**Agreement in Principle**

**Mr STEVE WHAN** (Monaro—Minister for Primary Industries, Minister for Emergency Services, and Minister for Rural Affairs) [10.29 a.m.]: I move:

That this bill be now agreed to in principle.

The Food Amendment Bill 2010 makes a number of amendments to improve the operation of the Food Act 2003 and introduces important new reforms to the disclosure of nutrition information by certain businesses that sell ready-to-eat standard food items. Health protection principles have always been key drivers of our food regulatory system. This emphasis remains appropriate considering the compelling social and economic imperatives to protect the health and safety of consumers. While our food regulatory system has mainly focused on reducing acute health risks, it has yet to fully realise its potential to help minimise or prevent chronic conditions. These are among the most common and expensive problems facing the health system despite being among the most preventable.

Obesity and related chronic illness have been estimated to cost around $19 billion per annum in New South Wales alone. This cost is borne by the public health system and individuals and families within our community. These figures clearly highlight the enormity of the food-related chronic health issues we need to tackle. We are dealing with an overweight and obesity epidemic. There are many contributing factors but one of the obvious factors is the increase in the consumption of energy-dense, nutrient-poor foods. Australians now spend about 42¢ in every food dollar eating out of home, with over a third of that spent on fast food. Serving sizes when eating out tend to be larger and contain more saturated fat and salt than meals prepared at home.

There is also a lack of knowledge and understanding about the nutritional content of fast food. This means that those who eat out regularly are not able to consider properly the impact on their overall diet and long-term disease risk. The food regulatory system can help to address these chronic health problems by giving consumers the information they need to make healthy food choices and by supporting consumers' efforts to seek those healthy choices. In other words, we need to make the healthy choice the easy choice. Consumers are also demonstrating a desire to move in that direction. There is increasing demand for healthy food and for food to be labelled in such a way that consumers can understand what they are eating. Standard food outlets such as the major fast food chains are responding to this demand by introducing menu items with lower energy content along with a variety of labelling arrangements to identify and market those items.

This is a welcome response, but it also creates potential challenges and problems. Experience has demonstrated time and again that without direction, uncoordinated industry efforts will inevitably result in a proliferation of different information systems and consumers will become totally confused. That is exactly what happened in the United Kingdom where there was a proliferation of different Front of Pack Labelling and Scores on Doors systems. This type of confusion undermines the potential public health benefits. The importance of getting this right is clearly highlighted by the fact that 4.5 million Australians visit a fast-food outlet each day. These food outlets therefore collectively hold a significant influence on the daily diet of many Australians. They also have significant potential to create confusion if they each present nutrition information differently.

I acknowledge that the industry has proposed a voluntary code of practice for nutrition information. Unfortunately, voluntary codes will not deliver the outcomes we need because each business can opt out if it believes this to be in its commercial interest. We also know that industry-driven codes of practice in related areas, such as marketing to children and television advertising, have had disappointing results. The New South Wales Government has shown time and again its strong commitment to enhancing the health of our community and the Government is continuing its proactive agenda in this area. We are dealing with an overweight and obesity problem of epidemic proportions. This is a chronic health problem, and while there are many factors involved there is a clear and substantial link with food-related factors and particularly the over-consumption of energy-dense foods.

But the food-related factors associated with chronic health problems are very different from those that are addressed by our existing food regulations. They are different issues that require a new approach. That is why the Government is pursuing this initiative and why we have been moving in this direction for some time. Earlier this year the Government's submission to the Blewett Review of Food Labelling Law and Policy clearly articulated our intention to pursue initiatives aimed at reducing adverse health outcomes related to the over-consumption of fast foods, fats and salt. It also identified the need to prevent confusion and to promote consistency by prescribing the labelling format and requirements that businesses must use if they provide nutrition information. I mentioned previously that many standard food outlets are already moving to disclose nutrition information about their food, and in some cases they have already done so.

This bill includes labelling provisions that build on the initiative shown by industry to disclose nutrition information. They have been developed in close consultation with key consumer advocates and sections of the

industry to ensure they address the kinds of issues I have outlined. The consultation process to consider and develop this initiative commenced with the Premier's Fast Food Forum in August and continued through the Quick Service Restaurant Labelling Reference Group that was formed following the forum. It became evident through this process that there was a clear need for the Government to take significant steps in ensuring consistent take-up across the full range of industry participants, while still allowing industry the capacity to operate its business.

For this reason it was decided that regulatory underpinning is required to ensure success. However, I must point out that the arrangements in this bill provide flexibility to address any issues that may emerge during implementation. There will be opportunity for further consultation with industry and community stakeholders during the implementation of this nutrition disclosure initiative. The operation and efficacy of the scheme will also be reviewed 12 months after implementation and this will include consideration of whether it is appropriate to extend disclosure requirements to ingredients such as salt and fat. This will include a formal evaluation based on data collected during implementation. The Government will support implementation of the initiative with consumer education materials to help consumers understand the energy values they see on menu boards. If we are going to have the best chance to change consumer behaviour it is clearly important that consumers have the opportunity to understand what energy values mean and how these values relate to their overall diet.

I turn now to matters of detail in the Food Amendment Bill 2010. The bill introduces the concepts of a standard food item and a standard food outlet. It defines a standard food item as an item of ready-to-eat food that is sold in servings that are standardised for portion and content and that is either listed or shown on a menu or is displayed for sale with a price or identifying tag or label. A standard food item may be a burger that is sold in the same size and with the same standard ingredients and is listed on a menu board in a fast-food shop, or it may be a muffin of a standard size, made from a standard recipe, and displayed for sale with a name and price tag in a cabinet at a retail bakery.

The bill also makes it clear that a standard food item may include a combination of such items. A "meal deal" of a burger, chips and a drink displayed on a poster, for example, could be a single standard food item. The bill also clarifies that standard food items of the same type shown or displayed for sale in different sizes or portions are separate standard food items. For example, a small container of fried chips listed for sale at an outlet is a separate standard food item from a large container of fried chips also listed for sale at that outlet. The bill makes it clear that a standard food item is not an item of food that arrives at the retail premises in the packaging in which it is sold. A can of soft drink or a packet of potato crisps are not standard food items.

Next, the bill defines a standard food outlet as a food business premises at which standard food items are sold by retail and where two criteria are met. First, the business must sell standard food items by retail at more than one premises or while operating in a chain of food businesses that sell standard food items. Secondly, at least one of the standard food items that are sold at the premises must be standardised for portion and content so that it is substantially the same as standard food items of that type that are sold at the other premises or sold by the other food businesses in the chain.

The bill imposes two sets of requirements. The first set of requirements relates to standard food outlets of a class prescribed in the regulations and the second set of requirements relates to standard food outlets that are not. Proprietors of standard food outlets of a class prescribed in the regulations are required to ensure that the nutritional information prescribed in the regulations is displayed for each standard food item. This information must be displayed in the manner and at the locations prescribed by the regulations. Intentionally failing to meet these requirements will be an offence which carries a maximum penalty of 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation. Failing to meet these requirements without a proven intention will also be an offence which carries a lower penalty of 100 penalty units in the case of an individual and 500 penalty units in the case of a corporation.

The bill also amends the Food Regulation 2010 to prescribe the classes of standard food outlets that are required to meet these requirements. These requirements will apply to a standard food outlet that is either an outlet of a food business that sells standard food items at 20 or more locations in New South Wales or at 50 or more locations in Australia, or an outlet of a food business that is operating in a chain of food businesses that sell standard food items if together those businesses sell standard food items at 20 or more locations in New South Wales or 50 or more locations in Australia. The bill also amends the regulation to prescribe the nutrition information to be displayed as the average energy content of each standard food item for sale, and a statement, by way of reference, as to the average adult daily energy intake. Both these figures are to be expressed in kilojoules.

The regulation amendments also prescribe the locations for the display of the nutritional information and the manner in which the information is to be displayed. These requirements ensure that the prescribed information will be available to consumers in a legible and consistent format on menus, including menu boards, posters and leaflets at the premises, menus distributed outside the premises, and tags and labels, that is, at the point where consumers decide what to order. Proprietors of standard food outlets that are not of a class prescribed in the regulations are not required to display prescribed nutritional information. However, if they choose to display prescribed nutritional information they are required to ensure that the information is in accordance with any

requirements of the regulation and that it is displayed in the manner and at the locations prescribed in the regulations.

For the purpose of these requirements the regulation amendments prescribe the information as the energy content of the food. The bill also establishes an offence of failing to meet these requirements which carries a maximum penalty of 100 penalty units in the case of an individual and 500 penalty units in the case of a corporation. The bill enables regulations to be made which regulate the display or distribution by a standard food outlet of explanatory material about prescribed nutritional information. The bill also enables regulations to be made which provide exemptions from any of the requirements. The regulation amendments exempt convenience stores, service stations, businesses that principally provide catering services, sit-down restaurants with no takeaway services and retail food sold in health care facilities from having to comply with the requirement to display prescribed nutritional information.

The bill also includes a number of miscellaneous amendments to the Food Act 2003 which will improve the administration of the Act. Firstly, the bill inserts a new section to make it clear that the powers of authorised officers and the duties of a food safety auditor may be exercised concurrently. At the Food Authority a food safety auditor may also be an authorised officer under the Food Act. On occasions whilst auditing it may be necessary for that officer to exercise his or her powers as an authorised officer in order to investigate or inquire about a particular matter. The amendment puts beyond doubt that there is no impediment to the officer doing so provided the officer's certificate of authority is produced. This is appropriate for ensuring that the officer exercises authorised officer powers in a transparent manner.

Secondly, the bill makes an offence of threatening, intimidating or assaulting a food safety auditor, which carries a maximum penalty of 500 penalty units. The outcome of a food safety audit or an inspection can have significant consequences for a food business, which may even be prohibited from trading if the problems are serious. This creates potential for authorised officers and food safety auditors to be intimidated, threatened or assaulted in the course of their work. Section 43 of the Act already provides that a person must not threaten, intimidate or assault an authorised officer but currently there is no equivalent offence in relation to food safety auditors. The amendment addresses this anomaly by creating a new offence to threaten, intimidate or assault a food safety auditor.

Thirdly, the bill amends section 119 to extend the time limit in which proceedings may be instituted under the Food Act or regulations to within two years after the date on which the offence is alleged to have been committed. Currently, proceedings for a food sample offence may be instituted only within six months of obtaining the food sample and, for other offences, within 12 months of the date when the offence is alleged to have been committed. The extension recognises the inadequacy of these periods for complex investigations. For some matters the Food Authority has been required to seek an extension of time from the courts to complete the necessary preparation before commencing proceedings. For example, the authority was required to make six such applications in the calendar years 2008 and 2009. All these applications were granted.

Extending the period to two years will minimise the need for such applications in the future and will save the courts and the authority significant time and resources. Finally, the bill amends section 128 to remove a clause that prevents the prosecution relying on analysis as evidence unless the analysis has been carried out by an approved laboratory or by or under the supervision of an approved analyst. This current restriction applies only to the prosecution and not the defence. The investigation of an outbreak or illness typically will involve the analysis of a range of specimens and there may have been a number of tests carried out by non-approved laboratories in isolating a cause. Some laboratories also specialise in a specific type of testing method and may be one of only a few laboratories, or even the only laboratory, that can do this testing.

It is not feasible or reasonable to approve all such laboratories just in case one of their tests is required as evidence. The analyses carried out by a non-approved laboratory might otherwise be admissible as prosecution evidence subject to the established rules of evidence, except that the effect of section 128 (3) is to prohibit their admission outright. Removing this clause will not deter the Food Authority from using approved laboratories wherever possible. There is a strong incentive to do so as a certificate of analysis obtained from an approved laboratory or analyst may be tendered into evidence without the need to call witnesses. The bill commences these Food Act amendments on the date of assent and the Food Regulation amendments, except for the insertion of new penalty notice provisions, on 1 February 2011.

The bill also provides a lead-in period until 1 February 2012 for the new offences, and penalty notices cannot be issued for any of these offences before that date, that is, the nutritional labelling provisions. New South Wales is leading the way with this bill but it is not moving in a different direction to the other States. Our information disclosure requirement aligns well with a similar initiative announced by Victoria. Queensland and South Australia are also understood to be considering initiatives of this kind. New South Wales action on this issue will help to pave the way for the development of a nationally consistent point of sale labelling system for these foods. New South Wales will advocate strongly on the issue of national harmonisation at the upcoming ministerial council meeting scheduled for 3 December.

The bill before the House introduces important new reforms on disclosure of nutrition information that will work

alongside the raft of other New South Wales Government measures already in place to help address chronic health issues. The bill also contains important amendments to improve the operation of the Food Act 2003. These are sensible and well-considered amendments. I look forward to receiving the support of Opposition members and members of the minor parties, in particular, to these important amendments which will enable kilojoules to be displayed by fast food restaurants at the point of sale. That will help us, as a society, to combat obesity, which is so prevalent in young children and in our society. I commend the bill to the House.