

- Act 30 of 1998
- Consolidated as at 25 Sep 1999
- Royal Assent 21 July 1998

FOOD ACT 1998

-
LONG TITLE

An Act to ensure the provision of food that is safe and fit for human consumption and to promote good nutrition

- PART 1 - PRELIMINARY

- SECT 1 Short title

1This Act may be cited as the Food Act 1998

- SECT 2 Commencement

2The provisions of this Act commence on a day or days to be proclaimed.

- SECT 3 Interpretation

3In this Act - "accredited" means accredited as a food handler under Division 3 of Part 6; "advertisement" includes -

(a) any written or spoken words; and

(b) any pictorial or other representation or design; "Agency" means an Agency as defined by the Tasmanian State Service Act 1984; "analysis" means any examination or testing carried out under this Act; "approved" means approved by the Director; "area" includes any geographic location; "authorised laboratory" means a laboratory authorised under section 43 to carry out analyses; "authorised officer" means -

(a) the Director; or

(b) a medical officer of health; or

(c) an environmental health officer; or

(d) a person appointed under section

11; or

(e) in respect of any matter relating to dairy premises, an authorised officer under the Dairy Industry Act 1994; or

(f) in respect of any matter relating to meat premises, an inspector under the Meat Hygiene Act 1985; "certificate of accreditation" means the certificate referred to in section 75; "certificate of registration of premises, vehicle or equipment" means the certificate referred to in section 57; "council fee" means a fee

imposed by a council under section 128;"Director" means the Director of Public Health appointed under the Public Health Act 1997;"director", in relation to a body corporate, includes -

(a) a person occupying or acting in the position of a director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

(b) any person in accordance with whose directions or instructions the directors or members of the governing body are accustomed to act;"environmental health officer" means a person appointed as such under the Public Health Act 1997;"equipment" includes -

(a) any utensil, machinery, instrument or apparatus; and

(b) any food vending machine;"excluded person" means a mortgagee, lessor or financial institution that does not have actual or complete control, access, use or management of a place, vehicle or other thing;"food" means -

(a) any substance ordinarily consumed or intended to be consumed or represented as being for human consumption; and

(b) any constituent or ingredient of food; and

(c) any food additive; and

(d) any substance used or intended to be used in the preparation of food; and

(e) a substance declared under section 6 to be food;"Food Advisory Council" means the Food Advisory Council established under section 16;"food handler" includes a person who -

(a) is involved in the manufacture or sale of food; or

;P;(b) inspects or assesses premises where food is manufactured or sold;"food vending machine" means a machine or mechanical device used or capable of being used for selling food without any intervention or attention by or on behalf of the seller at the time of the sale;"guidelines" means guidelines issued under section 126;"handling" includes manufacturing and selling;"health officer" means an environmental health officer or a medical officer of health;"label" includes -

(a) any tag, brand, mark or statement in writing; or

(b) any representation, design or other descriptive matter;/"licence" means a licence to manufacture or sell food referred to in Division 2 of Part 6;"manufacture" includes -

(a) to process, treat, cook and prepare; and

(b) to pack, store, transport and distribute; and

(c) to serve;"medical officer of health" means a person appointed as such under the Public Health Act 1997;"occupier" includes a person in charge of, or operating, any premises;"owner" includes an occupier;"pack" includes to cover, enclose and wrap;"package" includes anything in or by which food is wholly or partly cased, covered, enclosed, contained, wrapped or packed;"premises" includes -

(a) land; and

(b) a building or part of a building; and

(c) a structure or part of a structure; and

(d) fences, walls, outbuildings, service installations and other appurtenances of a structure; and

(e) a tent, stall or other temporary structure; and

(f) a boat or a pontoon; and

(g) any other place declared under section 6 to be premises;"prescribed disease" means a disease prescribed by the Director in the guidelines for the purpose of section 39;"proceedings" means proceedings for an offence under this Act;;"public authority" means -

(a) any council; or

(b) any body corporate established under an enactment having jurisdiction limited to a district, locality or part of the State; or

(c) any body corporate established under an enactment or in the exercise of prerogative rights of the Crown to administer or control any department, business, undertaking or public institution on behalf of the State;"public health" means the physical, mental and social wellbeing of the community;"publish" includes -

(a) publish material in a printed format which is available to the public; or

(b) publish material by any electronic means; or

(c) publish material by radio or television transmission; or

(d) provide material in a cinematographic film or videotape which is available to the public; or

(e) provide material in a book or sound recording which is available to the public; or

(f) make known to the public in any other manner or by any other means;"registered" means registered under this Act;"sample" means a sample taken under this Act;"sell" includes -

(a) dispose by any method for valuable consideration; and

(b) barter or exchange; and

(c) dispose to an agent for sale on consignment; and

(d) offer or expose for sale or disposition; and

;P;(e) keep or have in possession for sale; and

(f) agree or attempt to sell; and

(g) send, forward or deliver for sale; and

(h) dispose by way of raffle, lottery or other game of chance; and

(i) provide a sample; and

(j) provide under a contract of service; and

(k) supply;"standard" means a standard issued under section 125;"supply" includes -

- (a) offer as a prize or reward; and
- (b) give away for the purpose of advertisement or to promote trade or business; and
- (c) offer for charitable purposes;;"substance" includes -

- (a) any liquid or water; and
- (b) any mixture or compound;"vehicle" includes -
 - (a) any vessel or aircraft; and
 - (b) any thing declared under section 6 to be a vehicle.

- SECT 4 Act binds Crown

4This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

- SECT 5 Act prevails

5Any provision of this Act that is inconsistent with a provision of any other Act, other than the Public Health Act 1997, prevails over the latter provision to the extent of that inconsistency.

- SECT 6 Declarations

6The Director, by order, may declare that -

- (a) any substance or class of substance is food; and
- (b) any place or class of place is premises; and
- (c) any thing or class of thing is a vehicle.

- SECT 7 Application of Act

7This Act applies to -

- (a) any equipment used or capable of being used in, or in connection with, the sale of food; and
- (b) food that is for sale; and
- (c) any premises kept or used in any manner or to any degree for the manufacture or sale of food; and
- (d) any vehicle kept or used in any manner or to any degree for the manufacture or sale of food.

- SECT 8 Exemptions

8The Director, by order, may declare any of the following to be exempt from any provision of this Act:

- (a) any substance or food or class of substance or food;
- (b) any premises, vehicle or equipment;

(c) any person or class of person;

(d) any activity.

- PART 2 - ADMINISTRATION

- *Division 1 - Director and authorised officers*

- SECT 9 General functions and powers of Director

9(1) The functions of the Director are to -

(a) ensure that the provisions of this Act are complied with; and

(b) advise the Minister on any changes to this Act that may be necessary or appropriate; and

(c) carry out any other function for the purpose of this Act the Minister determines

(2) The Director may do anything necessary or convenient to perform any function under this Act

(3) The Minister may give the Director directions in respect of any power or function of the Director under this Act and the Director must comply with the directions.

- SECT 10 Delegation by Director

10(1) The Director may delegate any of his or her functions or powers, other than this power of delegation, to any person, class of person or Agency

(2) The Director is not to delegate any function or power to a council without that council's consent

(3) The Director is not to revoke a delegation to a council without consulting that council.

- SECT 11 Authorised officers

11(1) Subject to and in accordance with the Tasmanian State Service Act 1984, persons may be appointed as authorised officers

(2) A person employed in the Department may be appointed as an authorised officer and holds office in conjunction with that employment.

- SECT 12 Functions of authorised officers

12The functions of an authorised officer are to -

(a) carry out any functions the Director may determine; and

(b) ensure that the provisions of this Act are complied with; and

(c) assist the Director in the administration of this Act.

- SECT 13 Orders to prevent danger to public health

13The Director, a council or an authorised officer, by order, may do any of the following for the purpose of preventing or mitigating a serious danger to public health:

- (a) prohibit or restrict the manufacture, sale or advertisement of food or equipment of a specified class or description;
- (b) require the recall of food that has been consigned, distributed or sold;
- (c) require the impounding or isolation of food;
- (d) require a manufacturer, importer or seller of food to publish appropriate advertisements in an approved manner and form;
- (e) specify methods of analysis of food of a specified class or description;
- (f) permit any activity subject to specified conditions or prohibit any activity in relation to food.

- SECT 14 Order prohibiting cultivation of food from certain areas

14(1) The Director, if satisfied that food, if cultivated, taken, harvested or otherwise obtained from an area may be dangerous or injurious to any person consuming the food, by order may prohibit the cultivation, taking, harvesting or obtaining of the food from that area for sale

(2) A person must not cultivate, take, harvest or obtain food from an area to which an order relates without the written approval of the Director. Penalty: Fine not exceeding 50 penalty units.

- SECT 15 Assistance of authorised officers

15 The Director may require another authorised officer or police officer to assist in carrying out a direction or order under this Division.

- Division 2 - Food Advisory Council

- SECT 16 Food Advisory Council

16(1) The Director may establish a Food Advisory Council

(2) The Food Advisory Council consists of any person or persons appointed by the Director

(3) A person is appointed as a member of the Food Advisory Council on any terms and conditions the Director determines

(4) The procedure for the calling of, and for the conduct of business at, any meeting of the Food Advisory Council is as the Director determines.

- SECT 17 Function of Food Advisory Council

17(1) The function of the Food Advisory Council is to advise the Director on any issue relating to food as the Director requires

(2) The Food Advisory Council may do anything necessary or convenient to perform its function.

- SECT 18 Reports of Food Advisory Council

18 The Food Advisory Council is to provide the Director with any reports of its activities and recommendations as the Director requires.

- Division 3 - Councils

- SECT 19 Functions of councils

19(1) A council, within its municipal area, is to -

- (a) take adequate measures to ensure that the provisions of this Act are complied with; and
 - (b) carry out any other function the Minister or Director determines.:/
- (2) A council is to carry out any function under this Act in accordance with any relevant guidelines.

- SECT 20 Orders relating to functions

20(1) The Director may order -

- (a) a council to perform any function under this Act; or
 - (b) any authorised officer to carry out a specified function of a council under this Act; or
 - (c) any authorised officer to perform any function under this Act in any municipal area
- (2) If a council fails to exercise any power or perform any function, the Director may exercise the power or perform the function at the council's expense
- (3) Before the Director makes an order or takes any action under this section in relation to a council, the Director, unless the circumstances require immediate action, is to consult with the council
- (4) A council may request the Director to exercise any of its powers or perform any of its functions at the council's expense.

- SECT 21 Power over wharves

21A power or function of a council under this Act extends to any wharf in, or adjacent to, its municipal area.

- Division 4 - Powers of councils and authorised officers

- SECT 22 Entry, inspection and seizure

22(1) For the purpose of this Act, a council or an authorised officer may at any reasonable time -

- (a) enter, remain in and inspect any area, premises, body of water or vehicle; and
- (b) inspect any thing found in or on any area, premises, body of water or vehicle; and
- (c) mark, fasten, secure, take and remove a sample of any thing found in or on any area, premises, body of water or vehicle; and
- (d) open any container, receptacle or package found in or on any area, premises, body of water or vehicle; and
- (e) weigh, count, measure or gauge any thing found in or on the area, premises, body of water or vehicle; and

(f) seize any food, thing or record found in or on any area, premises, body of water or vehicle; and

(g) take any thing or record found in or on any area, premises, body of water or vehicle for the purpose of copying it; and

(h) seal any area, premises, body of water or vehicle

(2) A council or an authorised officer, other than the Director, may exercise a power under this section only if the council or officer -

(a) provides a certificate of authority when requested by the owner of the area, premises, body of water or vehicle; and

(b) gives reasonable notice unless notice would defeat the purpose of the intended exercise of the power; and

(c) uses no more force than is necessary to exercise the power

(3) A council or an authorised person may require a police officer to assist in exercising any power under this section

(4) A council or an authorised person, by notice in writing served on the owner of any thing seized under this section, must notify -

(a) the details of the thing seized; and

(b) the place to which the thing has been taken.

- SECT 23 Certificate of authority

23(1) The Director or a council is to issue a certificate of authority to an authorised officer

(2) A certificate of authority is to -

(a) state that it is issued for the purposes of this Act; and

(b) specify the powers which the authorised officer may exercise under it; and

(c) specify any expiry date.

- SECT 24 Production of records

24(1) A council or an authorised officer may require a person to produce any record required to be kept under this Act

(2) A council or an authorised officer may -

;(a) examine any record produced under subsection (1); and

(b) remove the record for the purpose of paragraph (c); and

(c) take extracts from, or copies of, the record by any means.

- SECT 25 Production of things

25A council or an authorised officer may require a person to produce for inspection any thing in the person's possession if the council or the officer reasonably believes that it may disclose evidence of the commission of an offence under this Act.

- SECT 26 Photographs, sketches, measurements and recordings

26 For the purposes of this Act, a council or an authorised officer may -

- (a) take any photograph, film or video recording; and
- (b) take any copy of, or extract from, any document or record; and
- (c) take any measurements; and
- (d) make any sketches or drawing; and
- (e) make any other recording by any other means.

- SECT 27 Information requirements

27(1) A council or an authorised officer may require a person to -

- (a) give his or her full name and residential address; and
- (b) give details of any registration, licence or exemption under this Act; and
- (c) provide any information reasonably required for the purposes of this Act

(2) A council or an authorised officer may require any person to give information about that person's or another person's activities in respect of any matter under this Act

(3) A person must comply with a requirement made under this section. Penalty: Fine not exceeding 50 penalty units.

- PART 3 - FOOD QUALITY

- SECT 28 Food unfit for human consumption

28 (1) Food is unfit for human consumption if it -

- (a) is likely to have a significant harmful effect on human health; or
- (b) is damaged or has deteriorated or perished; or
- (c) contains a substance that is likely to cause a significant harmful effect on human health; or
- (d) contains any foreign matter; or
- (e) comes into contact during its manufacture or sale with any substance that may render the food harmful to human health; or
- (f) consists wholly or partly of any portion of an animal which is unfit for food; or
- (g) consists of a spoilt, decomposed or putrid animal or vegetable substance; or

(h) is labelled or otherwise specified as being a particular type of food and its taste or smell is not one ordinarily associated with that type of food; or

(i) does not comply with any relevant regulations or standards

(2) A person must not manufacture, sell or supply food that is unfit for human consumption. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 100 penalty units.

- SECT 29 Ensuring food is fit for human consumption

29(1) An authorised officer, by notice in writing, may require the owner or person in charge of any equipment, premises or vehicles in or with which food being manufactured for sale or supply is unfit for human consumption -

(a) to take any specified action to ensure that the food produced is fit for human consumption; or

(b) to cease the manufacture of the food

(2) A notice is to specify -

(a) the name of that owner or person in charge; and

(b) the equipment, premises or vehicles to which it relates; and

(c) the action to be carried out; and

(d) the period within which the action is to be carried out

(3) A notice is to be served on the owner or person in charge of the equipment, premises or vehicle

(4) A person must comply with a notice. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 200 penalty units; and

(b) a natural person, a fine not exceeding 100 penalty units

(5) An authorised officer, if satisfied that at the end of the period referred to in a notice, food being manufactured is not fit for human consumption, may require the person specified in the notice to take -

(a) any action specified in section 37(2); and

(b) any other specified action.

- SECT 30 False or misleading description

30(1) The description of food is false or misleading if -

(a) the description conceals the fact that the food is unfit for human consumption; or

(b) the description represents the food as being of a particular class or description and -

(i) the food contains, or is mixed or diluted with, a substance in a quantity that significantly diminishes its food value or nutritive properties as compared with the food it is represented to be; or

(ii) the food contains, or is mixed or diluted with, a substance of lower commercial value than the food it is represented to be; or

;P;(iii) a constituent of the food is wholly or partly removed so that its properties as compared with the food it is represented to be are diminished; or

(c) the food is expressly or impliedly represented to be of a particular quality and it is not of that quality; or

(d) the food is expressly or impliedly represented to be of a particular description for which there is a prescribed standard and it does not comply with that standard; or

(e) the food in a package or attached to a label is wholly or partly removed and substituted with another substance; or

(f) the package or label in or with which the food is packed or labelled does not bear any relevant prescribed statement; or

(g) the package or label in or with which the food is packed or labelled bears a false or misleading statement, design or device relating to -

(i) the food or any substance contained in it; or

(ii) the physiological, curative or therapeutic effect of the food; or

(h) the food is packed or labelled in a manner -

(i) which is false or misleading or deceptive; or

(ii) which is not in accordance with the Act; or

(i) the food does not comply with any relevant regulations or guidelines

(2) A person must not manufacture or sell food the description of which is false or misleading. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 100 penalty units.

- SECT 31 Prescribed standard

31A person must not manufacture or sell food that does not comply with any relevant prescribed standard. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 100 penalty units.

- SECT 32 Demands of purchaser

32(1) A person must not sell food to a person that is not of the nature, substance or quality reasonably demanded by the person. Penalty: Fine not exceeding 50 penalty units

(2) A person must not sell food reasonably demanded by a person to the person for which there is a relevant prescribed standard that does not comply with that standard. Penalty: Fine not exceeding 50 penalty units

(3) A person who demands food by a prescribed name for which there is a relevant standard is taken to demand food that complies with that standard.

- SECT 33 Food wrongly packed

33A person must not sell food which is packed in a manner that does not comply with this Act and any relevant regulations or guidelines. Penalty: Fine not exceeding 50 penalty units.

- SECT 34 Labelling

34(1) A person who sells or manufactures food must ensure that the food is labelled in accordance with any relevant regulations or guidelines. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 100 penalty units; or

(b) a natural person, a fine not exceeding 50 penalty units

(2) Subsection (1) does not apply if food is packed in the presence of the person buying the food.

- PART 4 - FOOD SAFETY

- Division 1 - Cleanliness

- SECT 35 Clean equipment

35A person who owns or operates any equipment, premises or vehicle used in connection with the manufacture or sale of food must ensure that the equipment, premises or vehicle are kept clean and in a sanitary condition. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 100 penalty units; or

(b) a natural person, a fine not exceeding 50 penalty units.

- SECT 36 Cleanliness of premises, vehicles, equipment

36(1) An authorised officer, by notice in writing, may require the owner of any equipment, premises or vehicle used in connection with the manufacture or sale of food to take any specified action to ensure that the equipment, premises and vehicle are kept clean and in a sanitary condition

(2) A notice is to specify -

(a) the equipment, premises or vehicle to which it relates; and

(b) the action to be carried out; and

(c) the period during which the action is to be carried out

(3) A notice is to be served on the owner of the equipment, premises or vehicle

(4) An authorised officer is to ensure that a copy of a notice is affixed to a conspicuous part of the equipment, premises or vehicle to which it relates.

- SECT 37 Notice requiring certain action

37(1) If an authorised officer is not satisfied that at the end of the period specified in a notice under section 36(2)(c) any equipment, premises or vehicles to which the notice relates has been put into a clean and sanitary condition, the authorised officer, by notice in writing, may require the owner to take further specified action.;P;

(2) A notice may require that -

(a) any equipment, premises or vehicles to which it relates must not be kept or used for the manufacture or sale of food; and

(b) the equipment must not be used to clean other equipment; and

(c) the equipment, premises or vehicle may only be used for any purposes and on any conditions specified in the notice; and

(d) any other action the authorised officer determines appropriate be complied with

(3) A person must comply with a notice. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 100 penalty units.;/P;

- Division 2 - Food handling

- SECT 38 Standard of hygiene

38(1) A person who handles food in the course of its manufacture or sale must -

(a) comply with any regulations or relevant guidelines relating to hygiene; and

(b) observe reasonable standards of personal hygiene. Penalty: Fine not exceeding 20 penalty units

(2) An employer must ensure that any employee complies with subsection (1). Penalty: Fine not exceeding 30 penalty units.

- SECT 39 Handling food while diseased

39(1) A person who knows that he or she has a prescribed disease must not handle food in the course of its manufacture or sale otherwise than in accordance with any relevant guidelines. Penalty: Fine not exceeding 20 penalty units

(2) An employer must not allow any employee who the employer knows or ought reasonably to know has a prescribed disease to fail to comply with subsection (1). Penalty: Fine not exceeding 30 penalty units.

- Division 3 - Manufacture of food

- SECT 40 Manufacturing food

40A person must not manufacture, sell or supply any food otherwise than in accordance with any regulations or relevant guidelines. Penalty: In the case of -

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) a natural person, a fine not exceeding 100 penalty units.

- PART 5 - SAMPLES, ANALYSIS AND TESTING

- Division 1 - Samples

- SECT 41 Providing samples

41(1) An authorised officer may require a person to provide a sample of food to be taken in the prescribed manner for analysis for the purposes of this Act

(2) If any food is supplied in an unopened package, an authorised officer may require a person to provide the whole package as a sample

(3) A person must comply with a requirement to provide a sample in the prescribed manner. Penalty: In the case of -

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) a natural person, a fine not exceeding 100 penalty units

(4) An authorised officer is to pay the person who provided the sample -

- (a) a prescribed amount; or
- (b) if an amount is not prescribed, an amount equal to the current market value of the sample

(5) As soon as practicable after obtaining a sample, an authorised officer, by notice in writing, is to inform the person who provided the sample that the sample is to be analysed

(6) A person who is not otherwise entitled to do so under this Act is not entitled to require or request a sample in their possession to be analysed under this Act.

- SECT 42 Procedure for samples

42(1) Unless otherwise prescribed, an authorised officer is to divide a sample into 3 parts and -

- (a) leave one part with the person who provided the sample; and
- (b) retain one part for future comparison; and
- (c) provide one part to an authorised laboratory

(2) An authorised officer is taken to have complied with subsection (1) even if a person fails or refuses to accept a part left with that person under that subsection

(3) An authorised officer may deal with a sample in any other appropriate manner if satisfied that dividing the sample into 3 parts is likely to -

- (a) affect or impair the composition of the sample so as to make the parts unsuitable for accurate analysis; or
 - (b) provide a part that is insufficient for accurate analysis; or
 - (c) make the sample otherwise unsuitable for accurate analysis
- (4) If a sample is provided in the form of separate or severable items an authorised officer may -
- (a) obtain a number of those items; and
 - (b) divide the number into 3 parts so that each part consists of one or more of those items; and
 - (c) deal with those parts -
 - (i) in accordance with this section; or
 - (ii) if there are prescribed procedures, in accordance with those procedures
- (5) An authorised officer is to mark, fasten and seal each sample as its nature permits.

- Division 2 - Analysis and testing

- SECT 43 Authorised laboratories

43(1) A person in charge of a laboratory may apply in an approved form to the Director for the laboratory to be authorised to carry out analyses for the purpose of this Act

(2) The Director may -

- (a) grant the application for all types of analyses or for specific types of analyses; or
- (b) refuse to grant the application.

- SECT 44 List of authorised laboratories

44(1) The Director is to keep an updated list of authorised laboratories

- (2) The Director is to make available for public inspection the list of authorised laboratories
- (3) The Director may charge a reasonable fee for inspection of the list of authorised laboratories.

- SECT 45 Notification of connection with manufacture or sale of food

45A person in charge of an authorised laboratory must notify the Director in writing immediately it becomes directly or indirectly connected with any trade or business connected with the manufacture or sale of food. Penalty: Fine not exceeding 5 penalty units.

- SECT 46 Revocation of authorisation

46 The Director may revoke the authorisation of an authorised laboratory -

- (a) if satisfied that the laboratory has become directly or indirectly engaged in any trade or business connected with the manufacture or sale of food; or

(b) at the request of the person in charge of the laboratory; or

(c) for any other reason the Director considers appropriate.

- SECT 47 Method of analysis

47 An analysis of any sample is to be carried out -

(a) in accordance with any relevant guidelines; or

(b) if there are prescribed procedures, in accordance with those procedures.

- SECT 48 Order for analysis

48 In any proceedings, a court may order that a sample be analysed by -

(a) a laboratory specified by the court; or

(b) a laboratory agreed to by the parties to the proceedings.

- SECT 49 Certificate of analysis

49

(1) A person in charge of an authorised laboratory must provide a certificate in the approved form setting out the result of any analysis of a sample to any person who submitted the sample. Penalty: Fine not exceeding 100 penalty units

(2) A person in charge of an authorised laboratory, on payment of a prescribed fee, must provide a copy of the certificate of analysis to the following if so requested:

(a) the person from whom the sample is obtained;

(b) the person who submitted the sample;

(c) the manufacturer of the food comprised in the sample or the manufacturer's agent. Penalty: Fine not exceeding 100 penalty units

(3) Except as provided in this section, a person is not entitled to receive a copy of a certificate of analysis or any other report or confirmation concerning the result of an analysis.

- SECT 50 Use of results of analysis

50 A person must not use or permit to be used for business purposes the results of any analysis under this Act. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 100 penalty units; or

(b) a natural person, a fine not exceeding 50 penalty units.

- SECT 51 Testing facilities

51

(1) An authorised officer may require a person in charge of any premises where food is manufactured to provide facilities at those premises to test the food

(2) The testing and examination of food is to be carried out in accordance with any relevant guidelines

(3) A person must comply with a requirement under subsection (1).Penalty:Fine not exceeding 50 penalty units.

- SECT 52 Results of testing

52

(1) The Director may require a person who carries out any testing or examination under section 51 to provide the results of that testing or examination in accordance with any relevant guidelines

(2) A person must comply with a requirement under subsection (1).Penalty:Fine not exceeding 50 penalty units.

- Division 3 - Delegation

- SECT 53 Delegation

53A person in charge of a laboratory, by instrument in writing, may delegate any function or power under this Part to any other person.

- PART 6 - REGISTRATION, LICENCES AND ACCREDITATIONS

- Division 1 - Registration of premises, vehicles and equipment

- SECT 54 Registration of premises, vehicles and equipment

54 (1) The Director, by notice in the Gazette, may require the owner, occupier or operator of any premises, vehicle or equipment or class of premises, vehicle or equipment used for, or in relation to, the manufacture or sale of food to register the premises, vehicle or equipment

(2) A person must comply with a requirement under subsection (1).Penalty:Fine not exceeding 100 penalty units.

- SECT 55 Application for registration

55(1) A person is to apply to the relevant council for any premises, vehicle or equipment to be registered

(2) An application is to be -

(a) in an approved form; and

(b) lodged with the general manager of the council; and

(c) accompanied by the council fee.

- SECT 56 Grant or refusal of registration

56(1) A council may -

(a) grant an application for registration of premises, vehicle or equipment subject to any conditions; or

(b) refuse to grant the application

(2) In determining an application, the council is to consider -

(a) whether the premises, vehicle or equipment are capable of being operated in accordance with any relevant guidelines; and

(b) the protection of public health

(3) The council, by notice in writing served on the applicant, must notify -

(a) the granting of the application; or

(b) the refusal to grant the application.

- SECT 57 Issue of certificate of registration

57If a council grants an application for registration of any premises, vehicle or equipment, it is to -

(a) issue a certificate of registration in an approved form; and

(b) endorse the certificate with any conditions; and

(c) specify on the certificate -

(i) the premises, vehicle or equipment to which it relates; and

(ii) the date of issue of the certificate.

- SECT 58 Operation of registered premises, vehicle and equipment

58The owner, occupier and operator of registered premises and the owner of any registered vehicle or registered equipment must ensure that they are operated in accordance with -

(a) any conditions of the registration; and

(b) any relevant guidelines. Penalty: Fine not exceeding 50 penalty units.

- SECT 59 Duration of registration

59The registration of any premises, vehicle or equipment remains in force for whichever of the following periods is the lesser:

(a) the period specified in the certificate of registration;

(b) a period of 12 months from the date of issue of the certificate of registration of the premises, vehicle or equipment.

- SECT 60 Renewal of registration

60(1) A person may apply to the relevant council to renew the registration of premises, vehicle or equipment

(2) An application is to be -

(a) in an approved form; and
(b) lodged with the general manager of the council within 60 days before the registration ceases to be in force; and

(c) accompanied by the council fee

(3) The council may -

(a) grant the application subject to any conditions; or

(b) refuse to grant the application

(4) In determining an application, the council is to consider -

(a) the manner in which the premises, vehicle or equipment have been operated during the period of registration; and

(b) the protection of public health

(5) The council must grant or refuse to grant the application within 30 days after it is lodged

(6) The council, by notice in writing served on the applicant, must notify -

(a) the granting of the application; or

(b) the refusal to grant the application

(7) Sections 57, 58 and 59 apply to the renewal of registration as if it were the original registration.

- SECT 61 Variation of registration

61(1) A council, on its own volition or on application, may vary the registration of any premises, vehicle or equipment by omitting, substituting or amending any condition of the registration

(2) Before varying registration of any premises, vehicle or equipment, the council is to consider -

(a) the manner in which they are being operated; and

(b) the protection of public health

(3) The council, by notice in writing served on the holder of the certificate of registration of the premises, vehicle or equipment, must notify any variation of the registration

(4) The variation of the registration takes effect -

(a) if an appeal is not lodged under section 141(1)(d), 30 days after service of the notice; or

(b) if an appeal is lodged under section 141(1)(d) and a magistrate makes an order under section 145(1)(a), on the day the order was made.

- SECT 62 Cancellation of registration

62(1) A council may cancel the registration of any premises, vehicle or equipment if -

- (a) a condition of the registration has not been complied with; or
- (b) a provision of any relevant guidelines has not been complied with; or
- (c) the premises, vehicle or equipment to which the registration relates have undergone substantial alteration so that -
 - (i) compliance with this Act or any condition of the registration is significantly affected; or
 - (ii) the use of the premises, vehicle or equipment has substantially changed.:/
- (2) The council, by notice in writing served on the holder of the certificate of registration of the premises, vehicle or equipment, must notify the cancellation of the registration
- (3) The cancellation of the registration takes effect -
 - (a) if an appeal is not lodged under section 141(1)(e), 30 days after service of the notice; or
 - (b) if an appeal is lodged under section 141(1)(e) and a magistrate makes an order under section 145(1)(a), on the day the order was made.

- Division 2 - Licence to manufacture or sell food

- SECT 63 Licence to manufacture or sell food

- 63(1) The Director, by notice in the Gazette, may require any person or class of person who manufactures or sells food to be licensed
- (2) A person must comply with a requirement under subsection (1).Penalty:Fine not exceeding 100 penalty units.

- SECT 64 Application for licence

- 64(1) A person may apply to the relevant council for a licence to manufacture or sell food
- (2) An application is to be -
 - (a) in an approved form; and
 - (b) lodged with the general manager of the council; and
 - (c) accompanied by the council fee.

- SECT 65 Grant or refusal of licence

- 65(1) A council may -
 - ;P;(a) grant an application for a licence to manufacture or sell food subject to any conditions; or
 - (b) refuse to grant the application
- (2) In determining an application, the council is to consider -
 - (a) whether the applicant is competent to manufacture or sell food in accordance with any relevant guidelines; and

(b) the protection of public health

(3) The council, by notice in writing served on the applicant, must notify -

(a) the granting of the application; or

(b) the refusal to grant the application

(4) A condition of a licence may require the holder of the licence to provide information in accordance with any relevant guidelines.

- SECT 66 Issue of licence

66 If a council grants an application for a licence to manufacture or sell food it is to -

(a) issue the licence in an approved form; and

(b) endorse the licence with any conditions; and

(c) specify on the licence -

(i) the name of the person to whom it is issued; and

(ii) the date of issue of the licence.

- SECT 67 Manufacturing and selling food

67 The holder of a licence must manufacture or sell food in accordance with -

(a) any condition of the licence; and;P;

(b) any relevant guidelines. Penalty: Fine not exceeding 50 penalty units.

- SECT 68 Duration of licence

68 A licence remains in force for whichever of the following periods is the lesser:

(a) the period specified in the licence;

(b) a period of 12 months from the date of issue of the licence.

- SECT 69 Renewal of licence

69(1) The holder of a licence may apply to the relevant council to renew the licence

(2) An application is to be -

(a) in an approved form; and

(b) lodged with the general manager of the council within 60 days before the licence ceases to be in force; and

(c) accompanied by the applicable council fee

(3) The council may -

(a) grant the application subject to any conditions; or

(b) refuse to grant the application

(4) In determining an application, the council is to consider -

(a) the manner in which the applicant manufactured or sold food under the licence; and

(b) the protection of public health

(5) The council must grant or refuse to grant an application within 30 days after it is lodged

(6) The council, by notice in writing served on the applicant, must notify -

(a) the granting of the application; or

(b) the refusal to grant the application

(7) Sections 66, 67 and 68 apply to the renewal of a licence as if it were the original licence.

- SECT 70 Variation of licence

70(1) A council, on its own volition or on application, may vary a licence by omitting, substituting or amending any condition of the licence

(2) Before varying a licence, the council is to consider -

(a) the manner in which the holder of the licence manufactured or sold food; and

(b) the protection of public health.:/

(3) The council, by notice in writing served on the holder of the licence, must notify variation of the licence

(4) The variation of a licence takes effect -

(a) if an appeal is not lodged under section 142(1)(d), 30 days after service of the notice; or

(b) if an appeal is lodged under section 142(1)(d) and a magistrate makes an order under section 145(1)(a), on the day the order was made.

- SECT 71 Cancellation of licence

71(1) A council may cancel a licence if -

(a) a condition of the licence has not been complied with; or

(b) a provision of any relevant guidelines has not been complied with.:/

(2) The council, by notice in writing served on the holder of the licence, must notify the cancellation of the licence

(3) The cancellation of a licence takes effect -

- (a) if an appeal is not lodged under section 142(1)(e), 30 days after service of the notice; or
- (b) if an appeal is lodged under section 142(1)(e) and a magistrate makes an order under section 145(1)(a), on the day the order was made.

- Division 3 - Accreditation of food handlers

- SECT 72 67The holder of a licence must manufacture or sell food in accordance with -

- (a) any condition of the licence; and;P;
- (b) any relevant guidelines

72(1) The Director, by notice in the Gazette, may require a food handler or class of food handler to be accredited as a food handler under this Division in respect of -

- ;(a) any specified activity or class of activity; or
- (b) any specified premises or class of premises

(2) A person must comply with a requirement under subsection (1).Penalty:Fine not exceeding 50 penalty units.

- SECT 73 Application for accreditation

73(1) A person is to apply to the relevant council for accreditation

(2) An application is to be -

- (a) in an approved form; and
- (b) lodged with the general manager of the council; and
- (c) accompanied by the council fee.

- SECT 74 Grant or refusal of accreditation

74(1) A council may -

- (a) grant an application for accreditation subject to any conditions; or
- (b) refuse to grant the application

(2) In determining an application, the council is to consider -

- (a) if the applicant is competent to be a food handler; and
- (b) the protection of public health

(3) The council, by notice in writing served on the applicant, must notify -

- (a) the granting of the application; or
- (b) the refusal to grant the application.

- SECT 75 Issue of certificate of accreditation

75 If a council grants an application for accreditation, it is to -

- (a) issue a certificate of accreditation in an approved form; and
- (b) endorse the certificate with any conditions; and
- (c) specify on the certificate -
 - (i) the name of the person to whom it is issued; and
 - (ii) the date of issue of the certificate.

- SECT 76 Operating as food handler

76 The holder of a certificate of accreditation must operate as a food handler in accordance with -

- (a) any condition of the accreditation; and
- (b) any relevant guidelines.:/P;

- SECT 77 Duration of accreditation

77 The accreditation remains in force for whichever of the following periods is the lesser:

- (a) the period specified in the certificate of accreditation;
- (b) a period of 12 months from the date of issue of the certificate of accreditation.

- SECT 78 Renewal of accreditation

78(1) A person may apply to the relevant council to renew accreditation

(2) An application is to be -

- (a) in an approved form; and
- (b) lodged with the general manager of the council within 60 days before the licence ceases to be in force; and
- (c) accompanied by the council fee

(3) The council may -

- (a) grant the application subject to any conditions; or
- (b) refuse to grant the application

(4) In determining an application, the council is to consider -

- (a) the manner in which the applicant operated as a food handler; and
- (b) the protection of public health

(5) The council must grant or refuse to grant the application within 30 days after it is lodged

(6) The council, by notice in writing served on the applicant, must notify -

(a) the granting of the application; or

(b) the refusal to grant the application

(7) Sections 75, 76 and 77 apply to the renewal of accreditation as if it were the original accreditation.

- SECT 79 Variation of accreditation

79(1) A council, on its own volition or on application, may vary the accreditation of a person by omitting, substituting or amending any condition of the accreditation

(2) Before varying the accreditation of a person, a council is to consider -

(a) the manner in which the person operated as a food handler; and

(b) the protection of public health

(3) The council, by notice in writing served on the holder of the certificate of accreditation, must notify any variation of the accreditation

(4) The variation of the accreditation takes effect -

(a) if an appeal is not lodged under section 143(1)(d), 30 days after service of the notice; or

(b) if an appeal is lodged under section 143(1)(d) and a magistrate makes an order under section 145(1)(a), on the day the order was made.

- SECT 80 Cancellation of accreditation

80(1) A council may cancel the accreditation of a person if -

(a) a condition of the accreditation has not been complied with; or

(b) a provision of any relevant guideline has not been complied with

(2) The council, by notice in writing served on the holder of the certificate of accreditation, must notify the cancellation of the accreditation

(3) The cancellation of the accreditation takes effect -

(a) if an appeal is not lodged under section 143(1)(e), 30 days after service of the notice; or

(b) if an appeal is lodged under section 143(1)(e) and a magistrate makes an order under section 145(1)(a), on the day the order was made.

- PART 7 - OFFENCES

- SECT 81 Advertising

81(1) A person must not publish an advertisement relating to the sale of food that the person knows -

(a) is false or misleading; or

(b) omits any matter without which the advertisement is false or misleading. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 100 penalty units

(2) In any proceedings for an offence under subsection (1), it is a defence for a person to prove that he or she -

(a) did not know and could not have reasonably known that the advertisement was false or misleading; or

(b) as a person whose business it is to publish or arrange for publication of advertisements, did not make or cause to be made any material alteration in the substance of the advertisement.

- SECT 82 Dispatch of food

82(1) A person must not dispatch or tender or offer to dispatch or tender any food for sale that does not comply with this Act, whether the sale is effected or is to become effected in this State or elsewhere. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 100 penalty units

(2) In any proceedings for an offence under subsection (1), it is a defence for a person to prove that the sale was authorised under a law in force at the place where the sale is effected or is to become effected.

- SECT 83 Interference with marks

83.(1) A person, without the permission of an authorised officer, must not -

(a) interfere with, remove, erase, alter or break open a mark, fastening or seal placed by the authorised officer; or

(b) remove any thing from a container, room, compartment, cabinet or vehicle into which the thing has been placed by the authorised officer; or

(c) interfere with, or remove, any sample taken by an authorised officer; or

(d) interfere with, or remove, any thing or document seized by an authorised officer. Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both

(2) The owner of any premises or vehicle where an offence under subsection (1) is alleged to have been committed is taken to have committed that offence

(3) In any proceedings for an offence under subsection (2), it is a defence for a person to prove that he or she took all reasonable steps to prevent the commission of the offence

- SECT 84 Offences against authorised officers

84(1) A person must not -

(a) assault, abuse or threaten an authorised officer exercising a power or performing a function under this Act; or

(b) hinder, obstruct or delay an authorised officer exercising a power or performing a function under this Act. Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both

(2) A person must not fail to comply with a requirement of an authorised officer under this Act. Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both

(3) If an authorised officer fails to produce a certificate of authority when requested, a person is not guilty of an offence under this section.

- SECT 85 Inciting and encouraging

85A person must not incite or encourage another person to commit an offence under this Act. Penalty: Fine not exceeding 100 penalty units.

- SECT 86 Offences by corporations

86 If a body corporate is guilty of an offence under this Act, each director of the body corporate is guilty of the offence unless it is proved that the director could not have reasonably prevented the commission of the offence by the body corporate.

- SECT 87 Liability of employers

87(1) The employer of a person who commits an offence under this Act is taken to have committed the same offence even if the person committed the offence -

(a) without the employer's authority; or

(b) contrary to the employer's orders or instructions

(2) An employer may be proceeded against and convicted whether or not the person has been proceeded against or convicted

(3) In any proceedings against an employer it is a defence for the employer to prove that the employer -

(a) had no knowledge of the offence being committed; and

(b) by exercising due diligence, could not have prevented the offence from being committed.

- SECT 88 Liability of employees and agents

88(1) In any proceedings under this Act it is a defence for a person to prove that at the time of committing an offence he or she -

(a) was an employee of the owner of -

(i) the premises or vehicle in relation to which the offence was committed; or

(ii) any business relating to food conducted in the premises or vehicle; and

(b) was under the supervision of that owner or a person authorised by the owner

(2) Except by leave of the court, a defence under subsection (1) is only available if the person intending to rely on that defence gives notice in writing to the court and the complainant -

(a) stating that intention; and

(b) stating the name and address of the owner.

- PART 8 - LEGAL PROCEEDINGS AND EVIDENCE

- Division 1 - Proceedings

- SECT 89 Proceedings instituted

89(1) Proceedings may only be instituted by -

(a) the Minister or a person authorised by the Minister; or

(b) an authorised officer; or

(c) a council

(2) Proceedings must be -

(a) instituted within 3 years after the date on which an offence is alleged to have been committed; or

(b) if the proceedings are in respect of a sample of food, within 90 days after the date on which the sample was obtained

(3) A person may apply to a magistrate within the time limits referred to in subsection (2) to extend those time limits.

- SECT 90 Disclosure of source of information

90(1) A witness in any proceedings for an offence under this Act is not compelled to disclose the source or the nature of the source of any information the witness gives in the proceedings

(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.

- SECT 91 Onus of proof

91 In any proceedings under this Act, the defendant must prove -

(a) that any food to which the proceedings relate was not sold for human consumption; and

(b) the correctness of any statement on a label or in an advertisement relating to -

(i) the origin or composition of the food; or

(ii) the therapeutic or nutritive properties of the effect of the food; and

(c) any exception or provision in the Act on which he or she relies.

- SECT 92 Proof for conviction

92 Proof of an analysis or the results of an analysis is not necessary to prove an offence if the court is satisfied that the offence is sufficiently proven without the analysis.

- Division 2 - Presumptions and evidence

- SECT 93 Presumptions about food

93 In any proceedings it is presumed that -

- (a) a person intends to sell food if he or she sells any thing of which food is a constituent; and
- (b) any food manufactured for sale, transported for sale or sold is intended for human consumption; and
- (c) any food found in any premises or vehicle used for the manufacture of food is intended -
 - (i) to be used in the manufacture of food; and
 - (ii) for human consumption; and
- (d) any food sold is sold by the person who imported or manufactured the food.

- SECT 94 Presumption about samples

94 In any proceedings it is presumed that each part of a sample of food divided for the purpose of an analysis is of uniform composition with every other part of that sample.

- SECT 95 Presumption about importation and manufacture

95 In any proceedings it is presumed that any person who appears from any statement on a package or a label on a package to have imported, manufactured or prepared the food enclosed in the package has done so.

- SECT 96 Copies as evidence

96 A copy of any record or part of a record certified by an authorised officer as being a true and correct copy is -

- (a) admissible in any proceedings; and
- (b) evidence of the facts stated in it; and
- (c) taken to be a true and correct copy.

- SECT 97 Certificate of analysis

97(1) Subject to subsection (2), a certificate of the result of an analysis is -

- (a) admissible in any proceedings; and
- (b) evidence of the facts stated in it

(2) A certificate of analysis is not admissible unless -

- (a) a copy of the certificate is served on the defendant at least 14 days before the hearing; and

(b) if a method of analysis is prescribed, the certificate contains a statutory declaration by one of the following persons that the method has been followed:

;P;(i) the person in charge of a laboratory where the analysis was undertaken;

(ii) the analyst who undertook the analysis

(3) A court may admit a certificate of analysis if the defendant has not been served because he or she has not been found.

- Division 3 - Miscellaneous matters

- SECT 98 Forfeiture

98A court, in addition to imposing a penalty for an offence under this Act, may order that any article, vehicle or other thing by means of which, or in relation to which, the offence was committed be forfeited to the Crown or a council.

- SECT 99 Sale or disposal of forfeited things

99(1) A council or authorised officer may sell, destroy or otherwise dispose of any thing forfeited if -

(a) an application is not made under subsection (2); or

(b) an application is made under subsection (2) and the application is refused

(2) A person who owned any thing forfeited, or who had any legal or equitable interest in any thing forfeited immediately before the forfeiture, may apply to the council or authorised officer to buy it within 30 days after the forfeiture

(3) The council or authorised officer may -

(a) grant an application under this section; or

(b) refuse to grant the application

(4) If the application is granted, the council or authorised officer is to sell the forfeited thing to the applicant for an amount equal to its estimated market value

(5) Any proceeds of a sale or disposal of a thing forfeited by a council are payable to the council

(6) Any proceeds of a sale or disposal of a thing forfeited by an authorised officer are payable into the Consolidated Fund.

- SECT 100 Return of and access to seized things

100

(1) The owner of any thing seized under this Act may apply to the council which, or authorised officer who, seized the thing for -

(a) the return of that thing; or

(b) access to that thing

(2) An application for the return of any thing seized is to be made within 48 hours after it was seized

(3) The council or authorised officer may -

(a) grant an application under this section; or

(b) refuse to grant it.

- SECT 101 Sale or disposal of seized things

101(1) A council or authorised officer may sell or otherwise dispose of any thing seized under this Act if -

(a) an appeal is not made under section 144; or

(b) an appeal is made under section 144 and an order is made under section 145(2)(a); or

(c) it poses an immediate threat to public health

(2) Any proceeds of a sale or disposal of a thing seized by a council are payable to the council

(3) Any proceeds of a sale or disposal of a thing seized by an authorised officer are payable into the Consolidated Fund.

- SECT 102 Defences relating to analysis

102In any proceedings relating to food that has been analysed it is not a defence for a person to allege -

(a) that the person instituting the proceedings is not the person who caused the analysis to be made; or

(b) that any part of the food retained for future comparison has undergone any deterioration or material change in its constitution.

- SECT 103 Additional penalty

103A court, in addition to imposing a penalty under this Act on a person, may impose a penalty on the person not exceeding 100 penalty units if of the opinion that the food to which the offence relates is so unfit for human consumption as to be harmful to health.

- SECT 104 Liability for costs

104In any proceedings a court may order that a person convicted of an offence pay any reasonable costs and expenses incurred in -

(a) taking the proceedings in respect of the offence; and

(b) examining, seizing, analysing or disposing of any thing to which the offence relates; and

(c) the transportation and storage of any thing to which the offence relates.

- Division 4 - Infringement notices

- SECT 105 Service of infringement notice

(1) An authorised person or a council may serve an infringement notice on a person, other than a person under the age of 16 years, if of the opinion that the person has committed a prescribed offence

(2) An infringement notice is not to relate to 4 or more offences.

- SECT 106 Form of infringement notice

106(1) An infringement notice is to -

(a) be in an approved form; and

(b) specify -

(i) the offence to which it relates; and

(ii) the prescribed penalty and prescribed special penalty for that offence; and

(iii) the total amount payable; and

(iv) the place at which the penalty must be paid; and

(v) any other prescribed details

(2) An infringement notice is to state that the person on whom it is served may disregard the notice but that on doing so he or she may be prosecuted for the offence to which the notice relates.

- SECT 107 Acceptance of infringement notice

107A person may accept an infringement notice by -

(a) paying the total amount payable to a clerk of petty sessions within 21 days after being served with the notice; or

(b) lodging at the place specified in the notice within 21 days after being served with the notice a written undertaking to pay the amount payable.

- SECT 108 Extension of acceptance period

108If an infringement notice is not accepted before the period referred to in section 107 expires, a clerk of petty sessions or relevant council clerk may allow a further period of 14 days commencing on that expiry for the acceptance of that notice.

- SECT 109 Payment

109(1) If a person undertakes under section 107(b) to pay any amount payable under an infringement notice, a clerk of petty sessions or relevant council clerk may determine the period, not exceeding 60 days from the day on which the notice was served, within which the amount must be paid

(2) A person may make representations to a clerk of petty sessions or relevant council clerk in relation to the ability to pay the amount

(3) A clerk of petty sessions or relevant council clerk is to take the person's representations into account before determining the period within which the amount is to be paid

(4) If a person fails to pay any amount in accordance with an undertaking, the same proceedings may be taken against the person in respect of the amount remaining outstanding as if it were a penalty imposed on the person on summary conviction.

- SECT 110 Payments to council or Consolidated Fund

110 Any payments made in respect of an infringement notice -

(a) are payable to a council, if the notice was served by the council; or

(b) in any other case, are payable into the Consolidated Fund

- SECT 111 Effect of acceptance

111(1) The acceptance of an infringement notice is not an admission of liability in any civil proceedings

(2) Proceedings against a person for an offence to which an infringement notice relates that has not been withdrawn must not be brought -

(a) if the person accepts the infringement notice; or

(b) within -

(i) 28 days after the notice was served, if the person has not been allowed an additional period under section 108; or

(ii) 42 days after the notice was served, if the person has been allowed an additional period under section 108.

- SECT 112 Withdrawal of infringement notice

112(1) The Director or a council or any person authorised by either of them may withdraw an infringement notice served on a person if of the opinion that -

(a) the infringement notice should not have been served; or

(b) the person should be proceeded against for the offence to which the notice relates.:/

(2) An infringement notice may be withdrawn whether or not it has been accepted

(3) An infringement notice is to be withdrawn -

(a) by serving on a person a notice stating that the infringement notice has been withdrawn; and

(b) within 108 days after service of the infringement notice

(4) A clerk of petty sessions or relevant council clerk must repay to a person any amount paid by that person in respect of an infringement notice that is withdrawn.

- SECT 113 Certain evidence not admissible

113 Evidence of the service, acceptance or withdrawal of an infringement notice is not admissible in any proceedings for the offence to which the notice relates.;

- PART 9 - REGULATORY PROVISIONS

- SECT 114 Regulations in general

114

- (1) The Governor may make regulations for the purpose of this Act
- (2) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations
- (3) The regulations may -
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues
- (4) The regulations may -
 - (a) authorise any matter to be determined, applied or regulated by a specified person or body; and
 - (b) confer a power or impose a duty on a specified person or class of person
- (5) The regulations may adopt or incorporate the whole or part of any standard, rule, code, specification or guidelines as amended from time to time, with or without modification, issued, prescribed, made or published by any person or body before or after the regulations take effect.

- SECT 115 Regulations of savings or transitional nature

115(1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act

- (2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the commencement of this Act or a later day.

- SECT 116 Regulations relating to samples

116 The Governor may make regulations in respect of -

- (a) the methods for taking samples; and
- (b) the methods for transporting, storing and handling samples.

- SECT 117 Regulations relating to analysis

117 The Governor may make regulations in respect of -

- (a) the methods of analysis; and
- (b) the manner of recording the results of that analysis.

- SECT 118 Regulations relating to testing

118 The Governor may make regulations in respect of -

- (a) the methods of testing and examining food; and
- (b) the manner of recording the results of that testing and examination.

- SECT 119 Regulations relating to hygiene

119 The Governor may make regulations -

- (a) preventing or minimising the spread of disease; and
- (b) prescribing diseases and the management of those diseases in relation to a person handling food; and
- (c) imposing requirements with which a person handling food must comply; and
- (d) requiring a person or class of person to attend specified courses relating to the handling of food; and
- (e) prescribing the type of clothing to be worn by a person when handling food; and
- (f) securing the cleanliness of equipment and premises, vehicles and other places used for the manufacture or sale of food; and
- (g) prohibiting the sale or manufacture for sale of food or food of a specified class that contains a specified micro-organism, biotoxin or other substance in excess of a specified concentration or quantity; and
- (h) prescribing equipment to be used for cleaning premises, vehicles and equipment used in the manufacture or sale of food; and
- (i) prescribing the manner in which premises, vehicles and equipment are to be maintained; and
- (j) prescribing the manner of manufacture or sale of food or food of a specified class or description.

- SECT 120 Regulations relating to packaging, labels and names

120 The Governor may make regulations relating to -

- (a) the construction and size of packages containing food; and
- (b) the materials and substances used in the packaging of food; and
- (c) the manner in which food of a specified class is to be labelled; and
- (d) the statements appearing on packages of food; and
- (e) the naming of food; and
- (f) the advertising of food; and
- (g) items that are not food but are included in packages of food; and
- (h) the notices and labels to be displayed with food of a specified class or description.

- SECT 121 Regulations relating to premises and equipment

121 The Governor may make regulations relating to -

- (a) the design and construction of premises and equipment; and
- (b) prohibiting or regulating the use of any specified material in relation to premises and equipment; and
- (c) regulating the closure and repair of premises; and
- (d) regulating the use and maintenance of equipment; and
- (e) regulating the inspection and testing of equipment; and
- (f) regulating the provision and maintenance of adequate water supply, drainage, sewerage, lighting and ventilation in premises; and
- (g) prescribing the signs and notices to be attached to or displayed on premises and equipment and vehicles; and
- (h) regulating the fitting out of vehicles; and
- (i) regulating the maintenance of premises, equipment and vehicles.:/P;

- SECT 122 Regulations relating to processes

122The Governor may make regulations -

- (a) regulating the manufacture of food; and
- (b) regulating for the protection of food; and
- (c) regulating the service of food for consumption.

- SECT 123 Regulations relating to fees and charges

123(1) The Governor may make regulations prescribing fees and charges in relation to -

- (a) any matter under this Act; and
- (b) any services provided under this Act

(2) Regulations made under this section may prescribe a fee or charge by specifying -

- (a) a set amount; or
- (b) any other method of calculation.

- SECT 124 Regulations relating to miscellaneous matters

124The Governor may make regulations -

- (a) providing for the recall, destruction or denaturation of food in specified circumstances; and
- (b) prohibiting the sale of food or other dealings with food in specified circumstances; and
- (c) prohibiting the exclusion of persons or class of persons from premises in specified circumstances or for specified reasons; and

- (d) regulating the records to be kept in relation to the manufacture or sale of food; and
- (e) prescribing the offences in respect of which infringement notices may be served; and;/P;
- (f) the penalties applicable to those offences.

- SECT 125 Standards

125(1) The Director may issue standards in relation to the manufacture or sale of food relating to -

- (a) the nature, substance, composition and strength of food; and
- (b) the weight and quantity of food; and
- (c) the purity and quality of food; and
- (d) the addition to, or mixture of substances with, food; and
- (e) the quantity or proportion of substances that may be added to food; and
- (f) premises, vehicles and equipment

(2) The Director may amend or revoke any standards

(3) The Director, by public notice, must notify -

- (a) the issue, amendment or revocation of any standards; and
- (b) the subject matter of the standards; and
- (c) the place at which a copy of the standards may be obtained; and
- (d) the cost, if any, of obtaining the standards

(4) Any Agency, public authority or person must comply with the standards. Penalty: In the case of -

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) a natural person, a fine not exceeding 100 penalty units.

- SECT 126 Guidelines

126

(1) The Director may issue guidelines relating to any matter under this Act

(2) The guidelines may adopt or incorporate the whole or part of any standard, rule, code, specification or guidelines, with or without modification, issued, prescribed, made or published by any person or body before or after the guidelines take effect

(3) The Director may amend or revoke any guidelines

(4) The Director, by public notice, must notify -

- (a) the issue, amendment or revocation of any guidelines; and
- (b) the subject matter of the guidelines; and
- (c) the place at which a copy of the guidelines may be obtained; and
- (d) the cost, if any, of obtaining the guidelines

(5) Any guidelines or amendments of guidelines take effect on the day on which they are issued

(6) Any Agency, public authority or person must comply with the guidelines. Penalty: In the case of -

(a) a body corporate, a fine not exceeding 200 penalty units; or

(b) a natural person, a fine not exceeding 100 penalty units.

- SECT 127 Confirmation or disallowance of guidelines

127

(1) The Minister must cause guidelines to be laid before each House of Parliament within 5 sitting days of the day on which they take effect

(2) Either House of Parliament may disallow guidelines by resolution of that House passed within 15 sitting days after the guidelines are laid before it

(3) Guidelines may be confirmed by a resolution of both Houses of Parliament passed before the expiration of 15 sitting days after the guidelines are laid before it

(4) Guidelines are taken to be confirmed if -

(a) at the expiration of 15 sitting days after the guidelines are laid before either House of Parliament, notice has not been given of a motion to disallow the guidelines; or

(b) such a notice has been given and then withdrawn; or

(c) the motion has been negatived

(5) Any amendment to guidelines is to be dealt with under this section.

- SECT 128 Council fees

128 (1) A council, by resolution, may impose fees relating to applications made to it under Part 6

(2) Any fee imposed under subsection (1) is to be in accordance with any relevant guidelines.

- PART 10 - MISCELLANEOUS

- Division 1 - Orders

- SECT 129 Compliance with orders

129(1) A person must comply with any order or notice under this Act. Penalty: In the case of -

- (a) a body corporate, a fine not exceeding 200 penalty units; or
 - (b) a natural person, a fine not exceeding 100 penalty units
- (2) If a person fails to comply with an order under this Act, an authorised officer may take action to -
- ;(a) remove and destroy any food which is the subject of any order; and
 - (b) recover the cost of that action from that person.

- SECT 130 Orders

130(1) An order under this Act may be made -

- (a) in respect of a specified person; or
 - (b) in respect of persons generally or a class of persons
- (2) An order in respect of a specified person -
- (a) is to be served on the person; and
 - (b) takes effect on the date of service of the order or a later date specified in the order
- (3) An order in respect of persons generally or a class of persons -
- (a) is to be published in the Gazette; and
 - (b) takes effect on the date of publication or a later date specified in the order.

- Division 2 - Compensation and costs

- SECT 131 Compensation

131(1) A person may claim for compensation for damage to any premises, vehicle or article owned by, or in the possession or under the control of, that person if the damage -

- (a) was the result of the exercise of a power or performance of a function under this Act; and
 - (b) was not caused by any action or omission of the person
- (2) Compensation is payable at an amount the Director considers reasonable.

(3) Compensation is not payable if the premises, vehicle or article damaged was the cause of, or constituted, a threat to public health.

- SECT 132 Costs incurred in exercising powers

132 If any Agency, public authority or person fails to exercise a power or perform a function under this Act when required to do so, the Director or council may exercise that power or perform that function at the expense of that Agency, public authority or person.

- Division 3 - Information

- SECT 133 Disclosure of information

133A person must not disclose any information obtained for the purpose of this Act relating to a person except in accordance with any relevant guidelines and -

- (a) with the written consent of the person to whom the information relates; or;/P;
- (b) to a person authorised by the Director; or
- (c) for the purposes of legal proceedings arising out of this Act; or
- (d) for a purpose authorised or required by this Act or another Act; or
- (e) for the purposes of study or research approved by the Director. Penalty: Fine not exceeding 50 penalty units.

- SECT 134 Requirement for information

134

(1) A council or an authorised officer may require a person -

- (a) to give the person's full name and address; and
- (b) to provide any information relating to any matter under this Act that is reasonably needed for the purpose of this Act; and
- (c) to give information about that person's or another person's activities in respect of any matter under this Act; and
- (d) to answer any question relating to any matter under this Act

(2) A person must comply with a requirement under subsection (1). Penalty: In the case of -

- (a) a body corporate, a fine not exceeding 100 penalty units and a further fine not exceeding 5 penalty units for each day during which the offence continues; or
- (b) a natural person, a fine not exceeding 50 penalty units and a further fine not exceeding 2 penalty units for each day during which the offence continues.

- SECT 135 False and misleading statements

135A person, in making an application, giving any information or producing any record under this Act, must not -

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading. Penalty: In the case of -
 - (a) a body corporate, a fine not exceeding 100 penalty units; or
 - (b) a natural person, a fine not exceeding 50 penalty units.

- Division 4 - Warranty

- SECT 136 Implied warranty

136

(1) There is an implied warranty in any contract or agreement for the sale of food for resale that no contravention of this Act occurred in relation to that food

(2) A provision of any contract or agreement for the sale of food for resale that purports to exclude, restrict or modify the implied warranty has no effect.

- SECT 137 Defences in relation to warranty

137 1) In any proceedings for a breach of the implied warranty referred to in section 136, it is a defence for a person to prove that -

(a) the food was sold in the same condition as it was when purchased for resale; or

(b) if the food was sold in a condition different to that in which it was purchased for resale, that difference did not result in any contravention of this Act

(2) The defence under subsection (1)(a) is only available if the person -

(a) gives written notice of the intention to rely on the implied warranty within 7 days after service of the summons; and

(b) serves a copy of the notice on the person from whom the food was purchased

(3) The notice is to specify the name and address of the person from whom the food was purchased.

- SECT 138 Concurrent proceedings

138 Proceedings against a person for breach of the implied warranty referred to in section 136 may be held at the same time as proceedings against the person from whom the food was purchased for resale in relation to the same matter.

- Division 5 - Appeals

- SECT 139 Appeals against orders

139(1) A person may appeal to a magistrate against the decision to make any order made under this Act

(2) An appeal is to be made within 14 days after the day on whichever of the following is the earlier:

(a) the order is made;

(b) the order is served.

- SECT 140 Appeals against notices

140(1) A person may appeal to a magistrate against the decision to issue a notice under this Act

(2) An appeal is to be made within 14 days after the day on which the notice is issued.

- SECT 141 Appeal relating to registration

141(1) A person may appeal to a magistrate against the council's decision to -

- (a) grant or refuse to grant an application for the registration of premises, vehicles or equipment; or
- (b) grant or refuse to grant an application for the renewal of registration of premises, vehicles or equipment;
or
- (c) impose any condition on the registration of premises, vehicles or equipment; or
- (d) vary the registration of premises, vehicles or equipment; or
- (e) cancel the registration of premises, vehicles or equipment

(2) An appeal is to be made within 14 days after service of a notice under -

- (a) section 56(3); or
- (b) section 60(6); or
- (c) section 61(3); or
- (d) section 62(2).

- SECT 142 Appeals relating to licence to manufacture or sell food

142(1) A person may appeal to a magistrate against the council's decision to -

- (a) grant or refuse to grant an application for a licence to manufacture or sell food; or
- (b) grant or refuse to grant an application for the renewal of that licence; or
- (c) impose any condition on the licence; or
- (d) vary that licence; or
- (e) cancel that licence

(2) An appeal is to be made within 14 days after service of a notice under -

- (a) section 65(3); or
- (b) section 69(6); or
- (c) section 70(3); or
- (d) section 71(2).;/P;

- SECT 143 Appeal relating to accreditation

143(1) A person may appeal to a magistrate against the council's decision to -

- (a) grant or refuse to grant an application for accreditation as a food handler; or

- (b) grant or refuse to grant an application for the renewal of accreditation as a food handler; or
- (c) impose any condition on the accreditation; or
- (d) vary the accreditation; or
- (e) cancel the accreditation

(2) An appeal is to be made within 14 days after service of a notice under -

- (a) section 74(3); or
- (b) section 78(6); or
- (c) section 79(3); or
- (d) section 80(2).

- SECT 144 Appeal relating to seizure

144(1) A person may appeal to a magistrate against the seizure of any thing under section 22(1)(f)

(2) An appeal is to be made within 5 days after service of a notice under section 22(4).

- SECT 145 Determination of appeal

145(1) On hearing an appeal against a decision, a magistrate may make any of the following orders:

- (a) an order confirming the decision;
- (b) an order revoking the decision;
- (c) an order substituting the decision with another decision

(2) On hearing an appeal against the seizure of any thing, a magistrate may make any of the following orders:

- (a) an order confirming the seizure;
- (b) an order revoking the seizure and requiring the thing to be returned to its owner.

- SECT 146 Appeal to Supreme Court

146A person may appeal to the Supreme Court against an order of a magistrate under section 145.

- Division 6 - Miscellaneous matters

- SECT 147 Immunity from liability

147(1) Any authorised officer or employee of any Agency or public authority is not personally liable for an honest act or omission done or made in the exercise or purported exercise of a power, or in the performance or purported performance of a function, under this Act

(2) Subsection (1) does not preclude the Crown from incurring liability that a person referred to in that subsection would, but for that subsection, incur.

- SECT 148 Certificates and licences under repealed Act

148(1) A certificate of registration or licence in force under Part XIV of the Public Health (Food Hygiene) Regulations 1977 immediately before the commencement of this Act is, on that commencement, a certificate of registration or licence under Part 6 of this Act

(2) A certificate of registration or licence referred to in subsection (1) expires on 30 June immediately following the commencement of this Act.

- SECT 149 Administration of Act

149 Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 -

(a) the administration of this Act is assigned to the Minister for Community and Health Services; and

(b) the Department responsible to the Minister for Community and Health Services in relation to the administration of this Act is the Department of Community and Health Services.