



STANDARD OPERATING PROCEDURE

FOOD SEIZURE

1. BACKGROUND

Section 50 of Part 6 of the *Food Act 2004*, includes the power for authorised officers to seize any food, equipment, vehicle, package, labelling or other advertising material, or any other substance or thing that is believed to be evidence of an offence under the Act.

Where a serious breach of the Act has occurred, a seizure may be a precursor to prosecution. The purpose of this standard operating procedure is to provide authorised officers with a procedural framework for the seizure of articles, with particular reference to unsafe/unsuitable food which is damaged, deteriorated or considered unfit for human consumption due to floodwater damage or power cessation.

Prior to any seizure an authorised officer must produce an identity card to the proprietor or person in charge of the food business.

2. PRESCRIBED FORM

The authorised officer should compile and record on the prescribed form (refer to attachment 1), a list of food articles, which in the opinion of the officer are damaged, deteriorated, contaminated or unfit for human consumption.

Should the description of articles exceed the space on the form, it is acceptable for a separate list from a notepad etc to be attached to the form. A food business owner/manager may be able to provide a printout of stock and this may be appended to the prescribed form.

The grounds for the seizure of an item may include, that the item:

- does not meet the requirements of the Food Standards Code for labelling
- is unfit for human consumption
- is adulterated food
- is not of the nature, substance or quality demanded by the purchaser
- is likely to contaminate food or render it unfit for human consumption

Triplicate books containing this form are present in each regional office.

The original copy of the form is to be provided to the proprietor. Seizures involving additional lists should be photocopied for file purposes and then the original form and any attached lists handed to the proprietor, as soon as possible.

A copy of the form must be placed on the premises' TRIM file and can be scanned and attached to the premises record on Health Manager.

If the removal and/or disposal or destruction of the items seized cannot be undertaken immediately, items may be kept on site within the food premises provided that they are suitably labelled and secured and the food business owner/manager advised of the inability to use the items.

3. DESTRUCTION OF FILTHY, DECOMPOSED OR PUTRID MATTER

Section 59 of the Food Act allows an authorised officer who is satisfied that the food consists wholly or partly of filthy, decomposed or putrid matter or that it poses an immediate risk to health or property, the authorised officer may cause the food to be destroyed.

4. PROPRIETOR'S RIGHT TO APPEAL

Under the provisions of section 65 of the Act, the Proprietor may apply to the Local Court for disallowance of the seizure within 72 hours (attachment 2). It is therefore imperative, that where a Proprietor is dissatisfied with the action taken by the authorised officer, that the items are stored appropriately, for 72 hours have lapsed or until the Magistrate has allowed the seizure.

Section 59 applies despite this provision.

5. SEIZURE IN A DISASTER SITUATION

Food businesses or managers should initially contact their insurance provider who may be able to provide an Assessor to quantify the stock loss. In the case of food that has been "written off" by an insurance company, Environmental Health Officers will request documentation attesting to its destruction. Spot checks may also be undertaken to ensure that stock has been disposed of properly.

Food businesses, owners or managers may also contact Environmental Health directly and request that an Environmental health Officer attend the premises and assess food stock. If food is seized, the food business will be provided with a seizure notice as outlined in section 2. A food business will then arrange for the destruction of the seized stock and advise Environmental Health when and where destruction will take place. An authorised officer should witness the destruction of the food.

If food is unable to be identified (i.e. no labels) an authorised officer should note the volume of the unidentifiable food that is seized.

The fact sheet titled "Advice for Re-establishing a Food Business" contains information for Proprietors and authorised officers on the suitability of salvaging various items.

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NOTIFICATION OF SEIZURE

To _____ (Name)

Of _____ (Address)

I, _____ an Authorised
Officer of _____ (insert name of Enforcement Agency)

hereby give notice that I have at _____ *am/pm _____ (insert date)
seized under section 50 of the *Food Act 2004* the *substance(s) or thing(s) described below.

Description of *substance(s) or thing(s), please append list if necessary:

Grounds for seizure of *substance(s) or thing(s):

The substance or thing *has been/ will be removed from premises and the address where the
*substance(s) or thing(s) will be held is:

IMPORTANT NOTICE IN RELATION TO SEIZURE OF *SUBSTANCE(S) OR THING(S)

Pursuant to section 65 of the *Food Act 2004*, you or a person claiming ownership of the
*substance(s) or thing(s) must apply to the Local Court within 72 hours after this seizure for an
order for to disallow the seizure. If you do not make an application with 72 hours, the seized
*substance(s) or thing(s) shall become the property of the Territory and shall be destroyed or
disposed of appropriately.

NOTE: If you make an application to the Local Court, the enforcement agency listed below must
be served with a copy of the application.

Name of Authorised Officer: _____

Signature of Authorised Officer: _____

Enforcement Agency: _____

Address of Enforcement Agency: _____

Date: _____

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APPLICATION FOR AN ORDER TO DISALLOW SEIZURE

To the Magistrates Court at _____

I, _____ of _____
(insert name) (insert address)

_____ apply for an order to disallow the seizure of the substance(s) or thing(s) described below which were seized on _____
(insert date)

at _____
(insert address)

and detained by an Authorised Officer under section 57 of the *Food Act 2004*.

Description of *substance(s) or thing(s):

If substance or thing were removed from the premises, the address where the *substance(s) or thing(s) are being held:

Name of Authorised Officer who made the seizure: _____

Enforcement Agency: _____

Address of Enforcement Agency: _____

The reason(s) for application for an order to disallow seizure is/are:

*The substance(s) or things(s) were not in contravention of any provisions of the Act.

*There are exceptional circumstances justifying the making of the order.

Signature: _____

Date: _____

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