

FOOD ACT 1989 No 231

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[STATE ARMS]

New South Wales

Food Act 1989 No 231

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[STATE ARMS]

New South Wales

Food Act 1989 No 231

An Act to consolidate and amend the law relating to the preparation and sale of food; to repeal the *Pure Food Act 1908* and consequently to amend certain other Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Food Act 1989*.

2 Commencement

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

3 Definitions

(1) In this Act:

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 or disposal of any food.

analysis includes any examination or testing of food for the purposes of this Act carried out by or under the supervision of an analyst.

analyst means a person for the time being holding office as an analyst for the purposes of this Act.

appliance means the whole or part of:

- (a) any utensil, machinery, instrument, device, apparatus or article which is used, or designed or suitable or intended for use, in or in connection with the sale, manufacture, handling or consumption of food, or
- (b) any utensil, machinery, instrument, device, apparatus or article which is used, or designed or suitable or intended for use, in cleaning anything which is an appliance by virtue of paragraph (a).

consumers means persons:

- (a) to whom food is sold in the course of a business carried on by the person who sold the food, and
- (b) who do not receive or seek to receive the food in connection with any business carried on by them relating to the sale of food.

council has the same meaning as in the *Local Government Act 1993*.

Director-General means the Director-General of the Department of Health.

food means a substance or compound commonly used, or represented as being for use, as food or drink for human consumption or as an ingredient (whether or not after processing) of food or drink for human consumption or use, and includes:

- (a) confectionery, and
- (b) any spice, flavouring substance, essence, colouring matter or other ingredient whatever that enters into, or is used in, the composition or preparation of food or drink, and
- (c) any substance or compound for the time being declared under this Act to be food.

handling, in relation to food, means preparing, preserving, packing, storing, decorating, serving, conveying or delivering food.

inspector means a person for the time being holding office as an inspector for the purposes of this Act.

package includes anything in or by which goods for carriage or sale may be cased, covered, enclosed, contained or packed (and, in the case of goods carried or sold or intended for carriage or sale in more than one package, includes every such package).

premises includes any land (whether or not appurtenant to a building), any part of a building and any tent, stall or other structure.

publish means:

- (a) insert in any newspaper, journal, magazine or other periodic publication printed or published in New South Wales, or
- (b) send to any person by post or by any other means of delivering letters, or
- (c) deliver to any person or leave on any premises, or
- (d) broadcast by radio, or
- (e) televise, or
- (f) exhibit by means of posters, film or videotape, or
- (g) bring to the notice of the public in New South Wales by any other means at all.

retail trade means trade with consumers.

sell includes:

- (a) barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale or cause or permit to be sold or offered for sale, and
- (b) sell for resale.

vehicle means any means of transport, whether self-propelled or not, and whether used on land or sea or in the air, which is used or is capable of being used for the carriage or storage, or in connection with the sale, of food.

vermin includes rodents, reptiles, arachnids and insects of all descriptions.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

4 Certain substances and compounds to be regarded as food

The Governor may, by order published in the Gazette, declare any substance or compound used, or represented as being for use, for human consumption or use to be food for the purposes of this Act.

5 Certain transactions to be regarded as sales

For the purposes of this Act:

- (a) any food, or any food included in, or supplied with, a meal:
 - (i) for which payment is made or required to be made, and

- (ii) which is supplied for consumption in any shop, factory, canteen, hotel, motel, boarding-house, restaurant, eating house or licensed premises, or at any stall, or in any vehicle, is to be taken to have been sold, and
- (b) any food included in, or supplied with, a meal which is supplied by an employer to an employee, in accordance with a term of the employee's contract of service, for consumption by the employee at his or her place of work is to be taken to have been sold, and
- (c) any food supplied pursuant to a contract, together with accommodation, service or entertainment, in consideration of an inclusive charge for the article supplied and the accommodation, service or entertainment is to be taken to have been sold.

6 Food for human consumption or use

For the purposes of this Act:

- (a) a person is to be taken to sell food for human consumption or use if he or she sells for human consumption or use any substance or compound of which the food is a constituent, and
- (b) any food kept for further processing for human consumption or use is to be taken to be for human consumption or use.

7 Food or appliances offered as prizes etc

This Act and the regulations apply:

- (a) in relation to any food or appliance offered as a prize or reward, whether:
 - (i) in connection with entertainment, or
 - (ii) for the purpose of advertisement or in furtherance of trade or business, or otherwise, as if the food or appliance were, or had been, exposed for sale by each person offering the prize or reward, and
- (b) in relation to any food or appliance given away for the purpose of advertisement or in furtherance of trade or business, as if the food or appliance were, or had been, sold by the person giving away the food or appliance, and
- (c) in relation to any food or appliance which is exposed or deposited in any premises for the purpose of being so offered as a prize or reward or given away, as if the food or appliance were, or had been, exposed for sale by the occupier of the premises.

8 Adulteration or false description

For the purposes of this Act and the regulations, an article of food is adulterated or falsely described:

- (a) when it contains, or is mixed or diluted with, any substance in any quantity or in any proportion which diminishes in any manner its food value or nutritive properties as compared with the same article in a pure or normal state and in an undeteriorated or sound condition, or
- (b) when it contains, or is mixed or diluted with, any substance of lower commercial value than the same article in a pure or normal state and in an undeteriorated or sound condition, or
- (c) when, either wholly or partly, it does not comply with a standard prescribed for the article by the regulations, or
- (d) when it contains any substance prohibited by the regulations or any prescribed standard, or
- (e) when it contains any substance in excess of any maximum quantity or proportion permitted by the regulations, or
- (f) when it is mixed, coloured, powdered, coated, stained, prepared or treated in a manner whereby damage or inferiority may be concealed, or
- (g) whether manufactured or not, when it consists wholly or partly of a filthy, decomposed or putrid animal or vegetable substance or of any portion of an animal unfit for food, or
- (h) when it is the product of a diseased animal, or of one which has died otherwise than by slaughter, or

- (i) when it is damaged, deteriorated or perished, or
- (j) when it is unfit for human consumption or use, or
- (k) when it has had any constituent wholly or partly extracted or removed so that its properties as compared with the food in a pure state are diminished, or
- (l) when it is in any package, and:
 - (i) the contents of the package as originally put up have been removed in whole or in part and other contents have been placed in the package, or
 - (ii) neither the package, nor any label attached to the package, bears a statement of the quantity or proportion of any substance specified by the regulations as necessary to be stated, or
- (m) when it is in packaged form and the package, or any label or written matter attached to it or enclosed with it, bears a word, statement, design or device pertaining to (or that could reasonably be taken as pertaining to):
 - (i) the article or any ingredient or substance contained in it, or
 - (ii) its physiological, curative or therapeutic effect, which is false or misleading in any material particular, or
- (n) when it contains any matter foreign to the nature of the food.

Part 2 Unlawful practices

9 Preparation or sale of adulterated or sub-standard food

- (1) A person who prepares for sale any food for which there is a standard prescribed is guilty of an offence unless the food complies with the prescribed standard.
- (2) A person who sells any food which bears or has attached to it, or is contained in a package which bears or has attached to it, a name prescribed for a food for which there is a standard prescribed or which is otherwise designated or represented as being a food for which a standard is prescribed is guilty of an offence unless the food complies with the prescribed standard.
- (3) A person who sells any article of food which is adulterated or falsely described is guilty of an offence.
Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

10 Sale not complying with purchaser's demand

- (1) A person who sells any food which is not of the nature, substance or quality of the food demanded by the purchaser is guilty of an offence.
Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.
- (2) In any prosecution under this section, it is no defence to establish that the food concerned, though different in nature, or in substance, or in quality, was not different in all three respects.
- (3) A person who sells any food which does not comply with the standard prescribed for the food demanded by the purchaser is guilty of an offence.
Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.
- (4) If any person demands any food by a name prescribed for a food for which there is a standard prescribed, the person is to be taken to have demanded food which complies with that standard.

11 Tender or dispatch of food etc adulterated or falsely described

- (1) A person who, in or from New South Wales, tenders or dispatches or offers to tender or dispatch for or on sale any food which is adulterated or falsely described or which is:
 - (a) packed or enclosed for sale, or
 - (b) labelled, branded or marked,

otherwise than in accordance with any standard prescribed for the food or any provision of the regulations is guilty of an offence, whether the actual sale was effected or is to become effective in New South Wales or elsewhere.

Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) If, however, the actual sale was effected or is to become effective elsewhere than in New South Wales, it is a defence to a charge for an offence against this section to satisfy the court that the sale was authorised under the laws in force where it was effected or is to become effective.

12 Sale of food wrongly packed

A person who sells any food which is packed or enclosed for sale in a manner contrary to any standard prescribed for the food or any provision of the regulations is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

13 Food or food packages to be correctly labelled

- (1) Subject to subsections (3) and (4), every package of food intended for sale must bear a label setting out in such manner as may be prescribed the following particulars:
 - (a) if there is a standard prescribed for the food and a name has been prescribed to be used in relation to that food, the prescribed name, and in any other case, an appropriate designation,
 - (b) the name and business address of the manufacturer, the packer of the contents of the package or the vendor and, in the case of imported food, the name and business address of the importer, and
 - (c) such other particulars as may be prescribed.
- (2) If food other than packaged food is displayed for sale it must be labelled in accordance with the regulations.
- (3) The regulations may prescribe any food or class of food to which all or any of the provisions of subsection (1) or the provisions of subsection (2) are not to apply or any circumstances in which all or any of the provisions of subsection (1) or the provisions of subsection (2) are not to apply.
- (4) Subsection (1) does not, unless otherwise specified in regulations in relation to any particular type of food, apply where the food was packed before or at the time of sale and in the presence of the purchaser.
- (5) For the purposes of this section, *appropriate designation* means a name or description or a name and description sufficiently specific in each case to indicate the true nature of the food to which it is applied.
- (6) A person who sells any food is guilty of an offence if the food (or, in the case of packaged food, the package) is not labelled as required by or under this section.

Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

14 False advertising of food

- (1) A person who, for the purpose of effecting or promoting the sale of any food, publishes an advertisement which is false or misleading in a material particular, which is deceptive or likely to mislead members of the public or which contravenes a prescribed standard, is guilty of an offence.

Maximum penalty: 30 penalty units.

- (2) In any proceedings under this section against the manufacturer, producer or importer of any food, it lies on the defendant to prove (if the defendant so contends) that the defendant did not publish the advertisement.

Part 3 Inspection and analysis

Division 1 Inspectors' powers

15 Powers of entry and inspection

- (1) An inspector may do any one or more of the following:
 - (a) alone, or with such members of the Police Force or other persons as may be necessary, enter and inspect any place in which, or vehicle in or from which, the inspector reasonably believes any food or appliance is sold or any food is manufactured or handled for sale, or
 - (b) alone, or with such members of the Police Force or other persons as may be necessary, enter and inspect any place or vehicle in which the inspector reasonably believes any records are kept, being records which relate to any food for sale, any appliance or the manufacture or handling of food for sale,
 - (c) examine any food for sale or any food manufactured or handled for sale,
 - (d) open and examine any package that the inspector reasonably believes contains any such food,
 - (e) examine any labelling or advertising material which appears to the inspector to be intended for use in connection with the sale of any such food or appliance or to have been so used,
 - (f) open and examine any appliance,
 - (g) for the purpose of:
 - (i) the analysis of food, or
 - (ii) the carrying out of any other examination of food in order to ascertain whether the provisions of this Act and the regulations are being complied with in respect of the food or its packaging, demand, select and obtain samples of any food which appears to the inspector to be intended for sale or to have been sold,
 - (h) examine any records referred to in paragraph (b), make copies of those records or any part of them and, for that purpose, take away and retain (for such time as may, for that purpose, be reasonably necessary) any such records or any part of them,
 - (i) stop and detain any vehicle which the inspector is authorised by this subsection to enter,
 - (j) open, or order to be opened, any container used for the conveyance of goods, or any package, which the inspector reasonably believes to contain any food or appliance,
 - (k) take such photographs, films or audio or visual recordings as the inspector considers necessary,
 - (l) generally make such investigations and inquiries as may be necessary to ascertain whether an offence against this Act or the regulations is being or has been committed.
- (2) This section does not authorise an inspector acting without a search warrant to use force in the exercise of a power of entry and inspection conferred by this section or to enter any premises or part of any premises used as a dwelling without the consent of the occupier.
- (3) A person, however, may be regarded as having obstructed an inspector, contrary to section 60, if the person, after being requested to do so by the inspector (and on the production of the inspector's certificate of authority), refuses or fails to allow the inspector to exercise such a power.

16 Power of seizure

An inspector may seize and detain, or take possession of, any food, appliance, package or labelling or advertising material, or any other thing at all, which the inspector reasonably believes is evidence that an offence against this Act or the regulations is being or has been committed.

17 Requiring of information

- (1) For the purposes of, or in connection with, an inspection of any place or vehicle entered pursuant to section 15, an inspector may request any person engaged or employed in that place or vehicle to produce to the inspector for examination such records relating to:
 - (a) any food for sale or any appliance, or

- (b) the manufacture or handling of food for sale, as are in the custody or under the control of that person.
- (2) If the person fails to comply immediately with the request (it being in his or her power to do so), the person is guilty of an offence.
Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

18 Search warrant

- (1) An inspector may apply to an authorised justice (within the meaning of the *Search Warrants Act 1985*) for a search warrant if admission to a place or vehicle referred to in section 15 has been refused or if the inspector has reasonable grounds for believing:
 - (a) that admission to any such place or vehicle is likely to be refused, or
 - (b) that any such place or vehicle is unoccupied or the occupier or person in charge is temporarily absent.
- (2) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant to enter the place or vehicle.
- (3) An inspector who enters any place or vehicle by virtue of such a warrant may take with him or her such other persons as may be necessary, and on leaving any unoccupied place or vehicle so entered must, as far as practicable, leave it as effectively secured against trespassers as he or she found it.

Division 2 Items seized by inspectors

19 Definition

In this Division, *the responsible authority*, in relation to a seizure under this Part by a person holding office as an inspector, means:

- (a) the Director-General, if the person was appointed to that office by the Director-General, or
- (b) the council concerned, if the person was appointed to that office by a council, or
- (c) the Commissioner of Police, if the person was appointed to that office by the Commissioner of Police or a superintendent or other officer of police.

20 Seized items

- (1) Any item seized under this Part may, at the option of the inspector who made the seizure or of any inspector acting in his or her place, be detained in the place or vehicle where it was found or be removed to another place and detained there.
- (2) If the item is to be detained in the place or vehicle where it was found, the inspector may:
 - (a) place it in a room, compartment or cabinet in that place or vehicle, and
 - (b) mark, fasten and seal the door or opening providing access to that room, compartment or cabinet.

21 Return of seized item

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

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

22 Forfeiture of item

If:

- (a) any item seized under this Part has not been disposed of under section 21 and no application for disallowance of the seizure has been made within the period allowed under this Division, or
- (b) although such an application has been made within that period, the application has been refused or has been withdrawn before a decision in respect of the application has been made,

the item is forfeited to the Crown and may, subject to this Part, be destroyed, sold or otherwise disposed of as the Director-General may, generally or in a particular case, direct.

23 Cost of destruction or disposal of forfeited item

- (1) If a person who (immediately before the forfeiture) was the owner of an item forfeited to the Crown under this Division is convicted of an offence under this Act or the regulations in respect of the item, any cost incurred by or on behalf of the Crown in connection with the lawful destruction or disposal of the item is a debt due to the Crown from that person.
- (2) Any such debt is recoverable by the Director-General in a court of competent jurisdiction.
- (3) In any such proceedings a certificate signed by the Director-General stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

24 Return of forfeited item

- (1) If, after any item that has been seized is forfeited to the Crown because no application for disallowance of the seizure was made within the period allowed under this Division:
 - (a) the Director-General becomes satisfied that no contravention of this Act or the regulations has been committed in respect of the item, and
 - (b) the item has not been destroyed or disposed of in a manner that would prevent its being dealt with in accordance with this subsection,the Director-General must immediately cause the item to be delivered to:
 - (c) the person from whom it was seized, or
 - (d) such other person as appears to the Director-General to be entitled to it.
- (2) On being so delivered, such proprietary and other interests in the item obtain as existed immediately before the forfeiture.

25 Destruction of noxious material

If an inspector who has seized any food under this Part is satisfied on reasonable grounds that it consists wholly or partly of a filthy, decomposed or putrid animal or vegetable substance, the inspector (disregarding any provision to the contrary in this Part) may cause the food to be destroyed.

26 Applications

- (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 notice of an application in the District Court for an order disallowing the seizure of the item.
- (2) The application is to be made in accordance with rules of court and is not to be heard unless the applicant has previously served a copy of the application on the responsible authority.

27 Authorities entitled to answer the application

The responsible authority is entitled to appear as respondent at the hearing of the application.

28 Order disallowing seizure

The District Court, on the hearing of an application, must make an order disallowing the seizure:

- (a) if:
 - (i) it is proved by or on behalf of the applicant that the applicant would, but for the seizure, be entitled to the item, and
 - (ii) it is not proved beyond reasonable doubt that an offence was being or had been, at the time of the seizure, committed, being an offence of which the item was evidence, or
 - (b) if, in the opinion of the court, there are exceptional circumstances justifying the making of an order disallowing the seizure,
- but otherwise the court must refuse the application.

29 Ancillary orders

- (1) In the event that the District Court makes an order disallowing the seizure of any item, 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 responsible authority to pay to the applicant such amount by way of compensation as the court considers to be just and reasonable.
- (2) The award of costs with respect to the hearing of an application lies in the discretion of the court.
- (3) 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.

30 Adjournment pending hearing of other proceedings

If on the hearing of an application 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 against this Act or the regulations, the court may, either on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings.

Division 3 Procedure on taking samples

31 Owner of sample to be informed

Whenever an inspector obtains a sample of food with the intention that it be submitted for analysis, the inspector must, either before or as soon as practicable after obtaining the sample, inform:

- (a) the owner of the food comprised in the sample, or
 - (b) if the owner is not present or readily available, the person from whom the sample was obtained or the person having charge of the food,
- of the inspector's intention to have the sample analysed.

32 Payment to be made or tendered

- (1) An inspector when obtaining a sample of food must pay, or tender payment of:
 - (a) the amount fixed by the regulations as the amount payable for the sample concerned, or
 - (b) where no such amount is for the time being so fixed—an amount equal to the current market value of the sample,
 to the person from whom the sample is obtained.
- (2) In any proceedings for an offence of selling food in contravention of this Act or the regulations, the obtaining of a sample of food by an inspector in accordance with this Division is to be taken to be a sale of the food.

33 Procedure to be followed

- (1) Except in so far as a prescribed standard or the regulations otherwise provide, an inspector who obtains a sample of food with the intention that the sample be submitted for analysis must (unless relying on subsection (2)):
 - (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 owner of the food or other person from whom the sample was obtained or a person appearing to be the employee or agent of that owner or other person, and
 - (c) submit one of the remaining parts for analysis, and
 - (d) retain the other remaining part for future comparison.
- (2) If the division of a sample for analysis into 3 separate parts in accordance with subsection (1) would in the opinion of the inspector:
 - (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis, or
 - (b) render the sample in any other way unsuitable for analysis, including a method of analysis prescribed in relation to the food from which the sample was taken,
 the inspector may deal with the sample in such manner as is appropriate in the circumstances.

- (3) If a sample of food is taken by an inspector 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 inspector:
- (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.
- 34 Packaged food**
If food is kept for retail sale in a closed package, a person may not be required by an inspector to provide a sample that is less than the whole of that package.
- 35 Tendering of sample portion**
An inspector may be taken to have complied with a requirement under this Division or the regulations to leave part of a sample with any person despite any purported refusal by the person to accept any part or parts required to be delivered to him or her in accordance with that requirement.
- 36 Samples from vending machines**
The preceding provisions of this Division do not apply to the procuring for analysis of a sample of food sold through a food vending machine if the inspector obtains the sample by properly making payment for it and no person present at the time the inspector obtains the sample admits to being in charge of the machine.
- 37 Submission of samples etc for analysis**
 - (1) An inspector who has obtained a sample or part of a sample in accordance with this Division, unless the inspector no longer considers that the sample or part ought to be analysed, must submit it for analysis.
 - (2) The certificate of an analyst that, on receipt by him or her of a sample or part of a sample submitted by an inspector or any other person, the seal securing the sample or part was unbroken is admissible in any proceedings under this Act or the regulations and is evidence:
 - (a) that the sample or part was the same sample, or part of the same sample, as the one obtained by the inspector, and
 - (b) that the sample or part had not been tampered with before it was received by the analyst.
- 38 Duty of inspector to obtain sample for analysis on request**
If any person:
 - (a) has requested an inspector in writing to obtain a sample of any food from a specified place or vehicle for the purpose of having it analysed by an analyst, and
 - (b) has paid the prescribed fee (if any) for obtaining the sample,it is the duty of the inspector to obtain, or to arrange for another inspector to obtain, a sample of that food and to deliver it to the person who requested it.

Division 4 Analysis of samples

39 Analysis and certificates of analysis

- (1) An analyst to whom a sample or part of a sample is submitted by an inspector or any other person for analysis under this Part must cause an analysis of the sample or part to be carried out.
- (2) Where a method of carrying out the analysis is prescribed, the analyst must carry out the analysis in accordance with that method.
- (3) An analysis may be carried out by a person acting under the supervision of an analyst and in that event the analysis may be regarded as having been carried out by the analyst.
- (4) On the completion of an analysis, the analyst must give:
 - (a) to the inspector or person who submitted the sample or part for analysis, or

- (b) to any inspector or person who appears to the analyst to be acting in place of that inspector or, as the case may be, on behalf of that person, a certificate in the prescribed form of the result of the analysis.

40 Certificate of analysis to be evidence

- (1) A certificate given under section 39 of the result of an analysis, or a document supplied as referred to in section 42 and purporting to be a copy of such a certificate, is admissible in any proceedings under this Act and is evidence of the facts stated in it.
- (2) Where a method of analysis is prescribed by the regulations or is specified in an order under Division 1 of Part 4 in respect of any food, a certificate given under section 39 or 41 of the result of an analysis is not, nor is a copy of that certificate, admissible in any such proceedings unless the certificate contains a declaration that that method has been followed in the analysis.

41 Production of spare portion of sample

- (1) If, pursuant to this Act or the regulations, part of a sample obtained by an inspector is retained by the inspector for comparison with the analysed portion, a court in any proceedings under this Act may order that that part of the sample be submitted to an analyst specified in the order for analysis within a time limited by the order.
- (2) Except as provided by subsection (3), it is the duty of the court to give an order under subsection (1) on the application of either party to the proceedings.
- (3) The court may not give an order under subsection (1) unless:
 - (a) a part of the sample that was left with the owner or supplier of the sample has been analysed, and
 - (b) the result of that analysis shows that the food comprised in that part or sample did not contravene the provision of this Act or the regulations to which the proceedings relate.
- (4) The analyst to whom a part of the sample is submitted pursuant to an order under subsection (1) must carry out an analysis of that part and transmit to the court a certificate of the result of the analysis.
- (5) The costs of carrying out such an analysis are to be paid by such of the parties to the proceedings as the court may order.
- (6) If, in a case where an appeal is brought, no order under subsection (1) has been given by a lower court, this section applies to proceedings in the appellate court.
- (7) Any certificate transmitted to a court under this section is admissible in evidence in the proceedings and is evidence of the facts stated in it.
- (8) In this section:
 - (a) a reference to a court includes a reference to the Administrative Decisions Tribunal, and
 - (b) a reference to an appeal from a lower court includes a reference to an appeal from the Tribunal to an Appeal Panel of the Tribunal under the *Administrative Decisions Tribunal Act 1997*.

42 Copies of result of analyses

- (1) When a sample or part of a sample submitted by an inspector for analysis has been analysed in accordance with this Division, the inspector, on being requested to do so by:
 - (a) the owner of the food from which, or the person from whom, the sample or part was obtained, or
 - (b) the manufacturer of the food comprised in the sample or part or the manufacturer's agent in New South Wales,and on being paid the prescribed fee, must supply to that owner, person, manufacturer or agent a copy of the analyst's certificate of the result of the analysis or, if there is no such certificate, a copy of any report made by the analyst in respect of the sample or part.
- (2) Except as provided by this Act, no person is entitled to be supplied with a copy of an analyst's certificate or report of the result of an analysis of any sample or part of a sample submitted to an analyst for analysis in accordance with this Act.

43 Analysis not to be referred to for trade purposes

A person may not, for trade purposes or advertisement, use the results of any analysis made for the purposes of this Act.
Maximum penalty: 10 penalty units.

Part 4 Particular powers of the Director-General

Division 1 Orders controlling food production etc

44 Making of order

An order under this Division may be made only when the Director-General has reasonable grounds to believe that the making of one or more such orders is necessary in order to prevent or mitigate a serious danger to public health.

45 Nature of order

- (1) By an order under this Division, the Director-General may do any one or more of the following:
 - (a) prohibit the production, preparation, sale, supply or advertisement of any food or appliance of a class or description specified in the order,
 - (b) prohibit the cultivation, taking, harvesting or obtaining, from an area specified in the order, of any food or of any food of a class or description so specified,
 - (c) give directions, in respect of any food of a class or description specified in the order:
 - (i) for the recall of such of the food as may have been consigned or distributed for sale or sold, or
 - (ii) for the impounding or isolation of the food, or
 - (iii) for the destruction or other disposal of the food,
 - (d) prohibit the removal of any food the subject of a direction under paragraph (c) for the impounding or isolation of the food.
- (2) In connection with any prohibition or direction mentioned in subsection (1), an order under this Division may specify methods of analysis (not inconsistent with methods prescribed by the regulations) of any food or of any food of a class or description specified in the order.
- (3) An order under this Division may prohibit absolutely the carrying on of an activity in relation to food or may permit the carrying on of the activity in accordance with conditions specified in the order.
- (4) An order under this Division may be varied or revoked by the Director-General in the same way as the order was made.

46 Manner of making orders

- (1) An order under this Division:
 - (a) may be made in writing addressed to the person intended to be bound by it, and served on that person, or
 - (b) may be addressed to several persons, or to all persons, and published in the Gazette.
- (2) In either case, the order, when it takes effect, is binding on the person or persons to whom it is addressed.
- (3) An order that is served on a person takes effect on the date of service or a later date specified in the order.
- (4) An order that is published in the Gazette takes effect on the date of publication or a later date specified in the order and, unless sooner revoked, ceases to have effect 90 days after it takes effect.

47 Reviews by Administrative Decisions Tribunal of Director-General's order

A person aggrieved by any prohibition or direction imposed or given by an order under this Division may apply to the Administrative Decisions Tribunal for a review of the order.

48 (Repealed)

49 Failure to comply with Director-General's directions

A person who:

- (a) carries on an activity in relation to any food in contravention of any prohibition imposed by an order under this Division, or
- (b) neglects or refuses to comply with a direction given by any such order, is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

Division 2 Closure of dirty food stores etc

50 Definitions

In this Division:

food store means any premises or place, or part of any premises or place, in which food is sold or manufactured or handled for sale.

food vehicle means a vehicle in or from which food is sold or in which food is conveyed or delivered for sale.

proprietor:

- (a) in relation to a food store, means the owner (or, where the owner is not the occupier, the occupier) of the food store and includes any person in charge or apparently in charge of the food store, and
- (b) in relation to a food vehicle, means:
 - (i) where the vehicle is not the subject of a lease agreement, the owner, or
 - (ii) where the vehicle is the subject of a lease agreement, the lessee under that agreement,and includes any person in charge or apparently in charge of the vehicle, and
- (c) in relation to an appliance, means:
 - (i) where the appliance is in a food store, the proprietor of the food store as defined in paragraph (a), and
 - (ii) where the appliance is in a food vehicle, the proprietor of the food vehicle as defined in paragraph (b).

51 Clean-up notice

- (1) If the Director-General is satisfied, by the Director-General's own inspection or by the report of an inspector, that any food store, food vehicle or appliance is in an unclean or insanitary condition, the Director-General may serve a clean-up notice on the proprietor of the food store, food vehicle or appliance.
- (2) A clean-up notice is to take the form of an order that the food store, food vehicle or appliance be put into a clean and sanitary condition, to the satisfaction of an inspector, within a period of 24 hours after the service of the notice on the proprietor.

52 Order for closure

- (1) If, after the expiration of the requisite period, the Director-General is not satisfied that the food store, food vehicle or appliance to which a clean-up notice relates has been put into a clean and sanitary condition, the Director-General may serve on the proprietor an order for closure.
- (2) An order for closure is to take the form of an order that:
 - (a) no food be sold or manufactured or handled for sale in the food store, or
 - (b) no food be sold in or from the food vehicle or conveyed or delivered for sale in the food vehicle, or
 - (c) the appliance be not used in or in connection with the sale of food or the manufacture or handling of food for sale,as the case requires, until an inspector has given the proprietor a certificate of clearance certifying that the food store, food vehicle or appliance has been put into and is in a clean and sanitary condition.

53 Request for re-inspection

- (1) The proprietor of a food store, food vehicle or appliance affected by an order for closure may at any time after the order has been served make a written request to the

Director-General to cause the food store to be inspected by an inspector or the food vehicle or appliance to be so inspected at a place specified in the request.

- (2) If a request is so made and the food store, food vehicle or appliance, through no fault of its proprietor, is not inspected by an inspector within a period of 24 hours after the receipt of the request by the Director-General, a certificate of clearance may be regarded, for the purposes of section 54, as having been given to the proprietor.

54 Contravention of order for closure

If an order for closure has been served on the proprietor of a food store, food vehicle or appliance and:

- (a) a certificate of clearance has not subsequently been given under section 52, or
- (b) any appeal under section 56 against the refusal of an inspector to give such a certificate has not been allowed,

any person who:

- (c) sells food in the food store or manufactures or handles, in the food store, any food for sale, or
- (d) sells food in or from the food vehicle or conveys or delivers, in the food vehicle, food for sale, or
- (e) uses the appliance in or in connection with the sale of food or the manufacture of food for sale,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

55 Scope of notices and orders

A clean-up notice or an order for closure under this Division may be made with respect to:

- (a) any food store or food vehicle specified in the order, or
- (b) any food store or food vehicle so specified and all appliances contained in it or any appliance so specified and contained in it, or
- (c) any appliance so specified or all appliances contained in a food store or food vehicle so specified.

56 Review by Administrative Decisions Tribunal of order

If a request is made under section 53 and:

- (a) the food store, food vehicle or appliance concerned is inspected by an inspector within a period of 24 hours after the receipt of the request by the Director-General, and
 - (b) the inspector making the inspection refuses to give to the proprietor a certificate of clearance in respect of the food store, food vehicle or appliance,
- the proprietor may apply to the Administrative Decisions Tribunal for a review of the refusal.

Part 5 Legal procedures and enforcement

57 Prosecutions

Proceedings for an offence against this Act or the regulations may be dealt with in a summary manner by a Local Court constituted by a Magistrate sitting alone.

58 Time limit for certain prosecutions

Where a sample of food has been obtained under this Act for the purpose of analysis, no prosecution for an offence against this Act or the regulations in respect of the food sampled may be commenced after the expiration of 90 days from the date on which the sample was obtained, other than a prosecution under section 72.

59 Assault on inspector

A person who assaults an inspector in the course of the exercise by the inspector of his or her functions under this Act or the regulations is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

60 Obstruction of inspector in exercise of functions

Any person who:

- (a) intimidates, obstructs or attempts to obstruct in any manner any inspector in the exercise of his or her functions under this Act or the regulations, or
- (b) upon demand by an inspector to state his or her name and place of residence, refuses to do so or states a false name or place of residence, or
- (c) refuses to supply or to allow to be obtained any sample demanded in accordance with this Act or the regulations, or
- (d) gives, procures, offers or promises any bribe, recompense or reward to influence any inspector in the exercise of his or her functions under this Act or the regulations, or
- (e) without lawful authority, retakes or attempts to retake any food, appliance, package or labelling or advertising material seized under this Act or the regulations or resists or attempts to prevent such a seizure, or
- (f) fails, upon demand made by an inspector, to produce any record which the inspector is authorised under this Act or the regulations to examine or inspect, or
- (g) prevents or attempts to prevent an inspector from taking copies of or extracts from any such record or from taking and retaining any such record for such period as may be necessary in order to take copies of or extracts from it, or
- (h) fails to comply with any order or demand which an inspector is authorised by or under this Act or the regulations to give or make,

is guilty of an offence.

Maximum penalty: 50 penalty units.

61 Liability of person named on package

- (1) If any offence against this Act or the regulations is committed in respect of any food contained in a package, any person who appears from any statement on the package, or on a label attached to the package:
 - (a) to have imported, manufactured or prepared the food, or
 - (b) to have enclosed it in the package,is to be presumed to have done so, until the contrary is proved.
- (2) In proceedings for any such offence, food that has been sold to a consumer is to be presumed, until the contrary is proved, to have been sold at some time by any persons who respectively imported, manufactured, prepared or packed the food.

62 Interference with official marks, fastenings and seals

- (1) If an inspector has, in the exercise of the inspector's functions under this Act or the regulations, marked, fastened or sealed:
 - (a) any container containing any food, appliance, package or labelling or advertising material, or
 - (b) any door or opening providing access to any room, compartment or cabinet containing any such item,any person who, without the permission of the inspector or of the responsible authority:
 - (c) removes, erases, alters, breaks or opens the mark, fastening or seal, or
 - (d) removes the item from that container, room, compartment or cabinet,is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) In subsection (1), *the responsible authority* means:
 - (a) the Director-General, if the inspector was appointed by the Director-General, or
 - (b) the council concerned, if the inspector was appointed by a council, or
 - (c) the Commissioner of Police, if the inspector was appointed by the Commissioner or a superintendent or other officer of police.
- (3) If an offence against this section has been committed, then, whether or not any person has been charged with or convicted of that offence, the occupier of the place or, as the case may be, the person in charge of the vehicle where the offence was committed is guilty of an offence and is liable on conviction to a penalty not exceeding 50 penalty

units unless it is proved that he or she took all reasonable steps to prevent the commission of the offence.

63 Presumptions

- (1) In any proceedings for an offence against this Act or the regulations, it is to be presumed until, on the balance of probabilities, the contrary is proved:
 - (a) that food which was sold or prepared for sale or conveyed or intended for sale was sold, prepared, conveyed or intended for sale for human consumption, or
 - (b) that food found in any premises or vehicle used for the sale of food or the handling of food for sale was intended for sale for human consumption, and
 - (c) that food found in any premises used for the preparation for sale of food, or in any vehicle so used, was intended to be prepared for sale.
- (2) In any prosecution for an offence of selling food in contravention of this Act or the regulations, it lies on the defendant to prove (if the defendant so contends) that the food was not sold for human consumption.

64 Publication of advertisements

For the purposes of this Act and the regulations, an advertisement published by a person on behalf of another person is to be treated as being an advertisement published by that other person, and by that other person only.

65 Service of copy of analyst's certificate

- (1) If:
 - (a) an information is laid against a person for an offence against this Act or the regulations concerning any food, and
 - (b) a sample or part of a sample of that food has been submitted for analysis in accordance with this Act,a certificate of the result of the analysis given under section 39 is not admissible in evidence at the hearing of the information unless a copy of the certificate has been served on that person at least 7 days before the commencement of the hearing.
- (2) The service of a copy of an analyst's certificate may be proved by oath or affidavit of the person who served the copy.

66 Evidence of copies etc of records

If an inspector:

- (a) has made a copy of any record or part of a record pursuant to this Act, and
- (b) has certified the copy to be a true and correct copy of that record or part of a record,

the copy is admissible in evidence in any proceedings under this Act as evidence of the matters contained in the copy and, unless the contrary is proved, may be taken to be a true and correct copy.

67 Source of information or reports

- (1) A witness on behalf of any prosecution under this Act or the regulations may not be compelled (whether in the course of such a prosecution or in any other proceedings, civil or criminal) to disclose:
 - (a) the fact that he or she received any information, or
 - (b) the nature of any information received, or
 - (c) the name of the person who gave any such information,bearing on such a prosecution.
- (2) An inspector appearing as a witness may not be compelled to produce any reports made or received by the inspector confidentially in his or her capacity as an inspector or containing confidential information.

68 Authenticity of notices etc of the Director-General

- (1) In any proceedings under this Act, a document that purports to be a notice, order, certificate or other instrument given or made under the hand of the Director-General for the purposes of this Act is admissible in evidence, and the signature on it of the Director-General is to be presumed genuine until the contrary is established.
- (2) Nothing in this section limits the operation of any provision of the *Evidence Act 1995*.

69 Copies of certain informations etc to be forwarded to Director-General

Whenever an information is laid by an employee of a council or a member of the Police Force 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 Director-General, within one month after the prosecution is dealt with:

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

70 Warranties pleaded as a defence

- (1) In any prosecution for an offence of selling food in contravention of this Act or the regulations or an offence, under section 72, of giving a warranty that is false in respect of food sold by the defendant, it is a sufficient defence for the defendant to prove:
 - (a) that the defendant purchased the food in reliance on a written warranty, given by or on behalf of the person from whom the purchase was made, to the effect that:
 - (i) the food could be sold, or
 - (ii) the food could be sold under the name or description under which, or for the purpose for which, he or she sold it,
 - (b) without contravening any of the provisions of this Act or the regulations, and in the case of an offence of selling food in contravention of this Act or the regulations, that, if the food had conformed to the warranty, the sale of the food by the defendant would not have constituted the offence, and
 - (c) that the defendant had no reason to believe or suspect that the food sold by him or her did not conform to the warranty, and
 - (d) that, at the time of the sale to which the alleged offence relates, the food was in the same state as when the defendant purchased it.
- (2) The warranty, however, may be relied on only if:
 - (a) it was given by or on behalf of:
 - (i) a person resident in New South Wales, or
 - (ii) a corporation having a registered office or a place of business in New South Wales, or
 - (iii) a firm having a place of business in New South Wales, and
 - (b) it states the name and sole or principal business address in New South Wales of that person, corporation or firm (and, if that person, corporation or firm trades under a name different from that name, that trading name), and
 - (c) the defendant has, no later than 7 days before the date set down for the hearing of the prosecution:
 - (i) delivered to the prosecution a copy of the warranty and a written notice indicating that the defendant intends to rely on the warranty and specifying the name, the trading name (if any) and the sole or principal business address in New South Wales of the person who, or the corporation or firm which, gave the warranty, and
 - (ii) delivered or sent by post a similar notice to that person, corporation or firm.
- (3) If the defendant is an employee or agent of the person who purchased the food under a warranty, he or she is entitled to rely on the provisions of this section in the same way as his or her employer or principal would have been entitled if the employer or principal had been the defendant.
- (4) For the purposes of this section, a name or description entered in an invoice or a delivery note is to be taken to be a written warranty that the food to which the entry relates can be sold under that name or description by any person without contravening any of the provisions of this Act or the regulations, and any such warranty may, subject to subsection (2), be relied on.

71 Warrantor entitled to appear

The person, corporation or firm by whom a warranty is alleged to have been given has the right to appear and give evidence in any prosecution referred to in section 70,

and the court may, if it thinks fit, adjourn the hearing of the prosecution to enable the person, corporation or firm to exercise that right.

72 False warranties

- (1) If any person has, in respect of food sold by the person, given to the purchaser of that food a warranty which is or might be pleaded as a defence under section 70 and that warranty is false, the person is guilty of an offence.
Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.
- (2) If a warranty given to a person is or might be pleaded as a defence by that person under section 70 in a prosecution for an offence relating to the sale of any food, proceedings may, at any time within 2 years after that sale, be commenced:
 - (a) for an offence against this section relating to the giving of that warranty, or
 - (b) for an offence of selling that food to that person in contravention of this Act or the regulations,or both.

73 Liability of employers

- (1) If an employee contravenes any provision of this Act, the employer shall be deemed to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).
- (2) It is a defence in proceedings against an employer for such a contravention if it is established:
 - (a) that the employer had no knowledge of the contravention, and
 - (b) 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 subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

74 Liability of employees and agents

- (1) Except as provided by this section, in any prosecution for an offence against this Act or the regulations, it is no defence that the defendant was, at the time of the commission of the offence, only an agent or employee of another person.
- (2) In any prosecution for an offence against this Act or the regulations, the defendant has a defence to the prosecution if the defendant establishes that, at the time of the act or default constituting the offence:
 - (a) he or she was an employee:
 - (i) of the owner or occupier of the place or, as the case may be, the owner or person in charge of the vehicle in relation to which the offence was committed, or
 - (ii) of the proprietor of any business relating to food conducted in relation to that place or vehicle, and
 - (b) he or she was under the personal supervision of that owner, occupier, person in charge or proprietor or of any manager or other person representing that owner, occupier, person in charge or proprietor.
- (3) In any prosecution for an offence against this Act or the regulations, the defendant has a defence to the prosecution if the defendant establishes both of the following:
 - (a) that he or she committed the act or default constituting the offence in the course of acting as an agent or employee of another person and without knowledge of one or more of the facts constituting the offence,
 - (b) that the other person:
 - (i) is a resident of, or has a place of business in, New South Wales, or
 - (ii) is a corporation having a registered office or place of business in New South Wales, or
 - (iii) is a firm having a place of business in New South Wales.

75 Notice of defence

- (1) Except with the leave of the court, a defence referred to in section 74 may not be relied on unless the defendant has, within 7 days after service of the summons for the offence, delivered to the prosecutor a notice in writing:
 - (a) to the effect that the defendant intends to rely on that defence, and
 - (b) containing the name and address of the person by whom the defendant was employed, or for whom the defendant was an agent, at the time of the commission of the act or default constituting the offence.
- (2) The court ought not to refuse leave under subsection (1) if it appears to it that the defendant was not informed of the provisions of that subsection at the time of the service on the defendant of the summons for the offence.

76 Offences by corporations

- (1) If a corporation contravenes 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 to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under the provision concerned.
- (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.

Part 6 Administration

77 Food Advisory Committee

- (1) The committee known as the Pure Food Advisory Committee, established under the *Pure Food Act 1908* and consisting of persons appointed by the Minister, is continued under this Act under the name "Food Advisory Committee".
- (2) Of the members of the committee:
 - (a) one must be an officer of the Department of Health or an employee of a public health organisation within the meaning of the *Health Services Act 1997*, and
 - (b) two must be food technologists, and
 - (c) one must be an analyst who is an officer of the Department of Health or an employee of a public health organisation within the meaning of the *Health Services Act 1997*, and
 - (d) one must be a nutritionist, and
 - (e) one must be a microbiologist, and
 - (f) one must be a medical practitioner, and
 - (g) one must be a health surveyor, and
 - (h) three must be persons who, in the opinion of the Minister, are conversant with the interests of the public as consumers of food, and
 - (i) three must be persons who, in the opinion of the Minister, are concerned in or conversant with the food trade.
- (3) Schedule 1 applies with respect to the members and procedure of the committee.

78 Functions of the committee

The committee has the following functions:

- (a) submitting to the Director-General recommendations for more effectively securing the wholesomeness and purity of food,
- (b) reporting to the Director-General on such matters relating to food or to the operation of this Act and the regulations as the Director-General may from time to time refer to the committee,
- (c) making recommendations with respect to the making of regulations under this Act,
- (d) such other functions relating to food as may be prescribed.

79 Appointment and powers of inspectors

- (1) The Director-General may appoint any officer of the Department of Health or any employee of the Health Administration Corporation, or any other person whom the

Director-General considers to be suitably qualified for the purpose, to be an inspector for the purposes of this Act.

- (2) A council, other than a council in respect of which an order under section 80 is in force, may appoint any person employed by the council to be an inspector for the purposes of this Act.
- (3) The Commissioner of Police or any member of the Police Force of or above the rank of superintendent of police may appoint any member of the Police Force to be an inspector for the purposes of this Act.
- (4) Schedule 2 applies with respect to certification of the authority of inspectors.
- (5) An inspector may not exercise any function conferred or imposed on inspectors by or under this Act except in accordance with the certificate of authority issued to the inspector.
- (6) An inspector employed by a council may not exercise any function conferred or imposed on inspectors by or under this Act otherwise than:
 - (a) within the area of the council, or
 - (b) on any part of a road, river, stream or watercourse, the centre or middle line of which forms a common boundary between that area and an adjoining area of another council.

80 Control of council appointments

- (1) The Minister may, by order published in the Gazette, declare that the power conferred by section 79 (2) may not be exercised by any council specified in the order.
- (2) Such an order takes effect on the date on which it is published in the Gazette or on a later date specified in the order.
- (3) When such an order takes effect with respect to a council, any person appointed by the council to be an inspector for the purposes of this Act automatically ceases to be an inspector.

81 Appointment of Departmental and other analysts

- (1) The Director-General may from time to time appoint any person (including an officer of the Department of Health or an employee of the Health Administration Corporation) who holds the qualifications prescribed for the purposes of this section to be an analyst for the purposes of this Act.
- (2) The Director-General is to prepare and maintain a list of persons holding office as analysts and, at least once each year, revise that list and publish the revised list in such manner as the Director-General thinks fit.

82 Analysts of local authorities

A council may by itself, or in combination with one or more other councils, subject to the approval of the Director-General, appoint a person as an analyst for the purpose of analysing and supervising the analysis of samples taken within its area, or their areas, and may remunerate the person so appointed from the funds of the council or councils, either by salary or by fees.

83 Disqualification of analyst for contravention of Act etc

- (1) If any analyst is alleged to have contravened or failed to comply with any provision of this Act or the regulations, or with any specification contained in an order under Division 1 of Part 4 which is applicable to analysts, the Director-General may, if satisfied after inquiry into the matter (and after giving him or her an opportunity to be heard) that:
 - (a) the analyst contravened or, as the case may be, failed to comply with that provision or specification, and
 - (b) that the contravention or failure to comply was committed wilfully or negligently,determine to disqualify him or her from being, and from holding appointment as, an analyst either permanently or for such period as the Director-General may determine.
- (2) If the Director-General has determined to disqualify an analyst, the Director-General must notify the analyst in writing that he or she is disqualified from being, and from holding appointment as, an analyst either permanently or, as the case may be, for the period determined under subsection (1).

- (3) The disqualification takes effect on service of the notice and, while so disqualified, the person concerned is not to be regarded as an analyst for the purposes of this Act.
- (4) Every notification under subsection (2) is to specify the reasons for the disqualification.

84 Costs of analysis

Whenever any person is found guilty of an offence against this Act or the regulations, the court may order the person to pay as part of the costs of the prosecution all reasonable fees and other expenses (not exceeding the prescribed amount, if any) incurred by the prosecutor with respect to the analysis of any food involved in the commission of the offence.

85 Liability of Minister and others

Nothing done by:

- (a) the Minister or the Director-General, or
- (b) an inspector or an analyst, or
- (c) the Food Advisory Committee or any of its members, or
- (d) anyone else acting with the authority or under the direction of the Minister, the Director-General, an inspector or an analyst,

subjects the person by whom it was done to any personal liability if it was done in good faith for the purpose of carrying out or giving effect to this Act or the regulations.

86 Inspectors etc not to disclose information relating to manufacturing processes and trade secrets

- (1) An inspector or any other person who has, in connection with the administration or execution of this Act or the regulations, obtained confidential information relating to manufacturing or commercial secrets or working processes, and who discloses that information, is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) This section does not operate to prevent the disclosure of information where that disclosure is:
 - (a) made in connection with the administration or execution of this Act or the regulations, or
 - (b) made with the prior permission of the Minister, or
 - (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing or determination by that court, body or person of any matter or thing, or
 - (d) made with the consent of a person who has a proprietary interest in the information.
- (3) The Minister may grant the permission referred to in subsection (2) (b) only if the Minister is satisfied that to do so would be in the public interest.

Part 7 Miscellaneous

87 The Crown bound by this Act

This Act binds the Crown not only in right of New South Wales but also, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

88 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 a regulation, the provisions of this Act or the regulation prevail to the extent of the inconsistency.
- (2) Any statutory rule relating to any of the following matters, namely:
 - (a) the wholesomeness, cleanliness or freedom from contamination of food, or
 - (b) the composition of, and standards for, food, or
 - (c) the cleanliness of vehicles, premises or places in which food is sold or handled for sale,

must be submitted to the Minister before being made.

- (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) 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.

89 Publication of names of offenders

- (1) If:
 - (a) any person or any employee or agent of the person has been convicted of an offence against the provisions of this Act or the regulations relating to the sale of any food, and
 - (b) the same person or any employee or agent of that person is subsequently convicted of any such offence,a notification of the person's name may be published by the Director-General in the Gazette, within 21 days after the later conviction, together with:
 - (c) the address of the person's place of business, and
 - (d) the trade or company name under which the person trades, and
 - (e) a description of the nature of the offence, the decision of the court, the penalty imposed and any forfeiture incurred.
- (2) If the food was supplied to the convicted person by some other person, and was sold by the convicted person in the state in which he or she received it, then the name of the supplier, the address of the supplier's place of business and the nature of the trade carried on by the supplier may also, after notice to the supplier, be included in the notification.
- (3) The notification may, if the Director-General so directs, also be published in any newspaper circulating in New South Wales.
- (4) 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.
- (5) While any appeal is pending against a conviction for any offence, a notification in respect of the offence may not be published by the Director-General, but it may be so published within 21 days after a final order has been made on appeal affirming the conviction or dismissing the appeal.

90 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.
- (2) In particular, regulations may be made for or with respect to any of the following:
 - (a) standards for food,
 - (b) providing for all matters and things with respect to the licensing of persons and the registration of premises, vehicles and appliances for specified purposes,
 - (c) requiring the approval of premises, vessels, appliances, methods, processes, packages, seals or closures and sources of water for the purposes of this Act,
 - (d) providing for the giving, service and enforcement of directions or notices for the rectification of acts or omissions in contravention of this Act or the regulations,
 - (e) prohibiting the addition to, or mixing with, or use in the preparation of, or presence in food of any specified substance or class of substances or any specified substance in excess of the prescribed quantity or proportion,
 - (f) prescribing the quantity or proportion of any specified substance which is the quantity or proportion, or the maximum quantity or proportion, or the minimum quantity or proportion, which must or may be added to or mixed with or used in the preparation of or be present in food,
 - (g) prohibiting in the sale or handling for sale of any food the use of any appliances or materials containing any specified substance or any substance in excess of the specified proportion,
 - (h) regulating or prohibiting ways of handling food,

- (i) methods of analysis to be observed in analyses under this Act,
- (j) qualifications for analysts and for inspectors,
- (k) securing proper conditions and practices in connection with the sale of food and the handling of food for sale,
- (l) the manner of packing food,
- (m) requiring advertisements relating to food to contain specified words, or specified pictorial representations or designs, or prohibiting the use in advertisements of specified words, or words having the same or a similar meaning, or representations or designs of any specified kind,
- (n) the manner of labelling food or packages of food (including packages within any exterior package), the forms or kinds of labels, the matter to be contained in such labels (including specified words, statements, expressions, pictorial representations or designs of any specified kind), the size, style or colour of any such matter or the nature or colour of the background on which it appears, or prohibiting the use in labels of specified words, or words having the same or a similar meaning, or representations or designs of any specified kind,
- (o) requiring notices containing specified words, or specified pictorial representations or designs, to be affixed to food vending machines or prohibiting the use in such notices of specified words or words having the same or a similar meaning or representations or designs of any specified kind,
- (p) exempting any food, or any specified packages of food, from any provision of this Act or the regulations relating to labelling,
- (q) requiring and providing for the recalling, destruction or denaturation of any food which is adulterated and specifying circumstances in which such food must be destroyed or denatured,
- (r) prohibiting the sale of food containing any micro-organism of any specified kind or containing any micro-organism of any specified kind in excess of a specified quantity or number in a specified quantity of food,
- (s) methods of sampling and dealing with samples obtained under this Act for analysis,
- (t) requiring notices containing specified words, or words having the same or a similar meaning, or specified pictorial representations or designs to be affixed to vehicles used in the selling or handling for sale of food or prohibiting the use in such notices of specified words, or words having the same or a similar meaning, or specified pictorial representations and designs,
- (u) prescribing fees and charges to be paid for any analyses or examinations or any other service provided, or any licence, registration or approval granted, under this Act or the regulations,
- (v) rates of payment for samples of food obtained for the purposes of this Act,
- (w) requiring the proprietor, manager or person in charge of any vehicle, premises or other place in which any food is sold or handled for sale to keep such books or other records as may be specified,
- (x) the minimum size of, and the packing required for, any article that is not food but which is included in a package of food,
- (y) the temperature at which food which is handled for sale must be kept,
- (z) requiring that where food which is not contained in a package is displayed for sale, it must be displayed in conjunction with a notice or label bearing the information required by or under this Act,
- (aa) the number of samples to be taken for the purposes of this Act and the manner of dealing with those samples,
- (ab) requiring laboratory and testing facilities to be provided at premises where food is prepared for sale and prescribing procedures and facilities to be used for the testing and examination of such food and the notification of test or examination results,
- (ac) specifying the period from the date of manufacture or packing of any food within which it should be sold or consumed,

- (ad) substances or items, other than food, that may be contained in packages of food,
- (ae) standards and requirements for appliances, including requirements for the composition of, or of the glazing used in, crockery or other appliances,
- (af) generally securing the wholesomeness, cleanliness and freedom from contamination and adulteration of food and securing the cleanliness of vehicles, premises or places in which food is sold or handled for sale,
- (ag) forms to be used for the purposes of this Act.
- (3) The regulations may incorporate by reference, wholly or in part and with or without modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by any authority or body, whether or not it is a New South Wales authority or body.
- (4) (Repealed)
- (5) The regulations may make it an offence to contravene any of the regulations and may impose a penalty not exceeding 25 penalty units for such a contravention.

Part 8 Repeal and amendments

91 Repeal of Pure Food Act 1908 No 31

The *Pure Food Act 1908* is repealed.

92 Savings and transitional provisions

Schedule 3 has effect.

93 (Repealed)

Schedule 1 Members and procedure of the Food Advisory Committee

(Section 77)

1 Term of office

Subject to this Schedule, a member of the committee holds office for such period (not exceeding 2 years) as is specified in the instrument of the member's appointment, but any member is eligible, if otherwise qualified, for re-appointment.

2 Vacation of office

- (1) A member of the committee ceases to be a member if he or she:
 - (a) resigns his or her membership, by notice in writing addressed to the Minister, or
 - (b) ceases to hold an office or qualification that it was necessary for him or her to hold in order to be appointed, or
 - (c) is removed from office by the Minister.
- (2) The Minister may at any time remove a member of the committee from office by notice in writing addressed and delivered to the member concerned.
- (3) Without limiting the generality of subclause (2), a member of the committee may be removed from office for a contravention of clause 7.

3 Filling of vacancies

- (1) When a vacancy occurs on the committee, the Minister must appoint a new member to fill the vacancy.
- (2) In so doing, the Minister must have regard to section 77 (2).

4 Remuneration

A member of the committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister determines in respect of the member.

5 Meetings of the committee

- (1) Any 8 members of the committee constitute a quorum for any meeting of the committee.
- (2) At any meeting:
 - (a) the decision of a majority of members of the committee present and voting is the decision of the committee, and

- (b) the member referred to in section 77 (2) (a) or that member's deputy appointed under clause 6 (or, in the absence of both the member and that member's deputy, another member of the committee elected by the members present) is to preside, and
- (c) in the event of an equality of votes, the presiding member has a second or casting vote.
- (3) (Repealed)
- (4) Subject to this clause, the committee may regulate the procedure at its meetings as it sees fit.
- (5) If the committee sees fit to do so, it may permit non-members who have expertise in a matter being considered by the committee to attend any of its meetings, but no such visitor has a right to vote.

6 Deputy presiding member

- (1) If the member referred to in section 77 (2) (a) is unable to carry out his or her duties as presiding member of the committee for any period, the Minister may appoint another officer or employee referred to in that paragraph to act as deputy for that member during that period.
- (2) The deputy, during the period concerned, is a member of the committee and has the functions of the member for whom he or she acts as deputy.

7 Disclosure of pecuniary interests

- (1) If:
 - (a) a member of the committee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the committee, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
 the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.
- (2) A disclosure by a member at a meeting of the committee that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
 is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) The committee must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose. That book is to be open at all reasonable hours to inspection by any person.
- (4) After a member has disclosed the nature of an interest in any matter or thing, the member must not, unless the Minister or the committee otherwise determines:
 - (a) be present during any deliberation of the committee with respect to that matter, or
 - (b) take part in any decision of the committee with respect to that matter.
- (5) A contravention of this clause does not invalidate any decision of the committee or the exercise of any function under this Act.

8 Effect of certain other Acts

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of a member and a member is not, as a member, subject to that Act (except Part 8).
- (2) If by or under any other Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of the committee or from accepting and retaining any remuneration payable to the person under this Act as such a member.

- (3) The office of a part-time member is not, for the purposes of any Act, an office or place of profit under the Crown.

Schedule 2 Certification of authority of inspectors

(Section 79)

1 Certificate of authority

A certificate of authority is to be issued to an inspector:

- (a) if appointed under section 79 (1), by the Director-General, or
- (b) if appointed under section 79 (2), by the council which made the appointment, or
- (c) if appointed under section 79 (3), by the Commissioner of Police or the superintendent or other officer of police who made the appointment.

2 Scope of certificate

Subject to section 79, a certificate of authority may authorise the inspector to whom it is issued to exercise the functions conferred or imposed on inspectors by this Act and the regulations:

- (a) in relation to all places and in relation to all vehicles or in relation to such places or vehicles or classes of places or vehicles as may be specified in the certificate, and
- (b) at all times or at such times as may be specified in the certificate, and
- (c) in respect of all food, appliances, packages and labelling and advertising material or in respect of food, appliances, packages or labelling or advertising material of such classes or descriptions as may be specified in the certificate.

3 Production of authority

When an inspector exercises or seeks to exercise any function conferred or imposed on inspectors by or under this Act in relation to any place or vehicle, the inspector, if requested to do so by any person in charge or apparently in charge of that place or vehicle, must produce his or her certificate of authority.

Schedule 3 Savings and transitional provisions

(Section 92)

1 Definitions

In this Schedule:

appointed day means the day appointed for the commencement of section 91.

former Act means the *Pure Food Act 1908*.

2 Regulations

- (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) 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.

3 Regulations under Pure Food Act 1908

Any regulation that was in force, immediately before the appointed day, under the former Act remains in force despite the repeal of that Act and is to be taken to have been made under this Act.

4 Members of the Advisory Committee

A person who, immediately before the appointed day, held office as a member of the Pure Food Advisory Committee as constituted under the former Act holds office, subject to this Act, as a member of the Food Advisory Committee for the remainder of the term for which he or she was appointed under that Act.

5 Inspectors and analysts

- (1) A person who, immediately before the appointed day, was:
 - (a) an inspector for the purposes of the former Act, or
 - (b) an analyst for the purposes of that Act,becomes, on that day, an inspector or analyst, as the case may be, for the purposes of this Act and is to be taken to have been appointed under this Act.
- (2) A certificate of authority issued to any person who, immediately before the appointed day, was an inspector for the purposes of the former Act is to be taken to be a certificate of authority issued under this Act.

Schedule 4(Repealed)

Notes

The following abbreviations are used in the tables of Acts and amendments:

Am	amended	pp	pages
cl	clause	Rep	repealed
cll	clauses	Sch	Schedule
Div	Division	Sec	section
GG	Government Gazette	Secs	sections
Ins	inserted	Subdiv	Subdivision
No	number	Subst	substituted
p	page		

Table of Acts

Food Act 1989 No 231. Assented to 21.12.1989. Date of commencement, cll (2) and (3) of the item in Sch 4 relating to the Local Government Act 1919 excepted, 11.5.1990, sec 2 and GG No 62 of 11.5.1990, p 3728; cll (2) and (3) of that item were not commenced and were repealed by the Statute Law (Miscellaneous Provisions) Act 1997 No 55. This Act has been amended as follows:

1990	No 108	Statute Law (Miscellaneous Provisions) Act (No 2) 1990. Assented to 13.12.1990. Date of commencement of the provisions of Sch 1 relating to the Food Act 1989, assent, sec 2.
1992	No 111	Statute Law (Miscellaneous Provisions) Act (No 3) 1992. Assented to 8.12.1992. Date of commencement of the provision of Sch 1 relating to the Food Act 1989, 28.5.1993, Sch 1 and GG No 49 of 21.5.1993, p 2356.
1993	No 46	Statute Law (Miscellaneous Provisions) Act 1993. Assented to 15.6.1993.

Date of commencement	of the provision of Sch 1 relating to the Food Act 1989, assent, Sch 1.	
	No 108	Statute Law (Miscellaneous Provisions) Act (No 2) 1993. Assented to 2.12.1993. Date of commencement of the provisions of Sch 2 relating to the Food Act 1989, assent, Sch 2.
1995	No 11	Statute Law Revision (Local Government) Act 1995. Assented to 9.6.1995. Date of commencement of the provisions of Sch 1 relating to the Food Act 1989, 23.6.1995, sec 2 (1) and GG No 77 of 23.6.1995, p 3279.
	No 27	Evidence (Consequential and Other Provisions) Act 1995. Assented to 19.6.1995. Date of commencement, 1.9.1995, sec 2 and GG No 102 of 25.8.1995, p 4355.
1997	No 55	Statute Law (Miscellaneous Provisions) Act 1997. Assented to 2.7.1997. Date of commencement of Sch 5, assent, sec 2 (1).
	No 77	Administrative Decisions Legislation Amendment Act 1997. Assented to 10.7.1997. Date of commencement of Sch 5.15, 1.1.1999, sec 2 and GG No 178 of 24.12.1998, p 9946.
	No 147	Statute Law (Miscellaneous Provisions) Act (No 2) 1997. Assented to 17.12.1997. Date of commencement of Sch 1.12, 1.7.1998, Sch 1.12 and GG No 97 of 26.6.1998, p 4423.
	No 154	Health Services Act 1997. Assented to 19.12.1997. Date of commencement, 1.7.1998, sec 2 and GG No 97 of 26.6.1998, p 4423.
1999	No 85	Statute Law (Miscellaneous Provisions) Act (No 2) 1999. Assented to 3.12.1999. Date of commencement of Sch 4, assent, sec 2 (1).

Table of amendments

Sec 3	Am 1995 No 11, Sch 1.
Sec 41	Am 1997 No 77, Sch 5.15 [1].
Sec 47	Subst 1997 No 77, Sch 5.15 [2].
Sec 48	Rep 1997 No 77, Sch 5.15 [2].
Sec 56	Subst 1997 No 77, Sch 5.15 [3].
Sec 68	Am 1995 No 27, Sch 1.
Sec 70	Am 1992 No 111, Sch 1.
Sec 73	Am 1993 No 108, Sch 2.

Sec 77	Am 1990 No 108, Sch 1; 1997 No 147, Sch 1.12; 1997 No 154, Sch 6.13.
Sec 79	Am 1995 No 11, Sch 1.
Sec 80	Am 1995 No 11, Sch 1.
Sec 90	Am 1993 No 46, Sch 1.
Sec 93	Rep 1999 No 85, Sch 4.
Sch 1	Am 1990 No 108, Sch 1.
Sch 4	Am 1997 No 55, Sch 5. Rep 1999 No 85, Sch 4.