



New South Wales

# Food Act 2003 No 43

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New South Wales

## Food Act 2003 No 43

Act No 43, 2003

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An Act to regulate the handling of food for sale and the sale of food and to provide for the application of the *Australia New Zealand Food Standards Code* in New South Wales; to repeal the *Food Act 1989*; and for other purposes. [Assented to 8 September 2003]

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**The Legislature of New South Wales enacts:**

**Part 1      Preliminary**

**1    Name of Act**

This Act is the *Food Act 2003*.

**2    Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3    Objects of Act**

The objects of this Act include the following:

- (a) to ensure food for sale is both safe and suitable for human consumption,
- (b) to prevent misleading conduct in connection with the sale of food,
- (c) to provide for the application in this State of the Food Standards Code.

**4    Definitions**

- (1) In this Act:

*Administrative Decisions Tribunal* means the Administrative Decisions Tribunal constituted under the *Administrative Decisions Tribunal Act 1997*.

*advertisement* means:

- (a) any words, whether written or spoken, or
- (b) any pictorial representation or design, or
- (c) any other representation by any means at all,

used or apparently used to promote, directly or indirectly, the sale of food.

*analysis* includes any examination or testing of food or any other thing.

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



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***appropriate enforcement agency*** means, in relation to the provision in which the expression is used, the enforcement agency prescribed by the regulations for the purposes of that provision.

***approved analyst*** means a person approved under Division 4 of Part 6.

***approved form*** means the form approved from time to time by the regulatory authority.

***approved laboratory*** means a laboratory approved under Division 3 of Part 6.

***authorised justice*** has the same meaning as in the *Search Warrants Act 1985*.

***authorised officer*** means a person appointed under Division 3 of Part 9.

***Commonwealth Food Authority*** has the same meaning as *Authority* in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth.

***enforcement agency*** means:

- (a) the regulatory authority, or
- (b) any person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of this definition.

***equipment*** means the whole or part of:

- (a) any utensil, machinery, instrument, device, apparatus or appliance that is used, or that is designed or intended for use, in or in connection with the handling of food, or
- (b) any substance, utensil, machinery, instrument, device, apparatus or appliance that is used, or that is designed or intended for use, in cleaning anything referred to in paragraph (a).

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

***food*** has the meaning given by section 5.

***food business*** has the meaning given by section 6.

***food safety auditor*** means a person approved under Division 1 of Part 7.

***Food Safety Standards*** means the standards contained in Chapter 3 of the Food Standards Code.

***Food Standards Code*** means the *Australia New Zealand Food Standards Code* as defined in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth, as modified in accordance with regulations referred to in section 140 or 141.

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

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

***improvement notice*** means an improvement notice issued under Part 5.

***label*** includes any tag, brand, mark or statement in writing or any representation or design or other descriptive matter on or attached to or used or displayed in connection with or accompanying any food or package.

***package*** includes any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packed and, in the case of food carried or sold or intended to be carried or sold in more than one package, includes every such package.

***premises*** includes:

- (a) land (whether or not vacant), or
- (b) the whole or any part of a building, tent, stall or other structure (whether of a permanent or temporary nature), or
- (c) a pontoon, or
- (d) a vehicle (other than a food transport vehicle while it is engaged in the transport of food).

***primary food production*** has the meaning given by section 7.

***prohibition order*** means a prohibition order made under Part 5.

***proprietor of a food business*** means:

- (a) the person carrying on the food business, or
- (b) if that person cannot be identified the person in charge of the food business.

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***recall order*** means an order under Part 3 requiring the recall or disposal, or both, of any food.

***regulatory authority*** means the Director-General of the Department of Health.

***sell*** includes:

- (a) barter, offer or attempt to sell, or
- (b) receive for sale, or
- (c) have in possession for sale, or
- (d) display for sale, or
- (e) cause or permit to be sold or offered for sale, or
- (f) send, forward or deliver for sale, or
- (g) dispose of by any method for valuable consideration, or
- (h) dispose of to an agent for sale on consignment, or
- (i) provide under a contract of service, or
- (j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work, or
- (k) dispose of by way of raffle, lottery or other game of chance, or
- (l) offer as a prize or reward, or
- (m) give away for the purpose of advertisement or in furtherance of trade or business, or
- (n) supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment, or
- (o) supply food (whether or not for consideration) in the course of providing services to patients in public hospitals (within the meaning of the *Health Services Act 1997*) or inmates in correctional centres (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), or
- (p) sell for the purpose of resale.

***unsafe*** has the meaning given by section 8.

***unsuitable*** has the meaning given by section 9.

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

- (2) For the purposes of this Act, food or equipment that is displayed for the purpose of being offered as a prize or reward or given away for the purpose of advertisement or in the furtherance of trade or business is taken to have been displayed for sale by the owner of the food or equipment.
- (3) Notes included in this Act do not form part of this Act.

## 5 Meaning of “food”

- (1) In this Act, **food** includes:
  - (a) any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared), or
  - (b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a), or
  - (c) any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid, or
  - (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum, or
  - (e) any substance or thing declared to be a food under a declaration in force under section 3B of the *Food Standards Australia New Zealand Act 1991* of the Commonwealth, whether or not the substance, thing or chewing gum is in a condition fit for human consumption.
- (2) However, **food** does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth.
- (3) To avoid doubt, **food** may include live animals and plants.

## 6 Meaning of “food business”

In this Act, **food business** means a business, enterprise or activity (other than a business, enterprise or activity that is primary food production) that involves:

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

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- (b) the sale of food,  
regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.

## 7 Meaning of “primary food production”

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

**Note.** Section 7 (2) (c) enables regulations to be made prescribing food production activities that are not included in the definition of *primary food production*. Such a regulation might be made, for example, to prescribe a food production activity in relation to which significant and unmanaged food safety hazards have been identified.

## **8    Meaning of “unsafe” food**

- (1) For the purposes of this Act, food is *unsafe* at a particular time if it would be likely to cause physical harm to a person who might later consume it, assuming:
  - (a) it was, after that particular time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use, and
  - (b) nothing happened to it after that particular time and before being consumed by the person that would prevent its being used for its reasonable intended use, and
  - (c) it was consumed by the person according to its reasonable intended use.
- (2) However, food is not *unsafe* for the purposes of this Act merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only in persons with allergies or sensitivities that are not common to the majority of persons.
- (3) In subsection (1), *processes* include processes involving storage and preparation.

## **9    Meaning of “unsuitable” food**

- (1) For the purposes of this Act, food is *unsuitable* if it is food that:
  - (a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use, or
  - (b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use, or
  - (c) is the product of a diseased animal, or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption, or
  - (d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.
- (2) However, food is not *unsuitable* for the purposes of this Act merely because:
  - (a) at any particular time before it is sold for human consumption it contains an agricultural or veterinary chemical, or

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- (b) when it is sold for human consumption it contains an agricultural or veterinary chemical, so long as it does not contain the chemical in an amount that contravenes the Food Standards Code, or
  - (c) it contains a metal or non-metal contaminant (within the meaning of the Food Standards Code) in an amount that does not contravene the permitted level for the contaminant as specified in the Food Standards Code, or
  - (d) it contains any matter or substance that is permitted by the Food Standards Code.
- (3) In this section, *slaughter* of an animal includes the killing of an animal in the process of capturing, taking or harvesting it for the purposes of preparing it for use as food.

#### **10 Application of Act to primary food production**

- (1) Parts 5, 7 and 8 do not apply to or in respect of primary food production.
- (2) The functions conferred on authorised officers by Parts 4 and 6 may only be exercised in respect of primary food production:
  - (a) to enable the investigation and prosecution of offences against this Act or the regulations, or
  - (b) in connection with the making or enforcement of emergency orders under Part 3.

**Note.** The definition of **food business** excludes primary food production.

#### **11 Application of Act to water suppliers**

- (1) The following provisions of this Act do not apply to a water supplier in respect of the supply of water for human consumption through a reticulated water system:
  - (a) sections 13, 15, 16 (1), 17 (1), 18, 19, 20 and 21 (but only to the extent to which section 21 requires compliance with the requirements of the Food Safety Standards),
  - (b) Parts 5, 7 and 8.
- (2) In this section, **water supplier** means:
  - (a) a body that is constituted by or under an Act and that has as or as one of its functions the supply of water for human consumption, or

- (b) a person who is employed or engaged by such a body to supply water for human consumption, or
- (c) any body or person prescribed by the regulations for the purposes of this section.

## **12 Relationship to other laws**

- (1) If, by or under any other Act (whether passed before or after the commencement of this section) any provision is made in relation to food for sale, being a provision that is inconsistent with the provisions of this Act or the regulations under this Act, the provisions of this Act or the regulations prevail to the extent of the inconsistency.
- (2) Any statutory rule relating to any of the following matters must be submitted to the Minister before being made:
  - (a) the wholesomeness, cleanliness or freedom from contamination of food,
  - (b) the composition of, and standards for, food,
  - (c) the cleanliness of vehicles, premises or places in which food is sold or handled for sale.
- (3) No such statutory rule may be made unless the Minister approves of such of its provisions as relate to any of those matters.
- (4) Failure to comply with any provision of this section does not affect the validity of a statutory rule.
- (5) In this section, *statutory rule* means a regulation, by-law, rule or ordinance made, or required by law to be approved or confirmed, by the Governor or made by a council.



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## **Part 2      Offences relating to food**

### **Division 1      Serious offences relating to food**

#### **13    Handling of food in unsafe manner**

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

Maximum penalty: 1,000 penalty units or imprisonment for 2 years, or both, in the case of an individual and 5,000 penalty units in the case of a corporation.

- (2) A person must not handle food intended for sale in a manner that the person ought reasonably to know is likely to render the food unsafe.

Maximum penalty: 750 penalty units in the case of an individual and 3,750 penalty units in the case of a corporation.

#### **14    Sale of unsafe food**

- (1) A person must not sell food that the person knows is unsafe.

Maximum penalty: 1,000 penalty units or imprisonment for 2 years, or both, in the case of an individual and 5,000 penalty units in the case of a corporation.

- (2) A person must not sell food that the person ought reasonably to know is unsafe.

Maximum penalty: 750 penalty units in the case of an individual and 3,750 penalty units in the case of a corporation.

#### **15    False description of food**

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

Maximum penalty: 1,000 penalty units or imprisonment for 2 years, or both, in the case of an individual and 5,000 penalty units in the case of a corporation.

**Note.** Examples of food that is falsely described are contained in section 22.

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

Maximum penalty: 750 penalty units in the case of an individual and 3,750 penalty units in the case of a corporation.

**Note.** Examples of food that is falsely described are contained in section 22.

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

Maximum penalty: 1,000 penalty units or imprisonment for 2 years, or both, in the case of an individual and 5,000 penalty units in the case of a corporation.

**Note.** Examples of food that is falsely described are contained in section 22.

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

Maximum penalty: 750 penalty units in the case of an individual and 3,750 penalty units in the case of a corporation.

**Note.** Examples of food that is falsely described are contained in section 22.

## **Division 2 Other offences relating to food**

### **16 Handling and sale of unsafe food**

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

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

### **17 Handling and sale of unsuitable food**

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

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

Maximum penalty: 400 penalty units in the case of an individual and 2,000 penalty units in the case of a corporation.

### **18 Misleading conduct relating to sale of food**

- (1) A person must not, in the course of carrying on a food business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to the advertising, packaging or labelling of food intended for sale or the sale of food.

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

**Note.** Examples of food that is falsely described are contained in section 22.

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

**Note.** Examples of food that is falsely described are contained in section 22.

- (4) Nothing in subsection (2) or (3) limits the generality of subsection (1).

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

### **19 Sale of food not complying with purchaser's demand**

- (1) A person must not, in the course of carrying on a food business, supply food by way of sale if the food is not of the nature or substance demanded by the purchaser.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

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

### **20 Sale of unfit equipment or packaging or labelling material**

- (1) A person must not sell equipment that if used for the purposes for which it was designed or intended to be used:
- (a) would render or be likely to render food unsafe, or

- (b) would put other equipment, or would be likely to put other equipment, in such a condition that, if the other equipment were used for the purposes for which it was designed or intended to be used, it would render, or be likely to render, food unsafe.
- (2) A person must not sell packaging or labelling material that if used for the purposes for which it was designed or intended to be used would render or be likely to render food unsafe.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

## **21 Compliance with Food Standards Code**

- (1) A person must comply with any requirement imposed on the person by a provision of the Food Standards Code in relation to the conduct of a food business or to food intended for sale or food for sale.
- (2) A person must not sell any food that does not comply with a requirement of the Food Standards Code that relates to the food.
- (3) A person must not sell or advertise for sale any food that is packaged or labelled in a manner that contravenes a provision of the Food Standards Code.
- (4) A person must not sell or advertise for sale any food in a manner that contravenes a provision of the Food Standards Code.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

## **22 False descriptions of food**

- (1) For the purposes of this Part, food that is falsely described includes food to which any one or more of the following paragraphs applies:
  - (a) the food is represented as being of a particular nature or substance for which there is a prescribed standard under the Food Standards Code and the food does not comply with that prescribed standard,
  - (b) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance in a quantity or proportion that significantly diminishes its food value or nutritive properties as compared with food of the represented nature or substance,

- (c) the food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance of lower commercial value than food of the represented nature or substance,
  - (d) the food is represented as being of a particular nature or substance and a constituent of the food has been wholly or partly removed so that its properties are diminished as compared with food of the represented nature or substance,
  - (e) any word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression as to the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person,
  - (f) the food is not of the nature or substance represented by the manner in which it is packaged, labelled or offered for sale.
- (2) Without limiting the application of subsection (1) of this section to section 18 (2), food is falsely described for the purposes of section 18 (2) if it is supplied in response to a purchaser's request for a particular type of food, or a food that does not contain a particular ingredient, and the food is not of that type or contains that ingredient.

### **23 Application of provisions outside the State**

For the purposes of a provision of this Part, it does not matter that the food concerned was sold or intended for sale outside this State.

**Note.** See section 25 for a defence in relation to food intended for export.

## **Division 3 Defences**

### **24 Defence relating to publication of advertisements**

- (1) In any proceedings for an offence under this Part in relation to the publication of an advertisement, it is a defence for a person to prove that the person carried on the business of publishing or arranging for the publication of advertisements and that the person published or arranged for the publication of the advertisement in question in the ordinary course of that business.
- (2) Subsection (1) does not apply if the person:
  - (a) should reasonably have known that the publication of the advertisement was an offence, or

- (b) had previously been informed in writing by the relevant authority that publication of such an advertisement would constitute an offence, or
- (c) is the proprietor of a food business or is otherwise engaged in the conduct of a food business for which the advertisements concerned were published.

## **25 Defence in respect of food for export**

- (1) In any proceedings for an offence under this Part involving a contravention of or failure to comply with a provision of the Food Standards Code in relation to food, it is a defence for a person to prove that:
  - (a) the food in question is to be exported to another country, and
  - (b) the food complies with the laws in force at the time of the alleged offence in the place to which the food is to be exported, being laws that deal with the same subject-matter as the provision of the Food Standards Code concerned.
- (2) This section does not apply to food that was originally intended for export but was sold in this State.

## **26 Defence of due diligence**

- (1) In any proceedings for an offence under this Part, it is a defence if it is proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.
- (2) Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved:
  - (a) that the commission of the offence was due to:
    - (i) an act or default of another person, or
    - (ii) reliance on information supplied by another person, and
  - (b) that:
    - (i) the person carried out all such checks of the food concerned as were reasonable in all the circumstances, or
    - (ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person, and

- (c) that the person did not import the food into this State from another country, and
- (d) in the case of an offence involving the sale of food, that:
  - (i) the person sold the food in the same condition as when the person purchased it, or
  - (ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in any contravention of this Act or the regulations.
- (3) In subsection (2) (a), another person does not include a person who was:
  - (a) an employee or agent of the defendant, or
  - (b) in the case of a defendant that is a body corporate, a director, employee or agent of the defendant.
- (4) Without limiting the ways in which a person may satisfy the requirements of subsection (1) or (2) (b) (i), a person may satisfy those requirements by proving that:
  - (a) in the case of an offence relating to a food business for which a food safety program is required to be prepared in accordance with the regulations, the person complied with a food safety program for the food business that complies with the requirements of the regulations, or
  - (b) in any other case, the person complied with a scheme (for example, a quality assurance program or an industry code of practice) that was:
    - (i) designed to manage food safety hazards and based on Australian national or international standards, codes or guidelines designed for that purpose, and
    - (ii) documented in some manner.

## **27 Defence of mistaken and reasonable belief not available**

In any proceedings for an offence under Division 2, it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence.

**28    Defence in respect of handling food**

In any proceedings for an offence under section 13, 16 (1) or 17 (1), it is a defence if it is proved that the person caused the food to which the offence relates to be destroyed or otherwise disposed of immediately after the food was handled in the manner that was likely to render it unsafe or unsuitable.

**29    Defence in respect of sale of unfit equipment or packaging or labelling material**

In any proceedings for an offence under section 20 (1) or (2), it is a defence if the person proves that the person reasonably believed that the equipment or material concerned was not intended for use in connection with the handling of food.



## **Part 3      Emergency powers**

### **30    Making of order**

An order may be made under this Part by the regulatory authority if the regulatory authority has reasonable grounds to believe that the making of the order is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

### **31    Nature of order**

An order under this Part may do any one or more of the following:

- (a) require the publication of warnings, in a form approved by the regulatory authority, that a particular food or type of food is unsafe,
- (b) prohibit the cultivation, taking, harvesting or obtaining, from a specified area, of a particular food or type of food,
- (c) prohibit a particular food or type of food from being advertised or sold,
- (d) direct that a particular food or type of food consigned or distributed for sale or sold be recalled and specify the manner in which, and the period within which, the recall is to be conducted,
- (e) direct that a particular food or type of food be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which the impounding, isolation, destruction or disposal is to be conducted,
- (f) prohibit absolutely the carrying on of an activity in relation to a particular food or type of food, or permit the carrying on of the activity in accordance with conditions specified in the order,
- (g) without limiting the generality of paragraph (f), impose conditions relating to the taking and analysis of samples of the food or of water or soil or any other thing that is part of the environment in which that activity is carried on in relation to the food,
- (h) specify methods of analysis (not inconsistent with any methods prescribed by the Food Standards Code) of any samples required to be taken in accordance with the order.

### **32 Special provisions relating to recall orders**

- (1) A recall order may require the person, or the persons of a class, that is bound by the order to disclose to the public or to a class of persons specified in the order, in a manner so specified, any one or more of the following:
  - (a) the particular food or type of food to be recalled or disposed of,
  - (b) the reasons why the food is considered to be unsafe,
  - (c) the circumstances in which the consumption of the food is unsafe,
  - (d) procedures for disposing of the food.
- (2) A person who is required by a recall order to conduct a recall of any food must give written notice to the regulatory authority of the completion of the recall as soon as practicable after that completion.
- (3) A person who is bound by a recall order is liable for any cost incurred by or on behalf of the regulatory authority in connection with the recall order and any such cost is taken to be a debt due to the regulatory authority from that person.
- (4) In any proceedings for the recovery of the debt, a certificate signed by the regulatory authority stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

### **33 Manner of making orders**

- (1) An order under this Part:
  - (a) may be made in writing addressed to the person or persons intended to be bound by it, and served on that person or each of those persons, as the case requires, or
  - (b) may be addressed to several persons, to a class of persons, or to all persons.
- (2) Notice of an order addressed as referred to in subsection (1) (b) setting out the terms of the order and the persons to be bound by the order must, as soon as practicable after the order is made, be published in a newspaper that, in the opinion of the regulatory authority, will be most likely to bring the order to the attention of the persons bound by it.
- (3) An order under this Part, when it takes effect, is binding on the person or persons to whom it is addressed.

- (4) An order that is served on a person takes effect when it is served.
- (5) An order, notice of which is published under subsection (2), takes effect at the beginning of the first day on which the notice was published.
- (6) An order ceases to have effect at the expiration of 90 days after the day on which it takes effect unless it is sooner revoked.
- (7) Subsection (6) does not prevent a further order being made in the same terms as an order that has expired.
- (8) An order under this Part may be varied or revoked by the regulatory authority in the same manner as the order was made.

#### **34 Compensation**

- (1) A person bound by an order under this Part who suffers loss as a result of the making of the order may apply to the regulatory authority for compensation if the person considers that there were insufficient grounds for the making of the order.
- (2) If there were insufficient grounds for the making of the order, the regulatory authority is to pay such compensation to the applicant as is just and reasonable.
- (3) The regulatory authority is to send written notification of its determination as to the payment of compensation under this section to each applicant for the payment of such compensation.
- (4) If the regulatory authority has not determined an application for compensation under this section within 28 days of receiving the application, the regulatory authority is taken to have refused to pay any compensation.
- (5) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the regulatory authority as to the refusal to pay compensation or as to the amount of compensation may apply to the Administrative Decisions Tribunal for a review of the determination:
  - (a) within 28 days after the day on which notification of the determination was received, or
  - (b) in a case to which subsection (4) applies, within 28 days after the expiration of the 28-day period referred to in that subsection.

**35 Failure to comply with emergency order**

A person must not, without reasonable excuse:

- (a) carry on an activity in contravention of any prohibition imposed on the person by an order under this Part, or
- (b) neglect or refuse to comply with a direction given by such an order, or
- (c) fail to comply with a condition specified in such an order.

Maximum penalty: 500 penalty units in the case of an individual or 2,500 penalty units in the case of a corporation.

**36 Limitation on stay of operation of emergency orders**

In any proceedings for judicial review or in any other proceedings, a court or tribunal is not authorised to make an interlocutory order that has the effect of staying the operation of an order under this Part.

## **Part 4      Inspection and seizure powers**

### **Division 1      Inspection**

#### **37      Powers of authorised officers**

- (1) For the purposes of this Act, an authorised officer may, at any reasonable time, do any one or more of the following:
- (a) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any premises that the authorised officer reasonably believes are used in connection with the handling of any food intended for sale or the sale of food, or any food transport vehicle,
  - (b) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any premises or food transport vehicle, in which the authorised officer reasonably believes that there are any records or documents that relate to the handling of any food intended for sale or the sale of food,
  - (c) examine any food intended for sale,
  - (d) open and examine any package that the authorised officer reasonably believes contains any food intended for sale or any equipment,
  - (e) open and examine any equipment,
  - (f) examine any labelling or advertising material that appears to the authorised officer to be intended for use in connection with any food intended for sale or any equipment,
  - (g) subject to Division 1 of Part 6, for the purpose of analysing any food sold or intended for sale or for carrying out any other examination in order to determine whether the provisions of this Act or the regulations are being complied with, demand, select and obtain samples of any food,
  - (h) for the purpose of analysis, take samples of water or soil or any other thing that is part of the environment in which any food is handled to determine whether that environment poses a risk to the safety of the food for human consumption,
  - (i) take samples of any thing, other than for the purpose of analysis, that the authorised officer reasonably believes may be used as evidence that an offence has been, or is being, committed under this Act or the regulations,

- (j) examine any records or documents referred to in paragraph (b), make copies of those records or documents or any part of them and, for that purpose, take away and retain (for such time as may be reasonably necessary) any such records or documents or any part of them,
  - (k) stop and detain any vehicle that the authorised officer is authorised by this subsection to enter,
  - (l) open, or require to be opened, any container used for the conveyance of goods, or any package, that the authorised officer reasonably believes to contain any food sold or intended for sale, or any equipment,
  - (m) take such photographs, films or audio or visual recordings as the authorised officer considers necessary,
  - (n) take any measurements and make sketches or drawings or any other type of record,
  - (o) require a person to provide information or answer questions in connection with the authorised officer's functions under this Act or to produce any record, document or thing that an authorised officer is authorised to examine under this Act,
  - (p) require a person to state the person's name and residential address,
  - (q) generally make such investigations and inquiries as may be necessary to ascertain whether an offence under this Act or the regulations has been or is being committed.
- (2) This section does not authorise entry into any part of premises that is being used solely for residential purposes, except:
- (a) with the consent of the occupier of the premises, or
  - (b) under the authority of a search warrant, or
  - (c) if that part of the premises is being used for the preparation or service of meals provided with paid accommodation.

### **38 Power of seizure**

An authorised officer may seize any food, or any vehicle, equipment, package or labelling or advertising material, or any other thing at all, that the authorised officer believes on reasonable grounds:

- (a) is evidence that an offence under this Act or the regulations has been or is being committed, or

- (b) does not comply with a provision of this Act or the regulations, or, in the case of food, is labelled or packaged in a way that does not comply with a provision of this Act or the regulations.

### **39 Search warrants**

- (1) An authorised officer may apply to an authorised justice for a search warrant if the authorised officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant, when accompanied by a police officer, and such other person (if any) as is named in the warrant:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

### **40 Failure to comply with requirements of authorised officers**

- (1) A person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer duly made under this Division.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

- (2) Such a requirement is not duly made unless, at the time of the making of the requirement, the person of whom the requirement is made is informed by the authorised officer that a refusal or failure to comply with the requirement may constitute an offence.

### **41 Interfering with seized items**

A person must not, without the permission of an authorised officer, detain, remove or tamper with any food, vehicle, equipment, package or labelling or advertising material or other thing that has

been seized under this Act, unless it has been returned in accordance with Division 2 or an order disallowing the seizure has been made under that Division.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

#### **42 False information**

A person must not, in connection with a requirement or direction under this Act, provide any information or produce any document that the person knows is false or misleading in a material particular.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

#### **43 Obstructing or impersonating authorised officers**

- (1) A person must not, without reasonable excuse, resist, obstruct, or attempt to obstruct, an authorised officer in the exercise of the authorised officer's functions under this Act.
- (2) A person must not impersonate an authorised officer.
- (3) A person must not threaten, intimidate or assault an authorised officer in the exercise of the authorised officer's functions under this Act.

Maximum penalty: 500 penalty units.

### **Division 2      Items seized by authorised officers**

#### **44 Seized items**

- (1) Any item seized under this Part may, at the option of the authorised officer who seized the item or of any authorised officer acting in his or her place, be detained in the premises where it was found or be removed to another place and detained there.
- (2) If the item is to be detained in the premises where it was found, the authorised officer:
  - (a) may place it in a room, compartment or cabinet in those premises, and
  - (b) may mark, fasten and seal the door or opening providing access to that room, compartment or cabinet, and
  - (c) must ensure that it is marked in such a way as to indicate that it has been seized under this Act.



**45 Notification of seizure**

An authorised officer who seizes any item under this Part must, as soon as practicable after the seizure, give the person from whom the item was seized written notification of the seizure that includes the following:

- (a) a description of the items seized,
- (b) the reason for the seizure,
- (c) an explanation of the person's right to make an application to the court under section 52 for an order disallowing the seizure,
- (d) the address of the place where the item is held if the item has been removed from the premises where it was seized,
- (e) the name of the enforcement agency to whom the authorised officer reports.

**46 Destruction of filthy, decomposed or putrid matter**

If an authorised officer who has seized food under this Part is satisfied that the food consists wholly or partly of filthy, decomposed or putrid matter or that it poses an immediate risk to health or property, the authorised officer (disregarding any provision to the contrary in this Part) may cause the food to be destroyed.

**47 Return of seized item**

If, before any item seized under this Part is forfeited to the Crown under this Division, the enforcement agency concerned becomes satisfied that there has been no contravention of this Act or the regulations of which the item is evidence, the enforcement agency must, as soon as practicable, cause the item to be delivered to:

- (a) the person from whom it was seized, or
- (b) such other person as appears to the enforcement agency to be entitled to it.

**48 Forfeiture of item**

- (1) An item seized under this Part is forfeited to the Crown:
  - (a) on the expiration of the period allowed by section 52 for the making of an application for an order disallowing the seizure if the item has not been dealt with under section 47 and no application under section 52 has been made within that period, or
  - (b) if an application for an order disallowing the seizure has been made under section 52 but the application has been refused or has been withdrawn before a decision on the application has been made, on the date on which the application is refused or withdrawn.
- (2) An item forfeited to the Crown under this section may be destroyed, sold or otherwise disposed of as the enforcement agency concerned may, generally or in a particular case, direct.

**49 Cost of destruction or disposal of forfeited item**

- (1) A person who was the owner of an item immediately before its forfeiture under this Division is liable for any cost incurred by or on behalf of the enforcement agency concerned in connection with the lawful destruction or disposal of the item (including any storage costs) and any such cost is taken to be a debt due to the enforcement agency from that person.
- (2) In any proceedings for the recovery of the debt, a certificate signed by the enforcement agency stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

**50 Return of forfeited item**

- (1) An item seized under this Part that is forfeited under this Division and that has not been destroyed or otherwise disposed of in a manner that would prevent its return must, as soon as practicable, be delivered to the person from whom it was seized, or such other person as appears to the enforcement agency concerned to be entitled to it, if the enforcement agency becomes satisfied that no contravention of this Act or the regulations has been committed in relation to the item.
- (2) On being so delivered, any proprietary and other interests in the item that existed immediately before its forfeiture are restored.

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**51 Compensation to be paid in certain circumstances**

- (1) A person may apply for compensation for an item seized under this Part to the enforcement agency that appointed the authorised officer who seized the item, but only if the period allowed by section 52 for the making of an application for an order disallowing the seizure has expired and no application has been made.
- (2) An enforcement agency is, on an application made in accordance with this section, to pay such compensation as is just and reasonable in relation to any item seized under this Part by an authorised officer appointed by it if:
  - (a) no contravention of this Act or the regulations has been committed in relation to the item, and
  - (b) the item cannot be returned or has in consequence of the seizure depreciated in value.
- (3) An enforcement agency required to make a determination under subsection (2) as to the payment of compensation is to send written notification of its determination to the person from whom the item was seized and any person seeking compensation under this section.
- (4) If an enforcement agency determines to pay compensation under this section in relation to an item, the compensation is to be paid to the person from whom the item was seized, or such other person as appears to the enforcement agency to be entitled to it.
- (5) A person from whom an item was seized under this Part, or any other person who has sought compensation under this section, who is dissatisfied with a determination by an enforcement agency under this section as to the payment of such compensation may apply to the Administrative Decisions Tribunal for a review of the determination within 10 days after the date on which notification of the determination was received.

**52 Application for order disallowing seizure**

- (1) A person claiming to be entitled to any item seized under this Part may, within 10 days after the date on which the seizure took place, lodge an application with the District Court or a Local Court for an order disallowing the seizure.
- (2) The application is to be made in accordance with the rules governing the court and is not to be heard unless the applicant has previously served a copy of the application on the enforcement agency concerned.

**53 Enforcement agency entitled to answer application**

The enforcement agency concerned is entitled to appear as respondent at the hearing of an application made under section 52.

**54 Order disallowing seizure of item**

The court, on the hearing of an application made under section 52, must make an order disallowing the seizure of an item if:

- (a) it is proved that the applicant would, but for the seizure, be entitled to the item and it is not proved that an offence under this Act or the regulations was being, or had been, committed, being an offence of which the item was evidence, or
- (b) in the opinion of the court, there are exceptional circumstances justifying the making of such an order,

but otherwise the court must refuse the application.

**55 Ancillary orders**

- (1) In the event that the court makes an order for the return of any item seized under this Part, it must also make one or both of the following orders:
  - (a) an order directing the respondent to cause the item to be delivered to the applicant or to such other person as appears to the court to be entitled to it,
  - (b) if the item cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing the enforcement agency concerned to pay to the applicant such amount by way of compensation as the court considers to be just and reasonable.
- (2) Despite subsection (1), the court is not to award an amount of compensation that exceeds its general monetary jurisdiction.
- (3) The award of costs with respect to the hearing of the application lies in the discretion of the court.
- (4) If the court makes an order for the payment of any amount as compensation or awards any amount as costs, the order is enforceable as a judgment of the court.

**56 Adjournment pending hearing of other proceedings**

If on the hearing of an application made under section 52 it appears to the court that the item that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence under this Act or the regulations or under any other Act or regulations under any other Act, the court, on the application of the respondent or on its own motion, may adjourn the hearing until the conclusion of those proceedings.

## **Part 5 Improvement notices and prohibition orders for premises or equipment**

### **57 Unclean or unfit premises, vehicles or equipment**

If an authorised officer believes, on reasonable grounds, that:

- (a) any premises used by a food business in connection with the handling of food intended for sale or any equipment or food transport vehicle is in an unclean or insanitary condition or is otherwise unfit for the purpose for which it is designed or intended to be used, or
- (b) any premises used by a food business in connection with the handling of food intended for sale or any equipment or food transport vehicle does not comply with a provision of the Food Safety Standards, or
- (c) in relation to any premises used in connection with the handling of food for sale or any food transport vehicle, any relevant food safety program prepared in accordance with the regulations is not being implemented adequately by a food business, or
- (d) any provision of the Food Standards Code is being contravened in relation to the handling of food intended for sale on any premises or in any food transport vehicle used by a food business in connection with the handling of food intended for sale,

the authorised officer may serve an improvement notice on the proprietor of the food business in accordance with this Part.

### **58 Improvement notice**

- (1) An improvement notice is to take the form of an order that:
  - (a) premises, equipment or a food transport vehicle be put into a clean and sanitary condition, or be repaired, to the satisfaction of an authorised officer, or
  - (b) equipment or a vehicle be replaced, or
  - (c) a food safety program be prepared if required by the regulations, or
  - (d) a food safety program required by the regulations be revised so as to comply with the requirements of the regulations, or

- (e) in relation to the handling of food intended for sale, measures be taken to implement the provisions of any relevant food safety program required to be prepared by the regulations, or
- (f) in relation to the handling of food intended for sale, measures be taken to implement the requirements of the Food Safety Standards,

within a period of 24 hours (or such longer period as is specified in the notice) after the service of the notice on the proprietor of the food business.

- (2) Before the end of the period specified in the improvement notice, the authorised officer who issued the notice may, on his or her own motion or on the application of the proprietor of the food business, extend the period within which the proprietor of the food business is to take action in accordance with the notice.
- (3) An improvement notice is to state that it is issued under this section.

#### **59 Compliance with improvement notice**

- (1) If an improvement notice is complied with, an authorised officer is to note the date of compliance on a copy of the notice.
- (2) An authorised officer must give a copy of an improvement notice, noted in accordance with this section, to the person on whom the improvement notice was served if requested to do so by the person.

#### **60 Prohibition order**

- (1) If a regulatory authority or an enforcement agency believes, on reasonable grounds:
  - (a) that any of the circumstances specified in section 57 (a), (b), (c) or (d) exist, and
  - (b) that:
    - (i) the proprietor of a food business has not complied with an improvement notice within the time required by section 58 for compliance, or
    - (ii) the issue of the order is necessary to prevent or mitigate a serious danger to public health,

the regulatory authority or the enforcement agency may serve a prohibition order on the proprietor of the food business in accordance with this Part.

- (2) A prohibition order is to take the form of an order that:
- (a) no food intended for sale is to be handled on specified premises or a specified part of specified premises, or
  - (b) no food intended for sale is to be conveyed in a specified vehicle, or
  - (c) specified equipment is not to be used in connection with food intended for sale, or
  - (d) no food intended for sale is to be handled by a food business in a specified way or for a specified purpose,

until the proprietor of the food business has been given a certificate of clearance stating that the premises, part of the premises, vehicle or equipment may be used for the handling or conveyance of food intended for sale, or for use in connection with such food, or that the food may be handled in the specified way or for the specified purpose, as the case may be.

- (3) A prohibition order is to state that it is issued under this section.
- (4) The regulatory authority or person that made the order must give a certificate of clearance if, after an inspection of the premises, part of the premises, vehicle or equipment, or the way of handling food, specified in the prohibition order, the regulatory authority or person finds, by the regulatory authority's or person's own inspection or the report of an authorised officer, that:
- (a) the premises, part of the premises, vehicle or equipment, or the handling of food by the food business in the specified way or for the specified purpose, is not a serious danger to public health, and
  - (b) the person on whom the prohibition order was served has complied with the prohibition order and any improvement notices served on the person.

## **61 Scope of notices and orders**

An improvement notice or a prohibition order may be made with respect to any one or more of the following:

- (a) any premises or any part of any premises, food transport vehicle or equipment specified in the notice or order,
- (b) all equipment contained on any premises or any part of any premises, or in a food transport vehicle, specified in the notice or order, or any specified equipment so contained,



- (c) the handling of food intended for sale by a food business in a specified way or for a specified purpose.

## **62 Notices and orders to contain certain information**

An improvement notice or prohibition order under this Part:

- (a) must specify any provision of the Food Standards Code to which it relates, and
- (b) may specify particular action to be taken by a person to ensure compliance with the provision of the Food Standards Code to which it relates.

## **63 Request for re-inspection**

- (1) The proprietor of the food business whose premises (other than a vehicle) are affected by a prohibition order may at any time after the order has been served make a written request to the regulatory authority or person who made the order to cause the premises to be inspected by an authorised officer.
- (2) The proprietor of the food business whose vehicle or equipment is affected by a prohibition order may at any time after the order has been served make a written request to the regulatory authority or person who made the order to cause the vehicle or equipment to be inspected by an authorised officer:
  - (a) at the place where it was originally inspected, or
  - (b) if it is not convenient for it to be inspected at that place, at some other place that the regulatory authority or person who made the order has agreed to.
- (3) If a request for inspection is made under this section and the premises, vehicle or equipment concerned, through no fault of the proprietor of the food business, is not inspected by an authorised officer within the period of 48 hours of the receipt of the request by the regulatory authority or person, a certificate of clearance is taken to have been given to the proprietor of the food business under section 60.

## **64 Contravention of prohibition order**

A person must not contravene or fail to comply with a prohibition order served on the person under this Part.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

**65 Review of decision to refuse certificate of clearance**

The proprietor of a food business on whom a prohibition order has been served may apply to the Administrative Decisions Tribunal for a review of a decision of the regulatory authority or the person who made the order to refuse to give a certificate of clearance under section 60 to the proprietor.

**66 Compensation**

- (1) A person bound by a prohibition order who suffers loss as a result of the making of the order may apply to the regulatory authority or person who made the order for compensation if the person bound by the order considers that there were no grounds for the making of the order.
- (2) If there were no grounds for the making of the order, the regulatory authority or enforcement agency is to pay such compensation to the applicant as is just and reasonable.
- (3) The regulatory authority or enforcement agency is to send written notification of its determination as to the payment of compensation under this section to each applicant for the payment of such compensation.
- (4) If the regulatory authority or enforcement agency has not determined an application for compensation under this section within 28 days of receiving the application, the regulatory authority or enforcement agency is taken to have refused to pay any compensation.
- (5) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the regulatory authority or enforcement agency as to the refusal to pay compensation or as to the amount of compensation may apply to the Administrative Decisions Tribunal for a review of the determination:
  - (a) within 28 days after the day on which notification of the determination was received, or
  - (b) in a case to which subsection (4) applies, within 28 days after the expiration of the 28-day period referred to in that subsection.

## **Part 6 Taking and analysis of samples**

### **Division 1 Taking of samples**

#### **67 Proprietor to be informed**

Whenever an authorised officer obtains a sample of food for the purposes of analysis, an authorised officer must, either before or as soon as practicable after obtaining the sample, inform:

- (a) the proprietor of the food business from which the sample is to be taken or was taken, or
- (b) if the proprietor is not present or readily available, the person from whom the sample was obtained or who was in charge of the food from which the sample was taken,

of the authorised officer's intention to have the sample analysed.

#### **68 Payment for sample**

An authorised officer when obtaining a sample of food must pay, or tender payment of:

- (a) the amount prescribed by the regulations as the amount payable for the sample concerned, or
- (b) if no such amount is prescribed by the regulations, an amount equal to the current market value of the sample,

to the person from whom the sample is obtained.

#### **69 Samples from vending machines**

Sections 67 and 68 do not apply to the obtaining of a sample by an authorised officer from a vending machine if the authorised officer obtains the sample by making proper payment for it and the authorised officer cannot identify anyone who at the time appears to be in charge of the machine.

#### **70 Packaged food**

An authorised officer who takes a sample of food for the purposes of this Act that is contained in a closed package intended for retail sale must take the whole of the package unless the package contains two or more smaller packages of the same food.

**71 Procedure to be followed**

- (1) This section applies to the taking of samples for the purposes of this Act except to the extent that the Food Standards Code otherwise provides.
- (2) An authorised officer who obtains a sample of food for the purposes of analysis must (unless subsection (3) applies):
  - (a) divide the sample into 3 separate parts and mark and seal or fasten each part in such manner as its nature will permit, and
  - (b) leave one part with the proprietor of the food business or any other person from whom the sample was obtained or a person appearing to be the employee or agent of that proprietor or other person, and
  - (c) submit one of the remaining parts for analysis, and
  - (d) retain the other remaining part for future comparison.
- (3) If the division of a sample for analysis into 3 separate parts in accordance with subsection (2) would in the opinion of the authorised officer:
  - (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis, or
  - (b) result in the separate parts being of an insufficient size for accurate analysis, or
  - (c) render the sample in any other way unsuitable for analysis, including a method of analysis prescribed by the regulations in relation to the food from which the sample was taken,the authorised officer may take, in accordance with this section, as many samples as the authorised officer considers necessary to enable an accurate analysis to be carried out and may deal with the sample or samples in such manner as is appropriate in the circumstances.
- (4) If a sample of food is taken by an authorised officer in the form of separate or severable objects, it is not necessary, in dividing that sample into parts in accordance with this section, to divide any one of those objects, and it is sufficient compliance with this section if the authorised officer:
  - (a) takes a number of those objects, and
  - (b) divides the number so taken into the requisite number of parts so that each part consists of one or more than one of the separate or severable objects, and

- (c) deals with those parts in accordance with the preceding provisions of this section.

## **72 Samples to be submitted for analysis**

An authorised officer must submit any sample obtained in accordance with this Division for analysis under Division 2 unless no longer of the opinion that the sample ought to be analysed.

## **Division 2 Procedures relating to analyses**

### **73 Compliance with Food Standards Code**

A person who carries out an analysis for the purposes of this Act is to comply with any requirements of the Food Standards Code relating to the carrying out of analyses.

### **74 Certificate of analysis**

- (1) This section applies to an analysis that is carried out:
- (a) by an approved laboratory, or
  - (b) by an approved analyst, or
  - (c) under the supervision of an approved analyst,
- for the purposes of this Act.
- (2) On completion of an analysis to which this section applies:
- (a) the person in charge of the laboratory at which the analysis was carried out, or
  - (b) the approved analyst who carried out the analysis, or
  - (c) the approved analyst who supervised the carrying out of the analysis,
- is to give the person who requested the analysis, or an agent of the person, a certificate of analysis, in the approved form, that complies with the requirements of subsection (3).
- (3) The certificate of analysis must:
- (a) be dated and signed by the person in charge of the laboratory at which the analysis was carried out or by the approved analyst who carried out the analysis or who supervised the carrying out of the analysis, and
  - (b) contain a written report of the analysis that sets out the findings, and

- (c) specify the requirements, if any, of the Food Standards Code relating to the carrying out of the analysis and certify that the analysis was carried out in accordance with those requirements.

### **Division 3      Approval of laboratories**

#### **75    Approval of laboratories**

- (1) The regulatory authority may approve laboratories for the purposes of carrying out analyses under this Act.
- (2) A person providing or intending to provide analysis services at a laboratory may make an application, in the approved form, to the regulatory authority for an approval of the laboratory under this Division.
- (3) The application is to be accompanied by:
  - (a) such information as the regulatory authority requires to determine the application, and
  - (b) the fee, if any, prescribed by the regulations.
- (4) The regulatory authority may, after considering an application for approval:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (5) If the regulatory authority grants an application for approval, it must issue the applicant with a written approval that sets out the conditions to which the approval is subject.
- (6) If the regulatory authority refuses an application for approval, the regulatory authority must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

#### **76    Term of approval**

Except during any period of suspension, an approval of a laboratory granted under this Division remains in force until cancelled.

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**77 Approved laboratory to give notice of certain interests**

The person in charge of an approved laboratory must notify the regulatory authority of any direct or indirect interest in any food business that a person concerned in the management of, or an employee of, the approved laboratory has as soon as possible after becoming aware of that interest.

Maximum penalty: 50 penalty units.

**78 Variation of conditions or suspension or cancellation of approval of laboratory**

- (1) The regulatory authority may vary the conditions of, or suspend or cancel, the approval of a laboratory under this Division.
- (2) An approval of a laboratory may be suspended or cancelled on one or more of the following grounds:
  - (a) if the regulatory authority is satisfied that a person providing services at the laboratory has wilfully or negligently contravened or failed to comply with any provision of this Act or the regulations,
  - (b) if the regulatory authority is satisfied that a person providing services at the laboratory has contravened a condition to which the approval is subject,
  - (c) if the regulatory authority is satisfied that a person in charge of, concerned in the management of or employed by, the laboratory has a direct or indirect interest in any food business that, in the opinion of the regulatory authority, could affect the carrying out of the laboratory's functions under this Act,
  - (d) at the request of the person in charge of the laboratory,
  - (e) for any other reason that the regulatory authority considers appropriate.
- (3) The regulatory authority may only vary the conditions of, or suspend or cancel, the approval of a laboratory:
  - (a) after having given the person in charge of the laboratory:
    - (i) written reasons of its intention to vary, suspend or cancel, and
    - (ii) an opportunity to make submissions, and
  - (b) after having considered any submissions duly made by the person.

- (4) Subsection (3) does not apply to the cancellation of an approval at the request of the person in charge of the laboratory.
- (5) A variation of the conditions of, or the suspension or cancellation of, the approval of a laboratory:
  - (a) must be made by notice in writing, and
  - (b) must be served on the person in charge of the laboratory, and
  - (c) takes effect at the time at which the notice is served or at a later time specified in the notice.

#### **79 Review of decisions relating to approval**

- (1) An applicant for an approval of a laboratory under this Division, or the holder of such an approval, may apply to the Administrative Decisions Tribunal for a review of any of the following decisions relating to the application or approval:
  - (a) the grant or refusal of an application for approval of a laboratory under this Division,
  - (b) the imposition of conditions on an approval,
  - (c) the variation of conditions of an approval,
  - (d) the suspension or cancellation of an approval.
- (2) An application under this section may only be made within 10 days after service of:
  - (a) the relevant written approval or notice of refusal under section 75, in the case of an application for the review of a decision referred to in subsection (1) (a) or (b), or
  - (b) the relevant notice of the variation, suspension or cancellation under section 78, in the case of an application for the review of a decision referred to in subsection (1) (c) or (d).

#### **80 List of approved laboratories to be maintained**

- (1) The regulatory authority is to prepare and maintain a list of approved laboratories.
- (2) The list is to be made publicly available and is to be revised at least annually.



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**Division 4      Approval of analysts****81    Approval of persons to carry out analyses**

- (1) The regulatory authority may approve natural persons for the purposes of carrying out analyses under this Act.
- (2) A natural person may make an application, in the approved form, to the regulatory authority for an approval under this Division.
- (3) The application is to be accompanied by:
  - (a) such information as the regulatory authority requires to determine the application, and
  - (b) the fee, if any, prescribed by the regulations.
- (4) The regulatory authority may, after considering an application for approval:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (5) If the regulatory authority grants an application for approval, it must issue the applicant with a written approval that sets out the conditions to which the approval is subject.
- (6) If the regulatory authority refuses an application for approval, the regulatory authority must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

**82    Term of approval**

Except during any period of suspension, an approval of a person granted under this Division remains in force until cancelled.

**83    Approved analyst to give notice of certain interests**

A person who is an approved analyst must notify the regulatory authority of any direct or indirect interest in any food business that the person has as soon as possible after becoming aware of that interest.

Maximum penalty: 50 penalty units.

**84    Variation of conditions or suspension or cancellation of approval of analyst**

- (1) The regulatory authority may vary the conditions of, or suspend or cancel, an approval under this Division.

- (2) An approval of a person under this Division may be suspended or cancelled on one or more of the following grounds:
  - (a) if the regulatory authority is satisfied that the person has wilfully or negligently contravened any provision of this Act or the regulations,
  - (b) if the regulatory authority is satisfied that the person has contravened a condition to which the approval is subject,
  - (c) if the regulatory authority is satisfied that the person has a direct or indirect interest in any food business that, in the opinion of the regulatory authority, could affect the carrying out of the person's functions under this Act,
  - (d) at the request of the person,
  - (e) for any other reason that the regulatory authority considers appropriate.
- (3) The regulatory authority may only vary the conditions of, or suspend or cancel, the approval of a person under this Division:
  - (a) after having given the person:
    - (i) written reasons of its intention to vary, suspend or cancel, and
    - (ii) an opportunity to make submissions, and
  - (b) after having considered any submissions duly made by the person.
- (4) Subsection (3) does not apply to the cancellation of an approval at the request of the person to whom the approval relates.
- (5) A variation of the conditions of, or the suspension or cancellation of, an approval of a person under this Division:
  - (a) must be made by notice in writing, and
  - (b) must be served on the person, and
  - (c) takes effect at the time at which the notice is served or at a later time specified in the notice.

## **85 Review of decisions relating to approval**

- (1) An applicant for an approval under this Division, or the holder of such an approval, may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the regulatory authority relating to the application or approval:

- (a) the grant or refusal of an application for approval under this Division, or
  - (b) the imposition of conditions on an approval, or
  - (c) the variation of conditions of an approval, or
  - (d) the suspension or cancellation of an approval.
- (2) An application under this section may only be made within 10 days after service of:
- (a) the relevant written approval or notice of refusal under section 81, in the case of an application for the review of a decision referred to in subsection (1) (a) or (b), or
  - (b) the relevant notice of the variation, suspension or cancellation under section 84, in the case of an application for the review of a decision referred to in subsection (1) (c) or (d).

**86 List of approved analysts to be maintained**

- (1) The regulatory authority is to prepare and maintain a list of approved analysts.
- (2) The list is to be made publicly available and is to be revised at least annually.

## **Part 7 Auditing**

### **Division 1 Approval of food safety auditors**

#### **87 Approval of food safety auditors**

- (1) The regulatory authority may approve a natural person to be a food safety auditor for the purposes of this Act if the regulatory authority is satisfied that the person is competent to carry out the functions of a food safety auditor having regard to:
  - (a) the person's technical skills and experience, and
  - (b) any guidelines relating to competency criteria approved by the regulatory authority.
- (2) A natural person may make an application, in the approved form, to the regulatory authority for an approval under this Part.
- (3) The application is to be accompanied by:
  - (a) such information as the regulatory authority requires to determine the application, and
  - (b) the fee, if any, prescribed by the regulations.
- (4) The regulatory authority may, after considering an application for approval:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (5) If the regulatory authority grants an application for approval, it must issue the applicant with a written approval that sets out any conditions to which the approval is subject.
- (6) If the regulatory authority refuses an application for approval, the regulatory authority must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

#### **88 Term of approval**

Except during any period of suspension, an approval granted under this Division remains in force for the period specified in the approval unless sooner cancelled.

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**89 Food safety auditor to give notice of certain interests**

- (1) A food safety auditor must notify the regulatory authority of any direct or indirect interest in any food business that the auditor has as soon as possible after becoming aware of that interest.

Maximum penalty: 50 penalty units.

- (2) Payment to an auditor for carrying out the functions of an auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (1).

**90 Variation of conditions or suspension or cancellation of approval of auditor**

- (1) The regulatory authority may vary the conditions of, or suspend or cancel, an approval under this Division.
- (2) An approval of a person may be suspended or cancelled on one or more of the following grounds:
- (a) if the regulatory authority is satisfied that the person has wilfully or negligently contravened any provision of this Act or the regulations,
  - (b) if the regulatory authority is satisfied that the person has contravened a condition to which the approval is subject,
  - (c) if the regulatory authority is satisfied that the person has not competently carried out any duty of an auditor under this Act,
  - (d) if the regulatory authority is satisfied that the person has a direct or indirect interest in any food business that, in the opinion of the regulatory authority, could affect the performance of the person's duties under this Act,
  - (e) at the request of the person,
  - (f) for any other reason that the regulatory authority considers appropriate.
- (3) Payment to an auditor for performing the duties of an auditor does not constitute a direct or indirect interest in a food business for the purposes of subsection (2) (d).
- (4) The regulatory authority may only vary the conditions of, or suspend or cancel, the approval of a person:
- (a) after having given the person:
    - (i) written reasons of its intention to vary, suspend or cancel, and

- (ii) an opportunity to make submissions, and
  - (b) after having considered any submissions duly made by the person.
- (5) Subsection (4) does not apply to the cancellation of an approval at the request of the person to whom the approval relates.
- (6) A variation of the conditions of, or the suspension or cancellation of, the approval of a person under this Part:
  - (a) must be by notice in writing, and
  - (b) must be served on the person to whom the approval relates, and
  - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

**91 Review of decisions relating to approvals**

- (1) An applicant for an approval under this Division, or the holder of such an approval, may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the regulatory authority relating to the application or approval:
  - (a) the grant or refusal of an application for an approval under this Division,
  - (b) the imposition of conditions on an approval,
  - (c) the variation of conditions of an approval,
  - (d) the suspension or cancellation of an approval.
- (2) An applicant for an approval under this Division, or the holder of such an approval may apply to the regulatory authority for a review of any of the following decisions relating to the application or approval if the decision was made by a body acting under a delegation given by the regulatory authority:
  - (a) the grant or refusal of an application for an approval under this Division,
  - (b) the imposition of conditions on an approval,
  - (c) the variation of conditions of an approval,
  - (d) the suspension or cancellation of an approval.
- (3) An application under this section may only be made within 10 days after service of:

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- (a) the relevant written approval or notice of refusal under section 87, in the case of an application for the review of a decision referred to in subsection (1) (a) or (b) or (2) (a) or (b), or
  - (b) the relevant notice of the variation, suspension or cancellation under section 90, in the case of an application for the review of a decision referred to in subsection (1) (c) or (d) or (2) (c) or (d).

## **Division 2     Auditing and reporting requirements**

### **92    Food safety programs and auditing requirements**

- (1) The proprietor of a food business must ensure that any requirement imposed by the regulations in relation to the preparation, implementation, maintenance or monitoring of a food safety program for the food business is complied with.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

- (2) The proprietor of a food business must ensure that any food safety program required to be prepared by the regulations in relation to the food business is audited at least as frequently as is determined under section 93 (1), or as redetermined under section 96, in relation to the food business.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

### **93    Priority classification system and frequency of auditing**

- (1) The appropriate enforcement agency must determine:
  - (a) the priority classification of individual food businesses for the purposes of the application of any requirements of the regulations relating to food safety programs, and
  - (b) the frequency of auditing of any food safety programs required to be prepared by the regulations in relation to the food businesses.
- (2) The determination must be made having regard to a priority classification system for types of food businesses approved by the regulatory authority.
- (3) The appropriate enforcement agency must provide written notification to the proprietor of a food business of:

- (a) the priority classification it has determined for the food business, and
  - (b) the frequency of auditing of any food safety programs required to be prepared by the regulations in relation to the food business, and
  - (c) the date by which the food business must have implemented any food safety program required to be prepared by the regulations in relation to the food business.
- (4) The appropriate enforcement agency may change the priority classification of an individual food business if the appropriate enforcement agency believes that the classification is inappropriate for any reason, including as a result of changes made to the conduct of the food business.
- (5) The appropriate enforcement agency must provide written notification to the proprietor of a food business of any change in priority classification of the food business under subsection (4).

#### **94 Duties of food safety auditors**

A food safety auditor has the following duties:

- (a) to carry out audits of any food safety programs required by the regulations to be prepared in relation to food businesses having regard to the requirements of the regulations,
- (b) to carry out any necessary follow-up action, including further audits, if necessary, to determine whether action has been taken to remedy any deficiencies of any such food safety program identified in an audit,
- (c) to carry out assessments of food businesses to ascertain their compliance with requirements of the Food Safety Standards,
- (d) to report in accordance with section 95.

#### **95 Reporting requirements**

- (1) A food safety auditor must report in writing to the appropriate enforcement agency the results of any audit or assessment carried out by the food safety auditor for the purposes of this Act.
- (2) A report under subsection (1) must:
  - (a) be in the prescribed form, and
  - (b) be submitted to the appropriate enforcement agency within 21 days after the completion of the audit or assessment, and



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- (c) take account of any action taken before the submission of the report to remedy any deficiency identified by the food safety auditor.
- (3) A food safety auditor must indicate in a report of an audit under subsection (1):
- (a) whether or not the food safety auditor is of the opinion that the food business is being carried on in compliance with the requirements of the regulations relating to food safety programs, and
  - (b) any such requirements that the food safety auditor is of the opinion are being contravened in relation to the food business and the manner in which they are being contravened.
- (4) A food safety auditor must indicate in a report of an assessment under subsection (1):
- (a) whether or not the food safety auditor is of the opinion that the food business is being carried on in compliance with the provisions of the Food Safety Standards, and
  - (b) any such provisions that the food safety auditor is of the opinion are being contravened in relation to the food business and the manner in which they are being contravened.
- (5) A food safety auditor must report to the appropriate enforcement agency any contravention of this Act, the regulations relating to food safety programs, or the Food Safety Standards that comes to the food safety auditor's attention in the course of carrying out an audit or assessment for the purposes of this Act:
- (a) that is an imminent and serious risk to the safety of food intended for sale, or
  - (b) that will cause significant unsuitability of food intended for sale,
- as soon as possible but in any event within 24 hours after the contravention comes to the food safety auditor's attention.
- (6) A food safety auditor must report in writing to the appropriate enforcement agency, giving reasons, if the food safety auditor considers that the priority classification of a food business that has been audited by the food safety auditor should be changed.
- (7) A copy of a report provided to the appropriate enforcement agency in relation to an audit or assessment must be given to the proprietor of the food business concerned.

## **96 Redetermination of frequency of auditing**

- (1) In this section:
- food safety program*, in relation to a food business, means the food safety program (if any) required by the regulations to be prepared for the food business.
- priority classification* means a priority classification set out in the priority classification system referred to in section 93.
- (2) A food safety auditor may determine that the audit frequency of a food safety program for a food business that has been audited by a food safety auditor be changed from the initial audit frequency applicable to a food business within the relevant priority classification to another audit frequency.
- (3) The audit frequency to which the initial frequency may be changed must be within the range of audit frequencies appropriate for food businesses within that relevant priority classification.
- (4) A food safety auditor must have regard to the following matters in making such a determination:
- (a) the compliance history of the food business concerned in relation to any requirements of the regulations regarding food safety programs and the requirements of the Food Safety Standards,
  - (b) the audit compliance history (if any) established before the commencement of this subsection.

## **97 Certificates of authority of food safety auditors**

- (1) The regulatory authority is to provide each food safety auditor with a certificate of authority as a food safety auditor.
- (2) The certificate of authority:
- (a) must state that it is issued under this Act, and
  - (b) must give the name of the person to whom it is issued and bear a photograph of that person and the person's signature, and
  - (c) must state the date, if any, on which it expires, and
  - (d) must specify any conditions to which the person's approval is subject, and
  - (e) must bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

**98 List of food safety auditors to be maintained**

- (1) The regulatory authority is to prepare and maintain a list of food safety auditors.
- (2) The list is to be made publicly available and is to be revised at least annually.

**99 Obstructing or impersonating food safety auditors**

- (1) A person must not, without reasonable excuse, resist, obstruct or attempt to obstruct, a food safety auditor in the exercise of the food safety auditor's functions under this Act.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

- (2) A person who impersonates a food safety auditor is guilty of an offence.

Maximum penalty: 500 penalty units.

## **Part 8 Notification and registration of food businesses and approval of food premises**

### **100 Notification of conduct of food businesses**

The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted.

Maximum penalty: 500 penalty units in the case of an individual and 1,200 penalty units in the case of a corporation.

### **101 Exemption in relation to notification of information**

Section 21 (to the extent to which it requires notification of the information referred to in section 100) and section 100 do not apply to the following food businesses:

- (a) any food business that is not required by the Food Safety Standards to notify that information, or
- (b) any food business that is registered under this Act or under a law prescribed by the regulations.

### **102 Registration of food businesses**

- (1) The proprietor of a food business that is required by the regulations to be registered under this Part must not carry on the food business unless it is registered under this Part.

Maximum penalty: 500 penalty units in the case of an individual and 1,200 penalty units in the case of a corporation.

- (2) The appropriate enforcement agency may register a food business for the purposes of this Part.
- (3) The proprietor of a food business may make an application, in the approved form, to the appropriate enforcement agency for the registration of the food business under this Part.
- (4) The application is to be accompanied by:
  - (a) if required by the appropriate enforcement agency, the design and fitout specifications, in a form approved by the appropriate enforcement agency, of any premises or proposed premises on which food is to be handled in the course of carrying on the food business, and

- (b) such other information as the appropriate enforcement agency requires to determine the application, and
  - (c) the fee, if any, prescribed by the regulations.
- (5) The appropriate enforcement agency may, after considering an application for registration:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (6) If the appropriate enforcement agency grants an application for registration, it must issue the applicant with a certificate of registration that sets out the conditions to which the registration is subject.
- (7) If the appropriate enforcement agency refuses an application for registration, the appropriate enforcement agency must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

### **103 Renewal of registration**

- (1) The holder of a certificate of registration under this Part may, at any time during the currency of the registration, apply to the appropriate enforcement agency for a renewal of the registration.
- (2) The application is to be accompanied by such fee, if any, as is prescribed by the regulations.
- (3) The appropriate enforcement agency may, after considering an application for renewal of registration:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (4) If the appropriate enforcement agency grants an application for renewal of registration, the registration is renewed by the issue of a further certificate of registration:
  - (a) that takes effect from the expiry of the holder's current certificate of registration, or
  - (b) if the certificate is issued after that expiry—that takes effect, or is taken to have effect, from the date specified in the certificate.

- (5) If the appropriate enforcement agency refuses an application for renewal of registration, the appropriate enforcement agency must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.
- (6) Nothing in this section gives any force to a certificate of registration that has expired or been cancelled, or otherwise affects the operation of section 104.

**104 Term of registration**

Except during any period of suspension, the registration of a food business granted under this Part remains in force for the period specified in the certificate unless sooner cancelled.

**105 Variation of conditions or suspension or cancellation of registration of food businesses**

- (1) The appropriate enforcement agency may vary the conditions of, or suspend or cancel, the registration of a food business under this Part.
- (2) The registration of a food business may be suspended or cancelled on one or more of the following grounds:
  - (a) if the appropriate enforcement agency is satisfied that there has been a contravention of any provision of this Act or the regulations in the conduct of the food business,
  - (b) if the appropriate enforcement agency is satisfied that a condition to which the registration is subject is being contravened by the food business,
  - (c) at the request of the holder of the certificate of registration,
  - (d) for any other reason that the appropriate enforcement agency considers appropriate.
- (3) The appropriate enforcement agency may only vary the conditions of, or suspend or cancel, the registration of a food business under this Part:
  - (a) after having given the holder of the certificate of registration:
    - (i) written notice of its intention to vary, suspend or cancel the registration setting out its reasons, and
    - (ii) an opportunity to make submissions, and
  - (b) after having considered any submissions duly made by the holder.

- (4) Subsection (3) does not apply to the cancellation of registration at the request of the holder of the certificate of registration.
- (5) A variation of the conditions of, or the suspension or cancellation of, the registration of premises:
  - (a) must be made by notice in writing, and
  - (b) must be served on the holder of the certificate of registration, and
  - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

#### **106 Review of decisions relating to registration**

- (1) An applicant for registration of a food business under this Part, or the holder of any such registration, may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of an enforcement agency relating to the application or registration:
  - (a) the grant or refusal of an application for the registration, or the renewal of registration, of a food business under this Part,
  - (b) the imposition of conditions on the registration of a food business,
  - (c) the variation of conditions of the registration of a food business,
  - (d) the suspension or cancellation of the registration of a food business.
- (2) An application under this section may only be made within 10 days after:
  - (a) the issue of the relevant certificate of registration under section 102 (6) or 103 (4) or the service of the relevant notice of refusal under section 102 (7) or 103 (5), in the case of an application for the review of a decision referred to in subsection (1) (a) or (b), or
  - (b) the service of the relevant notice of the variation, suspension or cancellation under section 105 (5), in the case of an application for the review of a decision referred to in subsection (1) (c) or (d).

#### **107 Register of food businesses to be maintained**

- (1) Each enforcement agency is to prepare and maintain a list of:
  - (a) food businesses notified to it under section 100, and

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Part 8            Notification and registration of food businesses and approval of food  
premises

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- (b) food businesses registered by it under section 102.
- (2) The list is to be made publicly available and is to be revised at least annually.



## **Part 9 Administration**

### **Division 1 Regulatory authority**

#### **108 Functions of the regulatory authority in relation to this Act**

The regulatory authority has such functions in relation to the administration of this Act as are conferred or imposed on it by or under this Act.

#### **109 Delegation**

- (1) The regulatory authority may delegate to:
  - (a) a member of staff of the regulatory authority, or
  - (b) an authorised officer, or
  - (c) the holder of an office prescribed by the regulations,any function of the regulatory authority under this Act that is not specified in subsection (2).
- (2) The following functions of the regulatory authority cannot be delegated:
  - (a) the power of delegation conferred by this section,
  - (b) any function under Part 3 (Emergency powers),
  - (c) any function under section 111 (Conditions on exercise of functions by enforcement agencies).
- (3) A delegate may sub-delegate to a person referred to in subsection (1) any function delegated by the regulatory authority if the delegate is authorised in writing to do so by the regulatory authority.
- (4) A function must not be delegated under this section to an enforcement agency without the consent in writing of the enforcement agency.

### **Division 2 Functions of enforcement agencies**

#### **110 Functions of enforcement agencies in relation to this Act**

- (1) An enforcement agency has such functions in relation to the administration of this Act as are conferred or imposed on it by or under this Act or are delegated to it under this Act.
- (2) A function conferred specifically on an enforcement agency (other than the regulatory authority) by this Act cannot be delegated.

**111 Conditions on exercise of functions by enforcement agencies**

The regulatory authority, after consultation with an enforcement agency, may, in writing, impose conditions or limitations on the exercise of functions under this Act by the enforcement agency.

**112 Exercise of functions by enforcement agencies**

- (1) The regulatory authority may adopt national guidelines relating to the exercise of its functions under this Act and may require other enforcement agencies and authorised officers to adopt those guidelines in the carrying out of their functions under this Act.
- (2) In this section, *national guidelines* means guidelines prepared for the purposes of this section by the Commonwealth Food Authority.

**113 Reports by enforcement agencies**

- (1) An enforcement agency (other than the regulatory authority) is to report to the regulatory authority, at such intervals as the regulatory authority requires, on the performance of functions under this Act by persons employed or engaged by the agency.
- (2) In addition to any report required under subsection (1), an enforcement agency is to forward to the regulatory authority details of any proceedings for an offence under this Act or the regulations taken by an officer of the agency within one month of the proceedings being finally dealt with.

**Division 3 Appointment of authorised officers**

**114 Appointment of authorised officers**

- (1) An enforcement agency may appoint a person to be an authorised officer for the purposes of this Act, but only if the enforcement agency considers the person has appropriate qualifications or experience to exercise the functions of an authorised officer.
- (2) Each enforcement agency is to prepare and maintain a list of authorised officers appointed by it.

**115 Certificates of authority**

- (1) An enforcement agency is to provide each authorised officer appointed by it with a certificate of authority as an authorised officer.

- (2) The functions of an authorised officer may be limited by the authorised officer's certificate of authority.
- (3) The certificate of authority:
  - (a) must state that it is issued under this Act, and
  - (b) must give the name of the person to whom it is issued and bear a photograph of that person and the person's signature, and
  - (c) must state the date, if any, on which it expires, and
  - (d) must specify any conditions to which the person's authority is subject, and
  - (e) must bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.
- (4) An authorised officer is required to produce the certificate of authority:
  - (a) if requested to do so by the proprietor of a food business whose premises are entered by the authorised officer, or
  - (b) if requested to do so by a person whom the authorised officer requires to produce anything or to answer any question.

#### **Division 4      Advisory committees**

##### **116    Establishment of advisory committees**

- (1) The Minister may establish advisory committees to assist the regulatory authority in the exercise of its functions.
- (2) An advisory committee is to consist of members appointed from persons having expertise in one or more of the following areas:
  - (a) the food industry,
  - (b) public health,
  - (c) the interests of consumers,
  - (d) the enforcement of food legislation.
- (3) In addition, the Minister may appoint as members of an advisory committee persons having expertise in nutrition, toxicology, microbiology and food technology and such other persons as the Minister considers have appropriate expertise, qualifications or experience as will enable them to make a valuable contribution to the advisory committee.

- (4) The Minister may determine the term of office and remuneration of members and the procedure of an advisory committee.

**117 Functions of advisory committees**

An advisory committee has the following functions:

- (a) to provide advice to the Minister and the regulatory authority on any issue relating to food as the Minister or the regulatory authority may require,
- (b) such other advisory functions relating to food as the Minister may determine.

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## **Part 10 Procedural and evidentiary provisions**

### **118 Nature of proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is \$10,000, despite any higher maximum monetary penalty provided in respect of the offence.

### **119 Institution of proceedings**

- (1) Proceedings for an offence under this Act or the regulations may only be instituted:
  - (a) unless paragraph (b) applies, within 12 months after the date on which the offence is alleged to have been committed, or
  - (b) if the proceedings are in respect of a sample of food, within 6 months after the date on which the sample was obtained.
- (2) The court may extend the time referred to in subsection (1) for the institution of proceedings.

### **120 Penalty notices for certain offences**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice is to be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, *authorised officer* means a police officer, the Director-General or an authorised officer as defined in section 4 (1).

#### **121 Offences by employers**

- (1) If an employee contravenes any provision of this Act or the regulations, the employer is taken to have contravened the same provision.
- (2) It is a defence in proceedings against an employer for such a contravention if it is established that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (3) An employer may be proceeded against and convicted under a provision pursuant to this section whether or not the employee has been proceeded against or been convicted under that provision.

#### **122 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:

- (a) the corporation contravened the provision without the knowledge actual, imputed or constructive of the person, or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention.

### **123 Liability of employees and agents**

- (1) Except as provided by subsection (2), it is no defence in proceedings for an offence under this Act or the regulations that the defendant was, at the time of the commission of the offence, an employee or agent of another person.
- (2) In any proceedings for an offence under this Act or the regulations, it is a defence for the defendant to prove that the defendant was under the personal supervision of the proprietor of the food business, or the owner or person in charge of the place or vehicle, in relation to which the offence was committed or of another person representing that proprietor, owner or person in charge.

### **124 Alternative verdicts for serious food offences**

- (1) If, on the trial of a person charged with an offence against section 13 the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 16 (1), the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 16 (1), and the person is liable to punishment accordingly.

- (2) If, on the trial of a person charged with an offence against section 14, the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against section 16 (2), the trier of fact may find the person not guilty of the offence charged but guilty of an offence against section 16 (2), and the person is liable to punishment accordingly.

**125 No defence to allege deterioration of sample**

In any proceedings for an offence under this Act or the regulations, it is not a defence for a person to allege that any part of a sample retained for future comparison with a sample that has been analysed has from natural causes deteriorated, perished or undergone any material change in its constitution.

**126 Onus to prove certain matters on defendant**

In any proceedings for an offence under this Act or the regulations against a defendant who was responsible for making a statement on a package or in an advertisement relating to the origin or composition of the food in question or the therapeutic or nutritive properties of the food, being a statement that is alleged to have caused the food to be falsely described, the onus of proving the correctness of the statement is on the defendant.

**127 Presumptions**

In any proceedings for an offence under this Act or the regulations, it is presumed until, on the balance of probabilities, the contrary is proved that:

- (a) any substance or thing capable of being used as food that was sold or prepared for sale or conveyed or intended for sale was sold, prepared, conveyed or intended for sale for human consumption, and
- (b) any substance or thing capable of being used as food is not for human consumption if it is prominently marked as not being for human consumption, or with words to that effect, and
- (c) food that is part of a batch, lot or consignment of food of the same class or description is representative of all of the food in that batch, lot or consignment, and
- (d) each part of a sample of food divided for the purpose of analysis under this Act is of uniform composition with every other part of that sample, and



- (e) a person who sold food in the conduct of a food business and was not the proprietor of the food business sold the food as the agent of the proprietor, and
- (f) a person who appears from any statement on a package containing food for sale to have imported, manufactured, packed or prepared the food is the importer, manufacturer, packager or preparer of the food, as the case may be, and
- (g) food that has been sold to a consumer has been sold at some time by any person who respectively imported, manufactured, prepared or packed the food, and
- (h) a signature purporting to be that of the regulatory authority, an authorised officer, the person in charge of an approved laboratory or an approved analyst is that signature.

#### **128 Certificate evidence and evidence of analysts**

- (1) A certificate of the result of an analysis obtained by the defendant or the prosecution in proceedings for an offence under this Act or the regulations is admissible in any such proceedings and evidence of the facts stated in it if:
  - (a) the certificate was issued in accordance with section 74, and
  - (b) a copy of the certificate is served by the person who obtained it on the other party to the proceedings at least 7 days before the hearing.
- (2) An analyst who carried out an analysis in relation to which a certificate is produced as evidence in proceedings as referred to in subsection (1) need not be called as a witness in the proceedings by the party producing the certificate unless the court hearing the proceedings so orders (whether on application made to it or by any other means).
- (3) In any proceedings for an offence under this Act or the regulations, the prosecution cannot rely on an analysis as evidence for the purposes of those proceedings unless the person who carried out the analysis:
  - (a) is employed or engaged by an approved laboratory, or
  - (b) is an approved analyst, or
  - (c) was acting under the supervision of an approved analyst.
- (4) In any proceedings for an offence under this Act or the regulations:

- (a) a document purporting to be a copy of any registration, approval, order, notice or authority under this Act is evidence of that registration, approval, order, notice or authority, or
- (b) a document purporting to be signed by the regulatory authority certifying that at a specified time or during a specified period:
  - (i) there was or was not in force any registration, approval, order, notice or authority in relation to a specified person or persons, or
  - (ii) that a registration, approval, order, notice or authority was or was not subject to specified conditions,is evidence of the matters contained in the document, or
- (c) a document purporting to be signed by the regulatory authority certifying:
  - (i) as to the receipt or otherwise of any notice, application or payment, or
  - (ii) that any amount of fees or other money is payable under this Act by a specified person and has not been paid at the date of the certificate,is evidence of the matters contained in the document.

**129 Power of court to order further analysis**

- (1) In any proceedings for an offence under this Act or the regulations, the court may, if satisfied that:
  - (a) there is a disagreement between the evidence of the analysts for the parties to the proceedings, and
  - (b) it is in the interests of justice to do so,order that the part or parts of any sample retained under section 71 be sent by the enforcement agency concerned to an analyst specified by the court or agreed to by the parties.
- (2) An order may be made under subsection (1) at the request of any party to the proceedings or on the court's own motion.
- (3) An analyst who is sent a part or parts of a sample for analysis under this section is to make an analysis of that part or those parts for the information of the court.
- (4) Subject to section 131, the cost of an analysis under this section is to be borne by the enforcement agency concerned.

**130 Disclosure by witnesses**

- (1) In any proceedings for an offence under this Act or the regulations, a witness for the prosecution is not compelled to disclose the fact that the witness received information, the nature of the information received or the name of the person from whom the information was received.
- (2) An authorised officer appearing as a witness in any proceedings is not compelled to produce any document containing any confidential matter made or received in his or her capacity as an authorised officer.
- (3) Despite subsections (1) and (2), a court hearing proceedings for an offence under this Act or the regulations may order the disclosure of any matter, or the production of a document, referred to in those subsections if the court considers that it is necessary in the interests of justice.

**131 Court may order costs and expenses**

Without affecting any other power of a court to award costs, a court that hears proceedings for an offence under this Act or the regulations has power to make such orders as it thinks fit in respect of the costs and expenses of and incidental to the examination, seizure, detention, storage, analysis (including further analysis), destruction or other disposition of any thing the subject of those proceedings.

**132 Court may order corrective advertising**

A court by which a person (in this section referred to as *the defendant*) is found guilty of an offence under Part 2, may make one or both of the following orders:

- (a) an order requiring the defendant to disclose in a particular manner to the public, to a particular person or to a particular class of persons specified information, or information of a specified kind, which the defendant possesses or to which the defendant has access,
- (b) an order requiring the defendant to publish, at his or her own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in the order.

**133 Information in relation to prosecutions to be forwarded to Director-General**

Whenever an information is laid by an employee of a council or a police officer against a person for an offence against this Act or the regulations, it is the duty of the council concerned or the Commissioner of Police, as the case requires, to forward to the regulatory authority, within one month after the prosecution is dealt with:

- (a) a copy of the information, and
- (b) particulars of the result of the prosecution.

## **Part 11      Miscellaneous**

### **134    Protection from personal liability**

- (1) Any matter or thing done or omitted to be done by an enforcement agency, an advisory committee, or a protected person does not, if the matter or thing was done or omitted in good faith for the purpose of executing any provision of this Act or any other law, subject a protected person personally to any action, liability, claim or demand.
- (2) In this section, *protected person* means any of the following:
  - (a) the Minister,
  - (b) any member of the enforcement agency or of the staff of the enforcement agency,
  - (c) an authorised officer,
  - (d) any person acting under the direction of an enforcement agency,
  - (e) any member of an advisory committee,
  - (f) a person employed by the Crown to carry out analyses for the purposes of this Act or a person carrying out analyses under the supervision of such a person.

### **135    Exclusion of liability of the State and others**

- (1) This section applies to civil proceedings for damages or other compensation brought against the State, the regulatory authority or other enforcement agency or a protected person referred to in section 134.
- (2) Damages or other compensation is not payable in any such civil proceedings to the extent that:
  - (a) the claim is made in connection with the handling, sale or consumption of food, and
  - (b) the claim is based on alleged negligence or other breach of duty (including statutory duty) arising because of the exercise of, or the failure to exercise, any function under this Act.
- (3) This section does not affect any entitlement to compensation expressly conferred by this Act.

**136 Disclosure of certain confidential information**

- (1) A person who has, in connection with the administration or execution of this Act, obtained information relating to manufacturing secrets or commercial secrets or confidential processes must not disclose that information unless the disclosure is made:
- (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (d) in accordance with a requirement imposed by or under this Act or any other law, or
  - (e) to a person administering or enforcing a law of another jurisdiction that corresponds to this Act or any other law prescribed by the regulations, or
  - (f) to the Commonwealth Food Authority, or
  - (g) to a law enforcement authority, or
  - (h) with other lawful excuse.

Maximum penalty: 500 penalty units.

- (2) A person is not guilty of an offence under this section if the information was publicly available at the time the disclosure concerned was made.

**137 Publication of names of offenders**

- (1) The regulatory authority may publish a notification under this section in the Gazette or in a newspaper circulating in this State in respect of any person who is convicted of an offence under this Act or the regulations relating to the handling or sale of food or an employee or agent of whom has been convicted of such an offence.
- (2) The notification may only be published within 21 days after the conviction unless an appeal is made against the conviction.
- (3) If an appeal is made against the conviction, a notification under this section must not be published unless a final order has been made on appeal affirming the conviction, in which case, the notification may only be published within 21 days of the final order being made.

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- (4) A notification under this section may contain:
- (a) the address of the relevant person's place of business, and
  - (b) the trade or company name under which the company trades, if relevant, and
  - (c) a description of the nature of the offence, the decision of the court, the penalty imposed or any forfeiture incurred, and
  - (d) such other information relating to the safety of the food concerned as the regulatory authority thinks necessary.
- (5) No liability is incurred by a person for publishing in good faith:
- (a) a notification under this section, or
  - (b) a fair report or summary of such a notification.

### **138 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **139 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, including the following:
- (a) requiring the preparation, implementation, maintenance and monitoring of food safety programs for food businesses to ensure that the provisions of this Act and the Food Standards Code are complied with,
  - (b) fees or charges for the purposes of this Act, including (but not limited to) fees or charges for the provision of information, or for the carrying out of any inspection or analysis (whether or not the inspection or analysis was requested or agreed to), or in connection with the notification of the use of any food business or the registration of any food business,
  - (c) fees for the making of applications under this Act,
  - (d) requirements for the notification by food businesses of information relating to the conduct of those food businesses,
  - (e) regulating or prohibiting any activity relating to the handling or sale of food.

- (2) A regulation may create an offence punishable by a penalty not exceeding 25 penalty units.
- (3) The regulations may apply, adopt or incorporate, whether wholly or in part or with or without modifications, any standard, code (except the Food Standards Code) or other document as in force from time to time or as in force at a particular time.

#### **140 Temporary emergency regulations modifying the Code**

- (1) Regulations may be made for the purposes of this section that contain provisions that are in addition to, or in substitution for, one or more of the provisions of the Food Standards Code as those provisions of the Code apply in this State.
- (2) A regulation made for the purposes of this section must not be made unless the Minister has certified that such a regulation is necessary as it relates to an issue of public health and safety.
- (3) A provision of a regulation made for the purposes of this section does not continue in force:
  - (a) except as provided by paragraph (b), for a period that is more than 12 months, or
  - (b) if the provision is the same in substance as a provision of a regulation that was previously in force under this Act, for a period that, when added to the period for which that previous provision was in force, is more than 12 months.

#### **141 Other regulations modifying the Code**

- (1) Regulations may be made for the purposes of this section that contain provisions that are in addition to, or in substitution for, one or more of the provisions of the Food Standards Code as those provisions of the Code apply in this State.
- (2) A regulation made for the purposes of this section must not be made unless the Minister has certified that such a regulation does not have a significant impact on the implementation and enforcement of uniform food laws in Australia.
- (3) A regulation made for the purposes of this section may be made only with the approval of the Premier.

#### **142 Repeals**

The *Food Act 1989* and the *Food Regulation 2001* are repealed.



**143 Amendment of other Acts**

Each Act specified in Schedule 1 is amended as set out in that Schedule.

**144 Savings, transitional and other provisions**

Schedule 2 has effect.

## **Schedule 1 Amendment of other Acts**

(Section 143)

### **1.1 Contaminated Land Management Act 1997 No 140**

#### **Section 112 Regulations**

Omit “Section 88 of the *Food Act 1989*” from section 112 (5).

Insert instead “Section 12 of the *Food Act 2003*”.

### **1.2 Fair Trading Act 1987 No 68**

#### **Schedules 1 and 2**

Omit “*Food Act 1989*” wherever occurring.

Insert instead “*Food Act 2003*”.

### **1.3 Fluoridation of Public Water Supplies Act 1957 No 58**

#### **Section 8 Proof of certificate of analyst**

Omit “any person appointed by the Director-General of the Department of Health as an analyst under the *Food Act 1989*” from section 8 (3).

Insert instead “any person who is an approved analyst within the meaning of the *Food Act 2003*”.

### **1.4 Food Production (Safety) Act 1998 No 128**

#### **[1] Sections 3 (1) (definition of “relevant Ministers”), 6 and 19 (4)**

Omit “*Food Act 1989*” wherever occurring.

Insert instead “*Food Act 2003*”.

#### **[2] Section 14 Authorised officers**

Omit “any person appointed under section 79 (1) of the *Food Act 1989*”.

Insert instead “an authorised officer within the meaning of the *Food Act 2003*”.

## **1.5 Local Government Act 1993 No 30**

### **[1] Section 22 Other functions**

Omit “*Food Act 1989*” from the note to that section.

Insert instead “*Food Act 2003*”.

### **[2] Section 124 Orders**

Omit the matter relating to the *Food Act 1989* from the note to the section.

Insert instead:

*Food Act 2003* (by delegation) improvement notice or prohibition order

## **1.6 Protection of the Environment Operations Act 1997 No 156**

### **Section 323 Regulations**

Omit “Section 88 of the *Food Act 1989*” from section 323 (6).

Insert instead “Section 12 of the *Food Act 2003*”.

## **1.7 Search Warrants Act 1985 No 37**

### **Section 10 Definitions**

Omit “section 18 of the *Food Act 1989*” from the definition of *search warrant*.

Insert instead “section 39 of the *Food Act 2003*”.

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## Schedule 2 Savings, transitional and other provisions

(Section 144)

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) If such a regulation so provides, it has effect despite any provision of this Act.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definition

In this Part, *former Act* means the *Food Act 1989*.

#### 3 Inspectors

A person appointed as an inspector for the purposes of the former Act and holding that position immediately before the commencement of section 114 of this Act is taken to have been appointed as an authorised officer under that section and the appointment is subject to the same conditions as were imposed on the original appointment.

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**4 Analysts and certificates**

- (1) A person appointed as an analyst for the purposes of the former Act and holding that position immediately before the commencement of section 81 of this Act is taken to have been approved as an analyst under that section and the approval is subject to the same conditions as were imposed on the original appointment.
- (2) A certificate given under section 39 of the former Act by an analyst is, for the purposes of any proceedings under this Act, taken to be a certificate given under section 74 of this Act.

**5 Orders and clean-up notices**

An order or clean-up notice made under Part 4 of the former Act before its repeal by this Act continues to have effect, and may be enforced, as if that Act had not been repealed.

[Second reading speech made in—  
Legislative Assembly on 30 April 2003  
Legislative Council on 28 May 2003]

BY AUTHORITY