertaken by food handlers in the premises) in addition to such other matters that the Minister thinks are in the interests of food safety.

(4) The licence shall be in the form approved by the Minister.

**Proposed section 19H Licence not to be granted while premises incomplete.**

A licence application made in respect of a premises which is being altered or constructed cannot be approved until the premises is fit for occupation in accordance with the Building Act 1972. The purpose of the clause is to prevent instances where a premises commences operations after meeting requirements of one regulatory agency but not another.

**Proposed section 19I Effect of licence**

The licence, granted in accordance with the Bill, authorises the licensee to carry on a food businesses from the premises specified in the licence. Because the condition and practices in any one food premises may differ from another even when owned or operated by the same person. For this reason a licence is specific to the premises identified in the licence and a person with several outlets, such as a pizza operator with take-aways in several suburbs will require a licence for each premises.

Many established businesses operate stalls at annual festivities such as the Food and Wine Frolic. When these stalls sell high risk foods, and the majority of them do, there is a need to ensure that satisfactory standards of food safety are maintained with a minimum of administrative intervention. Because the stall is a separate premises, existing licence holders will need to apply for a variation to their licence under proposed section 19Q and this will be granted, subject to food safety requirements, when the stall is ready to operate. Persons who have not been exempted from licensing and do not hold a licence will need to apply but will pay only a nominal fee to avoid discrimination compared with existing holders. Again the licence would be granted when the stall meets requirements and is ready to operate.

A person wishing to sell food from a stall at a regular market will require a licence but the level of the application fee would reflect the risk dependant on the type of food intended to be sold. For example curries and rice sold from a stall require diligent practice and surveillance of food safety practices whereas selling only canned drinks requires very little.

**Proposed section 19K Inspection of licence**

The licensee of a food business must ensure that a copy of the licence is available at all times on the premises should an inspector wish to see it. The purpose is to ensure that it is clear to both the inspector and the proprietor whether or not the premises is currently licensed.

**Proposed section 19L Duration**

The licence remains in force for twelve months unless surrendered or cancelled.

**Proposed section 19M Renewal**

A licence will be renewed for twelve months if application is made prior to the expiry date and is accompanied by the determined fee.

**Proposed section 19N Alteration of food premises**

(1) The purpose of this section is to require a licensee to seek approval to carry out alterations to the premises or alter any food processing appliances to ensure that the enforcement authority is aware of situations that may affect food safety. It is important that structural alterations and appliances meet departmental requirements.

(2) The Minister may approve the application.

(3) The notice given under (1) must be in a form approved by the Minister and include plans and specifications if it is proposed to structurally alter premises. It must be accompanied by the determined fee.

(4) Further information may be sought from the applicant.

(5) In deciding whether to grant or refuse approval regard must be had to the matters listed in proposed section 19G.

It should be noted that if a licensee wishes to change the *use* of the premises then this is a variation to the licence under proposed section 19Q. For example a licence may be issued to a shop selling only raw chicken which now wishes to sell cooked, ready to eat chicken.

**Proposed section 19P Notice of transfer of food business**

(1) Should a licensee wish to transfer his licence to another person both parties have to notify the Minister within 7 days of the transfer.

(2) The notice has to be in writing and include name and address for service of documents, location of the premises, date of transfer and, in the case of the notification from the licensee, include the licence.

(3) The Minister must amend the licence and return it to the new licensee as soon as practicable.

(4) It is an offence to contravene this section.

The purpose of this section is to ensure that records are kept up to date in case of outbreaks of food poisoning or recalls of food or other matters where it is important to promptly and correctly identify the premises and the person operating the business.

It also provides the opportunity for the new proprietor to be advised of any outstanding works that need to be carried out.

Should the new proprietor wish to operate a different business in the premises to that specified in the existing licence the licence will require varying and the new licensee will need to apply for such variation, under proposed section 19Q below, otherwise he is operating contrary to the terms of the licence.

#### **Proposed section 19Q Variation of licences**

(1) A licensee may apply to vary the licence and the Minister may grant or refuse the application if it desirable in the interests of food safety.

(2) Where the Minister believes on reasonable grounds that it is desirable to vary a licence in the interests of food safety he or she may write to the licensee specifying those grounds and the basis for them, and advising the licensee of a time period in which he or she can respond to the intention.

(3) After expiration of the time and taking into account any response from the licensee the Minister can vary the licence by varying conditions attached to the licence or revoking or imposing conditions.

(4) The variation takes place on the date on which the notice of variation is given to the licensee or on a later date specified in the notice.

(5) The above provisions apply to a suspended licence.

#### **Proposed section 19R Suspension or cancellation of licences**

This section provides powers to suspend or cancel a licence where the Minister believes that there are grounds for so doing.

(1) lists the grounds as;

- contravention of a condition of the licence
- obtaining the licence by fraud or misrepresentation
- conviction of the licensee of an offence against this Act or the regulations or
- failure to comply with an improvement notice.

(2) The Minister must believe that grounds exist *and* it is in the interests of food safety to suspend or cancel the licence.

If the Minister intends to cancel or suspend a licence under the preceding sub sections he or she must notify the licensee of the intention in writing, giving the reasons for his intention and informing the licensee that he or she has 28 days to respond to the notice.

(3) After receiving a response or at the end of the 28 days the Minister may suspend the licence for a specified period or cancel the licence as the case may be.

(4) The suspension or cancellation takes effect on the date the notice is given to the licensee or a later date specified in the notice.

**Proposed section 19S Emergency suspension of licences**

It may be necessary in order to remove or prevent an imminent risk of injury to health to suspend a licence without giving the licensee 28 days notice as is required under proposed section 19R.

(1) A licence may be suspended on the grounds:

- a licensee has contravened a condition of his licence
- he or she has been convicted of an offence under this Act or regulations
- a prohibition notice has been served on the licensee

(2) The Minister may suspend the licence for a maximum of 6 months if he or she is satisfied that there are grounds and suspension is necessary to prevent or remove an imminent risk of injury to health.

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

(4) and specifies the grounds, the basis for those grounds and the period of the suspension.

**Proposed section 19T Return of licence**

(1) Within seven days of a suspension, cancellation or variation, taking effect a licensee must return his or her licence to the Minister.

(2) In the case of a variation the Minister shall endorse the licence and return it to the licensee as soon as practicable.

**Proposed Part IIC - IMPROVEMENT AND PROHIBITION NOTICES**

**Proposed section 19U Interpretation**

Reference is made in this Part to the licensee but in instances where the premises is not licensed it should be read as a reference to the proprietor. It is important that the

licensee is aware of any matters that affect the business particularly if he or she is not at the premises or the licence is issued to a company.

**Proposed section 19V Improvement notices**

The purpose of this section is to enable an inspector to require the proprietor to carry out structural work or repairs or works to improve a food premises. The notice requiring such improvements is termed an improvement notice and it is unlawful to fail to comply with the notice.

(1) Where an inspector is satisfied that a person fails or is likely to fail to meet requirements of this Act, an approved Code of Practice or regulations or is likely to contravene that legislation then the inspector may serve an improvement notice on the person in charge of the premises and if that person is not the licensee then the inspector must send the licensee a copy. The improvement notice requires the licensee to rectify matters.

(2) The notice has to specify the contraventions and the inspector's reasons for believing that such a contravention has occurred or is likely to occur and a time in which the matters are to be rectified.

(3) The inspector may recommend what action to take to remedy matters.

As an illustration; regulations require that a premises must be kept free from cockroaches. In a premises with an infestation in the dry-store the inspector must specify in the notice that the proprietor has failed to comply with the provision that the premises must be vermin-free, that cockroaches were seen in the dry-store. He may specify that the proprietor should employ pest control measures to eradicate the cockroaches and must give a time limit e.g. 7 days.

The inspector may specify explicit measures such as treating the premises with a residual insecticide or he may leave it to the proprietor to decide which of several alternative but equally effective measures are employed to solve the problem.

It is not anticipated that an improvement notice would be served without informal advice to a proprietor on discovery of a contravention.

(4) An inspector can extend the time period specified in a notice before the time expires. This may be desirable where circumstances beyond the control of the proprietor prevent compliance with the notice. A piece of equipment may be difficult to obtain or illness may cause delays.

(5) An improvement notice continues in force until revoked under proposed section 19X.

**Proposed section 19W Prohibition notices.**

A situation may exist in a premises that if allowed to continue involves or may involve the imminent risk of injury to health. This proposed section empowers an inspector to direct the proprietor to take action to prevent such risk.

(1) The section gives three broad areas where problems may arise in a food business which could cause risk of illness.

- the manner in which the food business is being carried on
- the use being made of the premises
- the state or condition of the premises

If an inspector believes on reasonable grounds that one or more of these areas is causing a problem of such a degree that there is imminent risk of injury then he can serve a prohibition notice on the person in charge (with a copy to the proprietor) directing that the food business or any part of the business is not carried on, is not carried on except in accordance with the terms of the notice, the premises is not used for a food business or only used in accordance with the terms of the notice.

(2) Directions may relate to a part of a premises where a specific activity is going on, substances that are or are not to be used in relation to a specified activity, practices and procedures, recall of food for example that has left the premises before the problem was identified, impounding or isolation of food or appliances and disposal of food or appliances.

The notice must specify the time, considered reasonable by the inspector, for the licensee to remedy the situation.

(3) The time period above may be extended in the same manner and for the same reasons as with improvement notices.

(4) The licensee has to display a copy of the notice in a prominent place on the food premises. The purpose of this is to ensure that employees and other persons who have an interest in the business are aware of action being taken.

(5) It is an offence to contravene the above sub section.

(6) A notice remains in force until revoked in accordance with proposed sub section 19X below.

Referring to the above example of the cockroaches, the inspector officer visits the premises at the end of the period specified in the improvement notice and finds that the work has not been done and the infestation has spread to the kitchen with grease and spilt food accumulations providing food for the cockroaches. The proprietor has committed an offence by not complying with the improvement notice. However the risk of cockroaches contaminating food with pathogenic bacteria by crawling on utensils, surfaces and exposed food warrants service of a prohibition notice directing that the premises not be used for the purpose of any food business.



There is no provision requiring an inspector to specify the works necessary to remedy the problem. It is expected that prohibition notices would be necessary when previous action has failed to remedy a situation.

**Proposed section 19X Revocation of notices**

The purpose of this section is to enable an improvement notice to be revoked when the licensee has complied with the notice and revocation of an improvement notice when the inspector is satisfied that the risk to injury has been removed.

(2) details the form of the application if it is made by the licensee and

(3) requires the inspector to inspect the premises and revoke the notice in writing if he or she is satisfied that the matter is resolved.

Written revocation may be useful in disputes between landlords and tenants over whether unsatisfactory matters have been remedied. Also, when a business changes ownership, intending buyers can ask sellers to provide evidence that there is no outstanding notice on the premises.

**Proposed section 19Y Compliance with notices**

Failure to comply with an improvement notice or a prohibition notice is an offence.

**Part IID REVIEW OF DECISIONS**

**Proposed section 19Z Review by Tribunal.**

Application may be made to the ACT Administrative Appeals Tribunal for a review of a decision of the Minister regarding granting or refusing to grant licences and in respect to conditions attached to a licence, refusing or granting alterations and variations to licences and licence cancellations and suspensions.

(2) Application may also be made to the Tribunal regarding decisions of inspectors on improvement and prohibition notices .

(3) Advice has to be included in notices on rights of appeal.

(4) However failure to comply with (3) does not invalidate the notice.

**Clause 11 Insertion**

After section 20 of the principal Act the following section is inserted.

**Proposed section 20A Fees**

The Minister may by notice in the Gazette determine fees for the purposes of this Act and regulations.

**Clause 12 Regulations**

This clause amends Section 22 of the Principal Act which provides regulation making powers. Added to the list of matters which may be included in regulations are matters relevant to the safety of food.

**PENALTIES**

Penalties for offences under the Bill have been set as follows:

Clause 8 Proposed section 18B Rendering food unsafe

Proposed section 18C Sale of unsafe food

Clause 10 Proposed section 19Y Compliance with Improvement and Prohibition notices

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

Clause 10 Proposed section 19D Requirement to be licensed

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

Clause 10 Proposed section 19N Alteration of food premises

\$5,000

Clause 10 Proposed section 19W Prohibition notices

\$1,000

Clause 10 Proposed section 19P Notice of transfer of a food business

Proposed section 19T Return of licence

\$500

Clause 10 Proposed subsection 19K Inspection of licence

\$100

The Principal Act provides maximum penalties for corporations that are five times the individual penalty.