



New South Wales

Food Production (Safety) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
The *Meat Industry Amendment Bill 1998* is cognate with this Bill.

Overview of Bill

The objects of this Bill are:

- (a) to constitute a body called Safe Food Production NSW ("Safe Food") with functions related to ensuring the safe handling of primary produce and seafood during the production, processing or transportation stages, and
 - (b) to dissolve the New South Wales Dairy Corporation and the New South Wales Meat Industry Authority and to transfer their staff, assets and liabilities to Safe Food, and
 - (c) to amend the *Dairy Industry Act 1979* and the *Meat Industry Act 1978* to remove provisions relating to the safety of food and the New South Wales Dairy Corporation and the New South Wales Meat Industry Authority and to transfer the functions of those bodies to Safe Food, and
 - (d) to establish a Safe Food Production Advisory Committee, and
 - (e) to enable regulations to be made establishing food safety schemes, and
 - (f) to provide for related matters.
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Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 extends the proposed Act to primary produce or seafood intended for use as animal food.

Clause 5 provides that the proposed Act does not apply to the handling of primary produce or seafood on retail premises (except for certain retail premises where meat is processed) or from retail vehicles (except dairy retail vehicles) or to the handling of primary produce or seafood not intended for sale (except milk or dairy products).

Clause 6 provides that in the event of an inconsistency between the proposed Act and the *Food Act 1989* or the *Public Health Act 1991*, the *Food Act 1989* or the *Public Health Act 1991* prevails.

Clause 7 provides that notes in the proposed Act do not form part of the Act.

Part 2 Safe Food Production NSW

Clause 8 constitutes a body corporate with the corporate name Safe Food Production NSW (referred to in the proposed Act as Safe Food).

Clause 9 sets out the functions of Safe Food. In particular, Safe Food has the functions of keeping under review operating procedures for the handling of primary produce or seafood and of regulating the handling of primary produce or seafood by means of food safety schemes to ensure its safety for consumption.

Clause 10 makes Safe Food subject to the control and direction of the Minister.

Clause 11 provides for the appointment of a Chief Executive Officer of Safe Food.

Clause 12 provides for the appointment of an acting Chief Executive Officer in the illness or absence of the Chief Executive Officer or during a vacancy in the office of Chief Executive Officer.

Clause 13 enables staff of Safe Food to be employed.

Clause 14 enables Safe Food to authorise certain persons to be authorised officers for the purposes of the proposed Act.

Clause 15 enables Safe Food to engage consultants and contractors.

Part 3 Safe Food Production Advisory Committee

Clause 16 requires the Minister to establish the Safe Food Production Advisory Committee.

Clause 17 sets out the functions of the Advisory Committee. One of the primary functions of the Advisory Committee is to provide expert advice to Safe Food on any matter relating to Safe Food's functions.

Clause 18 enables the Minister to appoint temporary members of the Advisory Committee and to establish subcommittees of the Advisory Committee.

Part 4 Food safety schemes

Clause 19 enables regulations to be made prescribing food safety schemes in relation to a type of primary produce or seafood. The regulation-making power covers a broad range of matters including regulating the handling of primary produce or seafood, setting up licensing schemes in relation to the handling of primary produce or seafood and requiring the preparation and implementation of food safety programs to ensure that food safety schemes are being complied with.

Clause 20 requires industry consultation to be undertaken before the establishment of a food safety scheme and provides that the provisions of the *Subordinate Legislation Act 1989* relating to the preparation of regulatory impact statements for principal statutory rules are to apply to regulations establishing food safety schemes. Those provisions require such statutory rules to be publicly exhibited for comment before being made.

Clause 21 makes it an offence for a person to handle primary produce or seafood in contravention of a provision of a food safety scheme or to contravene or fail to comply with a condition of a licence granted in accordance with a regulation establishing a food safety scheme.

Clause 22 requires Safe Food to undertake industry consultation on the continuing operation or the proposed amendment of a food safety scheme.

Part 5 Enforcement

Division 1 Inspection and analysis

Clause 23 sets out the powers of authorised officers under the proposed Act and makes it an offence not to comply with a requirement of an authorised officer.

Clause 24 enables an authorised officer to seize primary produce or seafood in connection with a suspected offence against the proposed Act or regulations or where the authorised officer has reasonable grounds to believe that the primary produce or seafood is not safe for human consumption.

Clause 25 enables an authorised officer to apply for a search warrant under the *Search Warrants Act 1985* authorising entry to premises.

Clause 26 enables Safe Food to give directions in relation to primary produce or seafood that is believed to be not safe for human consumption or in order to ensure that primary produce or seafood is safe for human consumption. Safe Food may seize primary produce or seafood that is not dealt with in accordance with a direction. The clause also provides a right of appeal to a Local Court against a direction.

Clause 27 makes it an offence for a person to remove or tamper with primary produce or seafood that has been seized under the proposed Act.

Clause 28 makes it an offence for a person to provide false information in response to a direction or request under the proposed Act.

Clause 29 makes it an offence to obstruct or impersonate an authorised officer.

Clause 30 provides that a certificate of authority is to be issued to each authorised officer.

Clause 31 enables Safe Food to arrange for the analysis of samples taken in accordance with the proposed Act.

Division 2 Items seized by authorised officers

Clause 32 enables items seized under the proposed Part to be detained in the place where they were seized or removed to another place.

Clause 33 enables items seized in connection with a suspected contravention of the proposed Act or the regulations to be returned if Safe Food is satisfied that there has been no such contravention.

Clause 34 provides for items seized under the proposed Part to be forfeited to the Crown provided the seizure has not been disallowed under the proposed Part.

Clause 35 provides that the cost of destroying or disposing of a seized item in accordance with the proposed Part is to be borne by the owner of the item.

Clause 36 provides that an item that has been forfeited in connection with a suspected offence against the proposed Act or the regulations must be returned if Safe Food is satisfied that no contravention of the proposed Act or the regulations has been committed.

Clause 37 provides for compensation to be paid by Safe Food in respect of a seized item if Safe Food is satisfied that no contravention of the proposed Act or the regulations has been committed in relation to the item and the item cannot be returned or has depreciated in value.

Clause 38 enables an authorised officer who seizes primary produce or seafood under the proposed Part to cause it to be destroyed if it is filthy, decomposed or putrid or poses an immediate risk to health or property.

Clause 39 enables a person who claims to be entitled to an item that has been seized under the proposed Part to apply to a Local Court for a disallowance of the seizure.

Clause 40 provides for Safe Food to appear as respondent at a hearing of an application for disallowance of a seizure.

Clause 41 enables a Local Court to make an order disallowing a seizure under the proposed Part in certain circumstances.

Clause 42 enables a Local Court to make ancillary orders when making an order for the disallowance of a seizure under the proposed Part.

Clause 43 enables a Local Court to adjourn proceedings in relation to the disallowance of a seizure under the proposed Part if satisfied that the item seized is required as evidence in other proceedings.

Division 3 Orders controlling food production

Clause 44 provides that an order may be made under the proposed Division only if it is necessary to prevent or mitigate a serious danger to public health.

Clause 45 enables Safe Food to make an order prohibiting the cultivation, taking, harvesting or obtaining of primary produce or seafood from a particular area.

Clause 46 provides for the manner in which such an order is to be made.

Clause 47 enables a person aggrieved by such an order to apply to the Administrative Decisions Tribunal for a review of the order.

Clause 48 makes it an offence for a person not to comply with such an order.

Division 4 Improvement notices and prohibition orders for unfit premises

Clause 49 enables Safe Food to issue an improvement notice on a person requiring any unclean, insanitary or unfit premises, vehicle or equipment used in connection with the handling of primary produce or seafood to be dealt with in a certain manner, or replaced, or requiring any equipment to be installed on premises used in connection with the handling of primary produce or seafood in order to ensure that the primary produce or seafood will be safe for human consumption.

Clause 50 provides that if Safe Food is satisfied, after the expiration of a specified period from service of an improvement notice, that the notice has not been complied with, Safe Food may give a prohibition order. A prohibition order is an order prohibiting a person from handling primary produce or seafood on the relevant premises, conveying primary produce or seafood in the relevant vehicle, or using the relevant equipment in connection with the handling of primary produce or seafood until a certificate of clearance is obtained from an authorised officer.

Clause 51 enables a person served with a prohibition order under the proposed Division to request Safe Food to re-inspect the premises, vehicle or equipment concerned.

Clause 52 makes it an offence for a person to fail to comply with a prohibition order under the proposed Division.

Clause 53 enables improvement notices and prohibition orders under the proposed Division to be drafted so as to apply to specified equipment or all equipment on specified premises or in a specified vehicle.

Clause 54 enables a person aggrieved by a refusal to issue a certificate of clearance under the proposed Division to apply to the Administrative Decisions Tribunal for a review of the decision to refuse.

Part 6 Finance

Clause 55 establishes the Safe Food Production Fund.

Clause 56 provides for the investment powers of Safe Food in relation to money held in the Safe Food Production Fund.

Clause 57 enables Safe Food to levy contributions towards the administration of the proposed Act from persons the subject of a food safety scheme under the proposed Act. Such a levy must be of an amount, or calculated on a basis, specified in the regulations for the relevant food safety scheme. The clause requires Safe Food to ensure, as far as is reasonably practicable, that levies from one industry or sector of an industry are not used to cross-subsidise any other industry or sector of an industry.

Part 7 Miscellaneous

Clause 58 enables Safe Food to delegate functions to certain persons.

Clause 59 enables the Minister to enter into arrangements with the Commonwealth allowing authorised officers under the proposed Act to exercise functions relating to food inspection under Commonwealth legislation.

Clause 60 protects certain persons from liability in connection with acts done in good faith for the purpose of executing a provision of the proposed Act or any other Act or the regulations.

Clause 61 prevents persons from disclosing information obtained in the execution of the proposed Act except in certain circumstances.

Clause 62 enables penalty notices to be issued for prescribed offences against the proposed Act or the regulations.

Clause 63 provides for proceedings for offences against the proposed Act or the regulations to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone or by the Supreme Court.

Clause 64 deals with offences committed by corporations.

Clause 65 enables Safe Food to recover money due to it under the proposed Act as a debt.

Clause 66 contains a provision relating to evidence.

Clause 67 provides that the proposed Act binds the Crown.

Clause 68 enables orders to be made containing exemptions from provisions of the proposed Act or the regulations.

Clause 72 provides for a review of the operation of the proposed Act to be undertaken after 3 years from the establishment of Safe Food.

Schedule 4 contains consequential amendments to the *Fines Act 1996*, the *Public Authorities (Financial Arrangements) Act 1987*, the *Public Finance and Audit Act 1983*, the *Public Sector Management Act 1988* and the *Search Warrants Act 1985*.

Schedule 5 Savings, transitional and other provisions

Schedule 5 contains provisions of a savings and transitional nature, including provisions providing for the dissolution of the New South Wales Dairy Corporation and the New South Wales Meat Industry Authority and the transfer of their staff, assets and liabilities to Safe Food. The Schedule also contains a provision enabling the Minister to give Safe Food a direction that a transferred asset only be used for certain purposes. The Minister is required to consult with the New South Wales Dairy Industry Conference and the Meat Industry Consultative Council (to be established by proposed amendments to the *Meat Industry Act 1978*) before making such a direction.



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New South Wales

Food Production (Safety) Bill 1998

No , 1998

A Bill for

An Act to establish Safe Food Production NSW and to define its powers, authorities, duties and functions; to amend various Acts consequentially; and for other purposes.

See also *Meat Industry Amendment Bill 1998*.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Food Production (Safety) Act 1998*.

2 Commencement

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

3 Definitions

(1) In this Act:

Advisory Committee means the Safe Food Production Advisory Committee established under section 16. 10

animal includes bird or fish.

authorised officer means a person authorised to be an authorised officer as referred to in section 14.

Chief Executive Officer means the Chief Executive Officer of Safe Food. 15

equipment means the whole or part of:

(a) any utensil, machinery, instrument, device, apparatus or article that is used, or designed or suitable or intended for use, in or in connection with the handling of primary produce or seafood, or 20

(b) any utensil, machinery, instrument, device, apparatus or article that is used, or designed or suitable or intended for use, in cleaning anything referred to in paragraph (a).

exercise a function includes perform a duty. 25

food safety scheme means a food safety scheme prescribed by regulations in accordance with Part 4.

function includes a power, authority or duty.

handling of primary produce or seafood includes the production, harvesting, collection, extraction, processing, storing or transporting of primary produce or seafood.

meat means the whole or any part of the carcase of an animal (other than a fish).

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primary produce means:

- (a) animals, animal products and anything containing animal products, intended for human consumption, or
- (b) plants, plant products and anything containing plant products, intended for human consumption, or 10
- (c) other substances or organisms harvested, collected, extracted or processed for human consumption, or
- (d) any other thing intended for human consumption that is prescribed by the regulations for the purposes of this definition, or 15
- (e) the following animals, or anything containing products from the following animals, intended for use as animal food:
 - (i) any horse, donkey, kangaroo, buffalo, deer, bull, ox, steer, cow, heifer, calf, ram, ewe, wether, lamb, goat, kid, swine or rabbit, 20
 - (ii) any other animal that the Minister, by order published in the Gazette, declares to be primary produce for the purposes of this paragraph,

but does not include seafood.

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relevant Ministers means:

- (a) the Minister administering the *Food Act 1989*, and
- (b) the Minister administering the *Fisheries Management Act 1994*.

retail premises means premises on which primary produce or seafood is sold by retail. 30

retail vehicles means vehicles on or from which primary produce or seafood is sold by retail.

Safe Food means Safe Food Production NSW constituted by this Act.

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seafood means any of the following intended for human consumption:

- (a) marine, estuarine or freshwater fish or other aquatic animal life.
- (b) aquatic plant life.
- (c) any other aquatic organisms.
- (d) any products of, or anything containing products of, fish, animal life, plant life or organisms referred to in paragraphs (a)–(c).

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sell means sell by wholesale or retail, and includes supply for profit, barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale or cause, suffer or permit to be sold or offered for sale.

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sell by retail means sell otherwise than by wholesale.

sell by wholesale means sell for the purpose of resale.

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

- (2) In this Act, a reference to primary produce or seafood that is **safe for human consumption** is a reference to primary produce or seafood that is not likely to cause harm to a person who consumes it when it is prepared, stored or consumed according to its reasonable intended use.

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4 Extension of Act to animal food

This Act applies to primary produce and seafood intended for use as animal food in the same way as it applies to primary produce and seafood intended for human consumption. In so applying the provisions of this Act:

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- (a) a reference to primary produce or seafood intended for human consumption (other than a reference in the definition of **primary produce** in section 3 (1)) is to be read as a reference to primary produce or seafood intended for use as animal food, and
- (b) a reference in this Act to primary produce or seafood that is safe for human consumption is to be read as a reference to primary produce or seafood that is not likely to cause harm to an animal that consumes it when it is prepared, stored or consumed according to its reasonable intended use.

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5 Application of Act to retail premises and primary produce or seafood not intended for sale

- (1) This Act does not apply to or in respect of the handling of primary produce or seafood on retail premises, other than the handling of meat on meat retail premises. 5
- (2) This Act does not apply to or in respect of the handling of primary produce or seafood in or from retail vehicles, other than vehicles used by milk vehicle vendors.
- (3) This Act does not apply to or in respect of the handling of primary produce or seafood that is not intended for sale, other than the handling of milk and dairy products that are not intended for sale. 10
- (4) In this section:
dairy products and *milk* have the same meaning as in the *Dairy Industry Act 1979*. 15
meat retail premises means retail premises on which raw meat carcasses are processed in some way (such as boning, slicing or cutting), not being premises where all the meat sold is:
(a) in a form ready to be consumed (such as is sold at a restaurant or take-away food shop), or 20
(b) in a form commonly referred to as cook and chill (that is, cooked packaged meat that requires reheating before consumption).
milk vehicle vendor means a person who delivers milk by vehicle and who sells the milk so delivered. 25
raw meat carcass includes a part of a raw meat carcass.

6 Application of Food Act 1989

In the event of an inconsistency between a provision of this Act or the regulations made under this Act and a provision of the *Food Act 1989*, the *Public Health Act 1991* or regulations made under the *Food Act 1989* or the *Public Health Act 1991*, the provision of the *Food Act 1989*, the *Public Health Act 1991* or regulations made under the *Food Act 1989* or the *Public Health Act 1991* prevails to the extent of the inconsistency. 30

7 Notes

Notes included in this Act are explanatory notes and do not form part of this Act. 35

Part 2 Safe Food Production NSW

8 Constitution of Safe Food Production NSW

- (1) There is constituted by this Act a body corporate with the corporate name of Safe Food Production NSW.
- (2) The affairs of Safe Food are to be managed by the Chief Executive Officer. 5
- (3) Any act, matter or thing done in the name of, or on behalf of, Safe Food by the Chief Executive Officer, or with the authority of the Chief Executive Officer, is taken to have been done by Safe Food. 10
- (4) Safe Food is, for the purposes of any Act, a statutory body representing the Crown.

Note. Section 50 of the *Interpretation Act 1987* provides for the powers of a statutory corporation.

9 Functions of Safe Food 15

- (1) Safe Food has such functions as are conferred or imposed on it by or under this or any other Act.
- (2) In particular, Safe Food has the following functions:
 - (a) to keep under review the construction, hygiene and operating procedures of premises, vehicles and equipment used for the handling of primary produce and seafood. 20
 - (b) to provide advice or recommendations to the Minister on the establishment, development or alteration of food safety schemes,
 - (c) to regulate the handling of primary produce and seafood the subject of food safety schemes to ensure that it is safe for human consumption. 25
 - (d) to encourage businesses engaged in the handling of primary produce or seafood to minimise food safety risks.
 - (e) to carry out such research as is necessary in order to perform the functions referred to in paragraphs (a)–(d). 30

10 Ministerial control of Safe Food

Safe Food is, in the exercise of its functions, subject to the control and direction of the Minister.

11 Chief Executive Officer

- (1) The Governor may appoint a Chief Executive Officer of Safe Food on the recommendation of the Minister. 5
- (2) The Minister must obtain the concurrence of the relevant Ministers to the making of a recommendation under subsection (1).
- (3) The employment of the Chief Executive Officer is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act. 10
- (4) The Minister may, at any time, remove a person from office as Chief Executive Officer, but only with the concurrence of the relevant Ministers. 15

12 Acting Chief Executive Officer

- (1) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive Officer during the illness or absence of the Chief Executive Officer (or during a vacancy in the office of the Chief Executive Officer). 20
- (2) Before appointing a person under subsection (1), the Minister must obtain the concurrence of the relevant Ministers to the appointment.
- (3) The Chief Executive Officer may appoint a person to act in the office of Chief Executive Officer, for a period of not more than 4 weeks, during the illness or absence of the Chief Executive Officer, but only if there is no person appointed under subsection (1) who is available to act in the office of the Chief Executive Officer. 25
- (4) A person appointed under this section to act in the office of the Chief Executive Officer has, while so acting, all the functions of the Chief Executive Officer and is taken to be the Chief Executive Officer. 30

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- (5) A person appointed under this section to act in the office of Chief Executive Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.
- (6) The Minister may, at any time, remove a person from the office of acting Chief Executive Officer, but only with the concurrence of the relevant Ministers. 5
- (7) The Chief Executive Officer may, at any time, remove a person from the office of acting Chief Executive Officer, but only if the Chief Executive Officer appointed the person to that office. 10

13 Staff of Safe Food

- (1) Such staff as may be necessary to enable Safe Food to exercise its functions are to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) Safe Food may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department or public or local authority. 15
- (3) For the purposes of this Act, a person whose services are made use of under this section is a member of staff of Safe Food.

14 Authorised officers 20

Safe Food may authorise any of the following persons to be an authorised officer for the purposes of this Act if Safe Food is satisfied that the person has appropriate qualifications or expertise to exercise the functions of an authorised officer:

- (a) any member of staff of Safe Food. 25
- (b) any member of staff of the Department of Agriculture or NSW Fisheries, but only with the approval of the relevant Department Head (within the meaning of the *Public Sector Management Act 1988*),
- (c) any person appointed under section 79 (1) of the *Food Act 1989*, but only with the approval of the Director-General of the Department of Health. 30
- (d) any employee of a local council, but only with the consent of the local council.

15 Use of consultants and contractors

Safe Food may engage such consultants and contractors as may be necessary or convenient to exercise any of the functions of Safe Food.

Part 3 Safe Food Production Advisory Committee

16 Establishment of Safe Food Production Advisory Committee

- (1) The Minister is to establish a committee to be called the Safe Food Production Advisory Committee. 5
 - (2) The Advisory Committee is to consist of:
 - (a) the Chief Executive Officer, who is to be the Chairperson of the Advisory Committee, and
 - (b) such other members as are appointed by the Minister, on a part-time basis, with the concurrence of the relevant Ministers. 10
 - (3) The members of the Advisory Committee are to be appointed from persons having expertise in one or more of the following areas:
 - (a) food technology or seafood technology, 15
 - (b) food science,
 - (c) human nutrition,
 - (d) microbiology,
 - (e) epidemiology,
 - (f) agricultural science or aquaculture science, 20
 - (g) veterinary science,
 - (h) design, implementation or management of food safety programs,
 - (i) the handling or selling of primary produce or seafood,
 - (j) food regulation systems, 25
 - (k) public administration,
 - (l) communications.
- Note.** *Handling* is defined in section 3.
- (4) Of the members of the Advisory Committee, one must be a person who is, in the opinion of the Minister, conversant with the interests of the public as consumers of food. 30
 - (5) Schedule 1 has effect with respect to the members and procedure of the Advisory Committee.

17 Functions of Advisory Committee

The Advisory Committee has the following functions:

- (a) to provide expert advice or make recommendations to Safe Food on any matter relating to the food safety functions of Safe Food. 5
- (b) to provide expert advice to Safe Food on any matter relating to food, or to the operation of this Act or the regulations, that the Minister, the Chief Executive Officer or any body that is consulted for the purposes of section 22 may from time to time refer to the Advisory Committee, 10
- (c) to provide expert advice or make recommendations with respect to the making of regulations (in particular, regulations prescribing food safety schemes) for the purposes of this Act.

18 Temporary members and subcommittees 15

- (1) The Minister may appoint as a member on a temporary basis any person who, in the Minister's opinion, has expertise in a matter to be considered by the Advisory Committee.
- (2) The Minister may establish subcommittees to assist the Advisory Committee in the exercise of its functions. 20
- (3) At least one of the members of a subcommittee must be a member of the Advisory Committee, but it does not matter that none of the other members of a subcommittee is a member of the Advisory Committee.
- (4) A member of a subcommittee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine. 25
- (5) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings is (subject to this Act, the regulations or any determination of the Advisory Committee) to be as determined by the subcommittee. 30
- (6) The Advisory Committee may delegate to a subcommittee any of the functions of the Advisory Committee other than this power of delegation.

Part 4 Food safety schemes

19 Regulations relating to establishment of food safety schemes

- (1) The regulations may make provision for or with respect to prescribing food safety schemes in relation to a type or a class or description of primary produce or seafood. 5
- (2) In particular, the regulations prescribing a food safety scheme may make provision for or with respect to the following:
 - (a) regulating the handling of primary produce or seafood,
 - (b) prohibiting activities in relation to the handling of primary produce or seafood. 10
 - (c) without limiting the generality of paragraphs (a) and (b), regulating the temperatures at which primary produce or seafood must be kept,
 - (d) the classification, marking or other identification of primary produce or seafood, 15
 - (e) requiring the licensing of activities in relation to the handling of primary produce or seafood,
 - (f) requiring the licensing of any person, business, premises, vehicle or equipment in relation to the handling of primary produce or seafood, 20
 - (g) the imposition of conditions on a licence,
 - (h) the suspension or cancellation of licences,
 - (i) appeals from, or reviews of, decisions of Safe Food made in relation to a licence or an application for the granting of a licence, 25
 - (j) requiring the preparation, implementation, maintenance and monitoring of programs to ensure that the provisions of the food safety scheme are complied with,
 - (k) the certification and auditing of programs referred to in paragraph (j), 30
 - (l) establishing committees or other bodies with specified functions relating to the monitoring of the food safety scheme at a local level and the making of recommendations on the operation of the food safety scheme at that local level. 35

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- (m) providing for the funding of those committees or bodies by Safe Food and the accounting by those committees or bodies of any money received from Safe Food.
- (n) the assessment of risks associated with the handling of different types of primary produce and seafood as part of the same business operation. 5
- (o) requiring the preparation of plans in the event of the need for a recall of any primary produce or seafood.
- (p) requiring persons involved in the handling of primary produce or seafood to possess specified qualifications, skills, knowledge or expertise. 10
- (q) designating the persons who are to be responsible for compliance with the obligations imposed by the regulations.
- (r) requiring the giving of information, returns or notices to Safe Food. 15
- (s) authorising the imposition of a levy under section 57 and providing for the amount of the levy or the basis on which it is to be calculated and for its recovery.
- (t) establishing a method of consultation with the relevant industry or sector of industry for the purposes of the ongoing review of the operation of the food safety scheme. 20
- (u) establishing a consultative body for the purposes of paragraph (p) and providing for its membership and procedure (including providing, where appropriate, for consumer representation on that body). 25
- (v) enabling Safe Food to undertake functions relating to the education and training of persons in safe food practices in respect of the type of primary produce or seafood to which the food safety scheme relates. 30
- (3) The regulations may provide for an application to be made to the Administrative Decisions Tribunal by a person for a review of a decision made by Safe Food in relation to a licence or an application for the granting of a licence under the regulations.
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- (4) A regulation establishing a food safety scheme or amending a food safety scheme may be made only with the concurrence of the Minister administering the *Food Act 1989* and, if the food safety scheme relates to seafood, the Minister administering the *Fisheries Management Act 1994*. 5
- (5) A regulation referred to in subsection (3) may be made only with the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.
- 20 Consultation to be undertaken on regulations establishing food safety schemes** 10
- (1) The Minister is to ensure that consultation with the relevant industry or sector of industry is undertaken before the making of any regulation that establishes a food safety scheme.
- (2) The provisions of section 5 (Regulatory impact statements) of the *Subordinate Legislation Act 1989* apply to a regulation that establishes a food safety scheme for a particular type of primary produce or seafood in the same way as they apply to a principal statutory rule (within the meaning of that Act). 15
- (3) In addition to any matters that are required to be included in a regulatory impact statement under the *Subordinate Legislation Act 1989*, the following matters are to be included in such a statement prepared in relation to a proposed regulation establishing a food safety scheme: 20
- (a) an assessment of food safety risks in the industry or sector of industry to which the food safety scheme relates in accordance with national and international standards for risk assessment. 25
- (b) a statement of whether the food safety scheme is based on national standards or supplements national standards, and for those standards imposed by the food safety scheme that are not national standards, an explanation of why those standards are required. 30
- (c) an explanation as to whether the food safety scheme is performance-based or prescriptive, or a combination of both, and the rationale for the approach adopted taking into 35

account the assessed food safety risks in the relevant industry or sector of industry and the capacity of the people involved in that industry or sector of industry to deal adequately with those risks.

- (d) an explanation of the scope of the food safety scheme, including the persons who have responsibilities under the scheme. 5
 - (e) an explanation of any agreements involving Safe Food and other government agencies as to the regulation of the handling of primary produce or seafood to which the food safety scheme applies. 10
 - (f) if a food safety scheme includes a licensing scheme, an explanation of why the licensing scheme is necessary to ensure the safety of food,
 - (g) an assessment of any quality assurance scheme operating in the industry or sector of industry to which the food safety scheme relates, including an assessment of the extent to which the scheme satisfies the requirements of any relevant national standard. 15
- (4) Consultation is taken to have been undertaken on a food safety scheme for the purposes of subsection (1) if notice of the proposed regulation establishing the food safety scheme is published in accordance with section 5 (2) (a) of the *Subordinate Legislation Act 1989*, consultation on the regulation takes place in accordance with section 5 (2) (b) of that Act and comments and submissions received are appropriately considered in accordance with section 5 (2) (c) of that Act. 20 25

21 Offences relating to food safety schemes

- (1) A person who handles primary produce or seafood in a manner that contravenes a provision of a food safety scheme is guilty of an offence. 30

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both. 35

- (2) The holder of a licence granted under the regulations who contravenes or fails to comply with a condition of the licence is guilty of an offence.

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both.

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22 Consultation on operation of food safety schemes

Safe Food is to ensure that consultation on the following matters is undertaken with the relevant industry or sector of industry and that such consultation is undertaken in accordance with the provisions of the food safety scheme:

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- (a) the continuing operation of a food safety scheme,
- (b) any proposed amendment of a food safety scheme.

Part 5 Enforcement

Division 1 Inspection and analysis

23 Powers of authorised officers

- (1) For the purposes of this Act, an authorised officer may, at any reasonable time, do any one or more of the following: 5
- (a) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any place or vehicle that the authorised officer reasonably believes is used in connection with the handling of any primary produce or seafood, 10
 - (b) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any place or vehicle in which the authorised officer reasonably believes any records or documents are kept, being records or documents that relate to the handling of any primary produce or seafood, 15
 - (c) examine any primary produce or seafood,
 - (d) open and examine any package that the authorised officer reasonably believes contains any primary produce or seafood, 20
 - (e) open and examine any equipment for use in connection with the handling of primary produce or seafood,
 - (f) for the purpose of the analysis of any primary produce or seafood or the carrying out of any other examination in order to determine whether the provisions of this Act or the regulations are being complied with, demand, select and obtain samples, without payment, of any primary produce or seafood, 25
 - (g) for the purpose of analysis, take samples of water or soil or any other thing that is part of the environment in which any primary produce or seafood is handled to determine whether that environment poses a risk to the safety of the primary produce or seafood for human consumption. 30

- (h) examine any records or documents referred to in paragraph (b), make copies of those records or documents or any part of them and, for that purpose, take away and retain (for such time as may be reasonably necessary) any such records or documents or any part of them. 5
 - (i) stop and detain any vehicle or vessel that the authorised officer is authorised by this subsection to enter.
 - (j) open, or require to be opened, any container used for the conveyance of goods, or any package, that the authorised officer reasonably believes to contain any primary produce or seafood, or any equipment used or intended for use in connection with the handling of primary produce or seafood. 10
 - (k) take such photographs, films or audio or visual recordings as the authorised officer considers necessary, 15
 - (l) require a person to provide information or answer questions in connection with the authorised officer's functions under this Act or to produce any record, document or article that an authorised officer is authorised to examine under this Act. 20
 - (m) require a person to state the person's name and address,
 - (n) generally make such investigations and inquiries as may be necessary to ascertain whether an offence against this Act or the regulations is being or has been committed.
- (2) A person who, without reasonable excuse, fails to comply with a requirement of an authorised officer made under this section is guilty of an offence. 25
- Maximum penalty: 50 penalty units.
- (3) Such a requirement is not duly made unless, at the time of the making of the requirement, the person of whom the requirement is made is informed by the inspector that a refusal or failure to comply with the requirement constitutes an offence. 30
- (4) This section does not authorise entry into any part of premises that is being used for residential purposes except with the consent of the occupier of the premises or under the authority of a search warrant. 35

24 Power of seizure

An authorised officer may seize:

- (a) any primary produce or seafood, or any equipment, package or labelling or advertising material, or any other thing at all, that the authorised officer has reasonable grounds to believe is evidence that an offence against this Act or the regulations is being or has been committed, or 5
- (b) any primary produce or seafood that the authorised officer has reasonable grounds to believe is intended for human consumption but is not safe for human consumption. 10

25 Search warrants

- (1) An authorised officer may apply to an authorised justice for a search warrant if the authorised officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises. 15
- (2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant, when accompanied by a police officer:
 - (a) to enter the premises concerned, and 20
 - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section, **authorised justice** and **premises** have the same meanings as in the *Search Warrants Act 1985*. 25

26 Directions of Safe Food relating to primary produce or seafood

- (1) Safe Food may, by notice in writing served on a person, give any one or more of the following directions in relation to primary produce or seafood that Safe Food is of the opinion is intended for human consumption: 30
 - (a) if Safe Food considers that the primary produce or seafood is not safe for human consumption—a direction that the

primary produce or seafood must not be supplied for human consumption and must be dealt with or disposed of in a manner specified in the notice.

(b) if Safe Food considers that the primary produce or seafood will not be safe for human consumption unless it is dealt with in a particular manner—a direction that the primary produce or seafood must not be supplied for human consumption unless it is dealt with in the manner specified in the notice. 5

(c) if Safe Food considers that the primary produce or seafood is described in a false or misleading way that could endanger human health—a direction that the primary produce or seafood must not be supplied for human consumption, or must be described in some other way before being supplied for human consumption, and must be dealt with or disposed of in a manner specified in the notice. 10 15

(2) A person on whom a notice is served under this section is guilty of an offence if the person fails, without reasonable excuse, to comply with a direction contained in the notice within the time specified in the notice for compliance. 20

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both. 25

(3) A person who is aggrieved by a direction given under this section may appeal to a Local Court against the direction in accordance with the rules of court.

(4) If an appeal is lodged under subsection (3) against a direction under this section, then until the appeal is determined and an order is made by the Court confirming the direction, the direction does not have effect except to the extent that it prohibits the supply of primary produce or seafood for human consumption. 30

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- (5) If a person on whom a notice is served under this section containing a direction to deal with or dispose of any primary produce or seafood in a specified manner fails to deal with or dispose of the primary produce or seafood in that manner within the time specified in the notice, Safe Food may seize the primary produce or seafood. 5
- (6) A person who is the owner of any primary produce or seafood that is the subject of a notice under this section is liable for any cost incurred in dealing with or disposing of the primary produce or seafood in compliance with the notice and any such cost incurred by Safe Food is taken to be a debt due to Safe Food from that person. 10
- (7) In any proceedings for the recovery of any debt referred to in subsection (6), a certificate signed by Safe Food stating the amount of the costs and the manner in which they were incurred is evidence of the matters certified. 15

27 Interfering with seized items

A person who, without the permission of Safe Food, removes or tampers with any primary produce or seafood that has been seized under this Act is guilty of an offence unless the seizure has been disallowed under Division 2. 20

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both. 25

28 False information

A person who, without reasonable excuse, in connection with a requirement or direction under this Act, provides any information or produces any document that the person knows is false or misleading in a material particular is guilty of an offence. 30

Maximum penalty: 50 penalty units.

29 Obstructing or impersonating authorised officers

- (1) A person who, without reasonable excuse, resists or obstructs an authorised officer in the exercise of the authorised officer's functions under this Act is guilty of an offence.

Maximum penalty: 50 penalty units. 5

- (2) A person who impersonates an authorised officer is guilty of an offence.

Maximum penalty: 50 penalty units.

30 Certificates of authority

- (1) Safe Food is to provide each authorised officer with a certificate of authority as an authorised officer. 10

- (2) The certificate of authority:

- (a) must state that it is issued under this Act, and
(b) must state the name of the person to whom it is issued and bear a photograph of that person, and 15

- (c) must describe the nature of the powers conferred and the scope of those powers, and

- (d) must state the date (if any) on which it expires, and

- (e) must describe the kind of premises to which the powers extend, and 20

- (f) must bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

- (3) The powers of an authorised officer may be limited by the authorised officer's certificate of authority. 25

- (4) An authorised officer is required to produce the certificate of authority:

- (a) if requested to do so by the occupier of any premises that the authorised officer enters, or

- (b) if requested to do so by a person whom the authorised officer requires to produce anything or to answer any question. 30

31 Analysis of samples

- (1) Safe Food may arrange for the analysis of any sample taken for the purposes of this Act.
- (2) The analysis of any such sample is to be carried out in accordance with the regulations.

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Division 2 Items seized by authorised officers**32 Seized items**

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

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33 Return of seized item

If, before any item seized under section 24 (a) is forfeited to the Crown under this Division, Safe Food becomes satisfied that there has been no contravention of this Act or the regulations of which the item is evidence, Safe Food may cause the item to be delivered to:

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

34 Forfeiture of item

- (1) An item seized under this Part is forfeited to the Crown if:
- (a) it has not been dealt with under section 33 and no application for an order disallowing the seizure has been made in accordance with this Division, or 5
 - (b) an application for an order disallowing the seizure has been made in accordance with this Division but the application has been refused or has been withdrawn before a decision on the application has been made.
- (2) An item forfeited to the Crown under this section may be destroyed, sold or otherwise disposed of as Safe Food may, generally or in a particular case, direct. 10

35 Cost of destruction or disposal of forfeited item

- (1) A person who was the owner of an item immediately before its forfeiture under this Division is liable for any cost incurred by or on behalf of Safe Food in connection with the lawful destruction or disposal of the item and any such cost is taken to be a debt due to Safe Food from that person. 15
- (2) In any proceedings for the recovery of the debt, a certificate signed by Safe Food stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified. 20

36 Return of forfeited item

- (1) An item seized under section 24 (a) that is forfeited by the operation of section 34 (1) (a) and that has not been destroyed or otherwise disposed of in a manner that would prevent its return must immediately be delivered to the person from whom it was seized, or such other person as appears to Safe Food to be entitled to it, if Safe Food becomes satisfied that no contravention of this Act or the regulations has been committed in relation to the item. 25 30
- (2) On being delivered, any proprietary and other interests in the item that existed immediately before its forfeiture are restored.

37 Compensation to be paid in certain circumstances

- (1) Safe Food is to pay such compensation as Safe Food considers to be just and reasonable in relation to any item seized under section 24 (a) if:
 - (a) Safe Food becomes satisfied that no contravention of this Act or the regulations has been committed in relation to the item, and 5
 - (b) the item cannot be returned or has in consequence of the seizure depreciated in value.
- (2) The compensation is to be paid to the person from whom the item was seized, or such other person as appears to Safe Food to be entitled to it. 10
- (3) A person dissatisfied with a determination by Safe Food as to compensation under this section may appeal to a Local Court against the determination within 10 days after the date on which notification of the determination was received. 15

38 Destruction of noxious material

If an authorised officer who has seized primary produce or seafood under this Part is satisfied that it consists wholly or partly of filthy, decomposed or putrid matter or that it poses an immediate risk to health or property, the authorised officer (disregarding any provision to the contrary in this Part) may cause the primary produce or seafood to be destroyed. 20

39 Application for order disallowing seizure

- (1) A person claiming to be entitled to any item seized under this Part may, within 10 days after the date on which the seizure took place, lodge notice of an application in a Local Court for an order disallowing the seizure of the item. 25
- (2) The application is to be made in accordance with the rules of court and is not to be heard unless the applicant has previously served a copy of the application on Safe Food. 30

40 Safe Food entitled to answer application

Safe Food is entitled to appear as respondent at the hearing of the application.

41 Order disallowing seizure

A Local Court, on the hearing of an application, must make an order disallowing the seizure of an item if: 5

- (a) in the case of a seizure under section 24 (a)—it is proved that the applicant would, but for the seizure, be entitled to the item and it is not proved beyond reasonable doubt that an offence was being, or had been, committed, being an offence of which the item was evidence, or 10
- (b) in the case of a seizure under section 24 (b)—it is proved on the balance of probabilities that the item seized was safe for human consumption, or
- (c) in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the seizure. 15

but otherwise the Court must refuse the application.

42 Ancillary orders

- (1) In the event that a Local Court makes an order disallowing the seizure of any item, it must also make one or both of the following orders: 20
 - (a) an order directing the respondent to cause the item to be delivered to the applicant or to such other person as appears to the Court to be entitled to it. 25
 - (b) if the item cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing Safe Food to pay to the applicant such amount by way of compensation as the Court considers to be just and reasonable. 30
- (2) The award of costs with respect to the hearing of the application lies in the discretion of the Court.

- (3) If the Court makes an order for the payment of any amount as compensation or awards any amount as costs, the order is enforceable as a judgment of the Court.

43 Adjournment pending hearing of other proceedings

If on the hearing of an application it appears to the Local Court that the item that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence against this Act or the regulations, the Court may, on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings. 5
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Division 3 Orders controlling food production

44 Making of order

An order under this Division may be made only when Safe Food has reasonable grounds to believe that the making of one or more such orders is necessary to prevent or mitigate a serious danger to public health. 15

45 Nature of order

- (1) By an order under this Division, Safe Food may prohibit the cultivation, taking, harvesting or obtaining, from an area specified in the order, of any primary produce or seafood or of any primary produce or seafood of a class or description so specified. 20
- (2) An order under this Division:
- (a) may prohibit absolutely the carrying on of an activity in relation to primary produce or seafood or may permit the carrying on of the activity in accordance with conditions specified in the order, and 25
 - (b) may, without limiting the generality of paragraph (a), impose conditions relating to the taking and analysis of

samples of the primary produce or seafood or of water or soil or any other thing that is part of the environment in which that activity is carried on in relation to the primary produce or seafood, and

- (c) specify methods of analysis (not inconsistent with methods prescribed by the regulations) of any samples required to be taken in accordance with the order. 5

- (3) An order under this Division may be varied or revoked by Safe Food in the same way as the order was made.

46 Manner of making orders 10

- (1) An order under this Division:
- (a) may be made in writing addressed to the person intended to be bound by it, and served on that person, or
- (b) may be addressed to several persons, or to all persons, and published in the Gazette. 15
- (2) In either case, the order, when it takes effect, is binding on the person or persons to whom it is addressed.
- (3) An order that is served on a person takes effect on the date of service or a later date specified in the order.
- (4) An order that is published in the Gazette takes effect on the date of publication or a later date specified in the order. 20
- (5) An order ceases to have effect 90 days after it takes effect unless it is sooner revoked.
- (6) Subsection (5) does not prevent a further order being made in the same terms as an order that has expired. 25

47 Review of order

A person bound by any order under this Division that imposes a prohibition or direction may apply to the Administrative Decisions Tribunal for a review of the prohibition or direction.

48 Failure to comply with directions

A person who:

- (a) carries on an activity in relation to any primary produce or seafood in contravention of any prohibition imposed on the person by an order under this Division, or 5
- (b) neglects or refuses to comply with a direction given by such an order.

is guilty of an offence.

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both. 10

Division 4 Improvement notices and prohibition orders for unfit premises**49 Improvement notice 15**

- (1) If Safe Food is satisfied, by Safe Food's own inspection or by the report of an authorised officer, that:

- (a) any premises, vehicle or equipment used in connection with the handling of primary produce or seafood is in an unclean or insanitary condition, or is otherwise unfit for the purpose for which it is intended, or 20
- (b) it is necessary to install any equipment on premises used in connection with the handling of primary produce or seafood to ensure that the primary produce or seafood will be safe for human consumption, 25

Safe Food may serve an improvement notice on the owner of, or the person in charge of, the premises, vehicle or equipment.

- (2) An improvement notice is to take the form of an order that:
- (a) the premises, vehicle or equipment be put into a clean and sanitary condition, or be repaired, to the satisfaction of an authorised officer, or 30

- (b) the vehicle or equipment be replaced, or
 - (c) specified equipment be installed on the premises.
- within a period specified in the notice.

50 Prohibition order

- (1) If, after the expiration of the period specified in the notice under section 49 (2), Safe Food is not satisfied that the premises, vehicle, vessel or equipment to which an improvement notice relates has been dealt with in accordance with the notice or that equipment has been installed as required by the notice, Safe Food may serve on the owner or person in charge a prohibition order. 5
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- (2) A prohibition order is to take the form of an order that:
 - (a) no primary produce or seafood is to be handled on the premises, or
 - (b) no primary produce or seafood is to be conveyed in the vehicle or vessel, or 15
 - (c) the equipment is not to be used in connection with the handling of primary produce or seafood,

as the case requires, until an authorised officer has given the owner or person in charge a certificate of clearance certifying that the premises, vehicle or equipment has been dealt with or installed in accordance with the improvement notice. 20

51 Request for re-inspection

- (1) The owner of, or person in charge of, premises or a vehicle or equipment affected by a prohibition order may at any time after the order has been served make a written request to Safe Food to cause the premises to be inspected by an authorised officer, or the vehicle or equipment to be so inspected: 25
 - (a) at the place where it was originally inspected, or
 - (b) if it is not convenient for it to be inspected at that place, at some other place that Safe Food has agreed to. 30

- (2) If such a request is made and the premises, vehicle or equipment, through no fault of the owner or person in charge, is not inspected by an authorised officer within the period specified in the notice under section 49 (2), a certificate of clearance is taken to have been given to the proprietor under section 50.

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52 Contravention of prohibition order

A person must not contravene or fail to comply with a prohibition order served on the person under section 50.

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both.

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53 Scope of notices and orders

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

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

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54 Review of decision to refuse certificate of clearance

A person aggrieved by a decision of an authorised officer to refuse to give a certificate of clearance under section 50 may apply to the Administrative Decisions Tribunal for a review of the decision.

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Part 6 Finance

55 Safe Food Production Fund

- (1) There is to be established in the Special Deposits Account a Safe Food Production Fund (the *Fund*) into which is to be paid:
 - (a) all money advanced to Safe Food by the Treasurer or appropriated by Parliament for the purposes of Safe Food, and 5
 - (b) all money directed or authorised to be paid into the Fund by or under this or any other Act, and
 - (c) the proceeds of the investment of money in the Fund, and 10
 - (d) all money received by Safe Food under this Act from any other source.
- (2) The Fund is to be applied for the purpose of enabling Safe Food to exercise its functions under this Act.
- (3) All expenditure incurred by Safe Food under this Act is to be paid from the Fund. 15
- (4) A separate account is to be maintained in the Fund in relation to each levy under section 57 imposed in respect of a particular industry or sector of industry.

56 Investment 20

Safe Food may invest money held by it:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on Safe Food to invest the money, in any other manner approved by the Minister with the concurrence of the Treasurer. 25

57 Industry levies

- (1) Safe Food may levy a contribution towards the cost of the administration of this Act on any person, or member of a class of persons, who is subject to the requirements of a food safety scheme, but only if authorised to do so by the provisions of a food safety scheme. 30

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- (2) A levy under this section is to be of an amount, or calculated on a basis, specified in the relevant food safety scheme.
- (3) Safe Food is to ensure, as far as is reasonably practicable, that money received from levies imposed under this section in relation to an industry or sector of industry that is subject to a food safety scheme is not used to cross-subsidise the expenses of Safe Food in carrying out its functions in relation to any other industry or sector of industry that is subject to a food safety scheme.

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Part 7 Miscellaneous

58 Delegation

- (1) Safe Food may delegate to:
- (a) a member of staff of Safe Food, or
 - (b) an authorised officer, or 5
 - (c) a person holding a position, or a person of a class, prescribed by the regulations,
- any function of Safe Food, other than this power of delegation.
- (2) A delegate may sub-delegate to a person referred to in subsection (1) any function delegated by Safe Food if the delegate is authorised in writing to do so by Safe Food. 10

59 Authorised officers may perform functions under Commonwealth legislation

The Minister may, on behalf of the State, enter into arrangements with a Commonwealth Minister or officer of the Commonwealth government in relation to the exercise under Commonwealth legislation, by authorised officers authorised under this Act, of functions relating to food inspection. 15

60 Protection from liability

- (1) Any matter or thing done or omitted to be done by Safe Food, the Advisory Committee, a body consulted for the purposes of section 22 or a protected person does not, if the matter or thing was done or omitted in good faith for the purpose of executing any provision of this or any other Act or the regulations, subject a protected person personally to any action, liability, claim or demand. 20 25
- (2) In this section, *protected person* means:
- (a) the Chief Executive Officer,
 - (b) any member of staff of Safe Food,
 - (c) an authorised officer. 30

- (d) any person acting under the direction of Safe Food.
- (e) any member of the Advisory Committee.
- (f) any member of a body that is consulted for the purposes of section 22.

61 Disclosure and misuse of information

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A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained. or 10
- (b) in connection with the administration or execution of this Act. or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, the *Freedom of Information Act 1989* or the *Independent Commission Against Corruption Act 1988*, or 15
- (e) as permitted by the regulations, or
- (f) with other lawful excuse. 20

Maximum penalty: 50 penalty units.

62 Penalty notices

- (1) An authorised officer or a police officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations. 25
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section. 30
- (3) A penalty notice is to be served personally or by post.

-
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence. 5
- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and 10
 - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court. 15
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences. 20

63 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction. 25
- (2) If proceedings for an offence against this Act or the regulations are taken before a Local Court, the maximum penalty that the Court may impose is, despite any provision of this Act to the contrary, 100 penalty units or the maximum penalty provided by this Act for the offence, whichever amount is the smaller. 30
- (3) If proceedings for an offence against this Act or the regulations are taken before the Supreme Court, the Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations for the offence.

64 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 5
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision. 10
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

65 Recovery of charges, fees and other money

15

Any charge, fee or money due to Safe Food under this Act is recoverable by Safe Food as a debt.

66 Evidence

In any proceedings for an offence against this Act or the regulations, it is presumed until, on the balance of probabilities, the contrary is proved that: 20

- (a) primary produce or seafood found on premises in a quantity that is in excess of that reasonably required for the personal use of the occupiers of the premises is intended to be sold for the purposes of human consumption, and 25
- (b) primary produce or seafood found on premises usually used in connection with the handling of primary produce or seafood intended for human consumption is intended for human consumption.

67 Act to bind Crown

30

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

68 Exemptions

- (1) The Minister may, by order published in the Gazette, exempt any of the following from any or all of the provisions of this Act or the regulations:
- (a) any person or class of persons. 5
 - (b) any premises or class of premises.
 - (c) any vehicle or class of vehicle.
 - (d) any equipment or class of equipment.
 - (e) any activity.
 - (f) any primary produce or seafood or class or description of primary produce or seafood. 10
- (2) An order under this section may only be made with the concurrence of the relevant Ministers.
- (3) An order under this section takes effect from the date on which it is gazetted or, if a later date is specified in the order, on that later date. 15
- (4) An order under this section may provide for an exemption to be subject to such conditions as are specified in the order.
- (5) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order under this section in the same way as they apply to a statutory rule within the meaning of that Act. 20

69 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 25
- (2) In particular, the regulations may make provision for or with respect to the following:
- (a) the manner of taking samples for the purposes of this Act, 30
 - (b) the methods of analysis to be observed in analyses under this Act.

-
- (c) fees or charges for the purposes of a food safety scheme, including (but not limited to) fees for the processing of applications for licences and for the grant or renewal of licences.
- (d) fees or charges for the provision of information, or for the carrying out of any inspection or analysis for the purposes of this Act or any audit of a program relating to food safety implemented in accordance with a food safety scheme (whether or not the inspection, analysis or audit is requested or agreed to). 5
- (3) A regulation may create an offence punishable by a penalty not exceeding 25 penalty units. 10
- (4) The regulations may incorporate by reference, wholly or in part and with or without modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by an authority or body (whether or not it is a New South Wales authority or body). 15
- 70 Amendment of other Acts**
- (1) The *Dairy Industry Act 1979* is amended as set out in Schedule 2. 20
- (2) The *Meat Industry Act 1978* is amended as set out in Schedule 3.
- (3) Each Act specified in Schedule 4 is amended as set out in that Schedule.
- 71 Savings, transitional and other provisions**
- Schedule 5 has effect. 25
- 72 Review of Act**
- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of section 8. 30

- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.
- (4) In particular, the review is to address the following matters:
 - (a) the coverage and effectiveness of the food safety schemes in operation at the time of the review. 5
 - (b) the extent to which national food hygiene standards have been implemented in food safety schemes.
 - (c) whether food safety operations undertaken by different government agencies in New South Wales should be undertaken by a single agency and, if so, the means of achieving that objective. 10

Schedule 1 Provisions relating to members and procedure of Advisory Committee

(Section 16 (5))

Part 1 Members

1 Definitions

5

In this Schedule:

Chairperson means the Chief Executive Officer.

member means any member of the Advisory Committee, other than the Chief Executive Officer.

2 Terms of office of members

10

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

3 Remuneration

15

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment. 20
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person: 25
 - (a) has all the functions of the member and is taken to be a member, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person. 30

- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
- (a) dies, or 5
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause.
- (2) The Minister may at any time remove a member from office, but only with the concurrence of the relevant Ministers. 10

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Disclosure of pecuniary interests 15

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Committee, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, 20
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Committee. 25
- (2) A disclosure by a member at a meeting of the Advisory Committee that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or 30
 - (c) has some other specified interest relating to a specified company or other body or to a specified person.

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Advisory Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Advisory Committee. 5
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Advisory Committee otherwise determines: 10
 - (a) be present during any deliberation of the Advisory Committee with respect to the matter, or
 - (b) take part in any decision of the Advisory Committee with respect to the matter. 15
- (5) For the purposes of the making of a determination by the Advisory Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 20
 - (a) be present during any deliberation of the Advisory Committee for the purpose of making the determination, or
 - (b) take part in the making by the Advisory Committee of the determination. 25
- (6) A contravention of this clause does not invalidate any decision of the Advisory Committee.

8 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member. 30
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office. 35

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

Part 2 Procedure 5

9 General procedure

The procedure for the calling of meetings of the Advisory Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Committee. 10

10 Quorum

The quorum for a meeting of the Advisory Committee is a majority of its members for the time being.

11 Presiding member

- (1) The Chairperson is to preside at a meeting of the Advisory Committee. 15
- (2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Advisory Committee at which a quorum is present is the decision of the Advisory Committee. 20

13 Visitors

If the Advisory Committee sees fit to do so, it may permit non-members who have expertise in a matter being considered by the Advisory Committee to attend any of its meetings, but no such visitor has a right to vote. 25

14 First meeting

The Minister may call the first meeting of the Advisory Committee in such manner as the Minister thinks fit. 30

Schedule 2 Amendment of Dairy Industry Act 1979

(Section 70 (1))

[1] Long title

Omit "the New South Wales Dairy Corporation and to define their". 5
Insert instead "to define its".

[2] Section 4 Definitions

Omit the definitions of *Corporation*, *Deputy General Manager*,
General Manager, *officer of the Corporation* and *secretary* from 10
section 4 (1).

[3] Section 4 (1)

Omit "the Corporation" wherever occurring in the definition of *Milk Authority*.
Insert instead "Safe Food".

[4] Section 4 (1)

Insert in alphabetical order:

Safe Food means Safe Food Production NSW
constituted by the *Food Production (Safety) Act 1998*.

[5] Section 6C Executive committee of Conference

Omit "General Manager" wherever occurring in section 6C (1) (e) 20
and (2).
Insert instead "Chief Executive Officer of Safe Food".

[6] Section 6F Financial provisions

Omit "The Corporation" from section 6F (1).
Insert instead "Safe Food".

[7] Section 6G Functions of Conference

Omit "the Corporation" from section 6G (a). 5
Insert instead "Safe Food".

[8] Section 6G

Insert at the end of section 6G (b):

 , and

 (c) consult with Safe Food on food safety schemes 10
 under the *Food Production (Safety) Act 1998*.

[9] Section 6H Reports and advice of Conference furnished to Minister

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food". 15

[10] Section 6H (2) (b)

Omit "section 7 (4) (c)".
Insert instead "section 10 of the *Food Production (Safety) Act 1998*".

[11] Part 2, heading

20

Omit the heading. Insert instead:

**Part 2 Functions of Safe Food relating to dairy
 industry**

[12] Part 2, Division 1 Constitution of the Corporation (sections 7-7B)

Omit the Division.

[13] Part 2, Division 2, heading

Omit the heading.

5

[14] Section 8 Principal responsibility

Omit "The Corporation". Insert instead "Safe Food".

[15] Section 9 Powers, generally

Omit "The Corporation" wherever occurring.
Insert instead "Safe Food".

10

[16] Section 9 (1), (2) and (3)

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[17] Section 10 Directions in the interests of health etc

Omit "The Corporation" wherever occurring in section 10 (1) and (2).
Insert instead "Safe Food".

15

[18] Section 10 (1) (a)-(e)

Omit the paragraphs.

[19] Section 10 (1) (g) and (1A)

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

20

[20] Section 10 (2)

Omit "(a), (a1), (b) or".

[21] Section 10 (2A)

Omit the subsection.

[22] Section 11 Directions to take remedial measures

5

Omit "the Corporation" wherever occurring in section 11 (1).
Insert instead "Safe Food".

[23] Section 12 Seizure of contaminated milk etc

Omit the section.

[24] Section 13 Trading activities

10

Omit "The Corporation" wherever occurring.
Insert instead "Safe Food".

[25] Section 14 Promotional activities

Omit "The Corporation" wherever occurring.
Insert instead "Safe Food".

15

[26] Section 14

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[27] Section 15 Taking of samples

Omit "the Corporation". Insert instead "Safe Food".

20

[28] Sections 16–18

Omit the sections.

[29] Section 19 Authorised agents

Omit “The Corporation” from section 19 (1).
Insert instead “Safe Food”.

5

[30] Section 19 (1)

Omit “the Corporation’s”. Insert instead “Safe Food’s”.

[31] Section 19 (1)

Omit “the Corporation”.
Insert instead “Safe Food under this Act”.

10

[32] Section 19 (2)

Omit “the Corporation” wherever occurring.
Insert instead “Safe Food”.

[33] Section 20 Powers of certain authorised officers

Omit section 20 (1). Insert instead:

15

(1) In this section, *authorised officer* means:

- (a) an authorised officer within the meaning of the *Food Production (Safety) Act 1998*, or
- (b) an officer or a temporary employee of the Department, appointed by order in writing of Safe Food to be an authorised officer for the purposes of this section.

20

[34] Part 3 Regulation of the milk supply

Omit “the Corporation” and “The Corporation” wherever occurring.
Insert instead “Safe Food”.

25

[35] Section 32 Registration of dairy farmers and dairy produce merchants

Omit "the Corporation" and "The Corporation" wherever occurring.

Insert instead "Safe Food".

5

[36] Section 33 Safe Food may refuse to issue certificate etc

Omit "The Corporation" and "the Corporation" wherever occurring.

Insert instead "Safe Food".

[37] Section 34 Cancellation of certificate on cessation of use

10

Omit "the Corporation" wherever occurring.

Insert instead "Safe Food".

[38] Section 35 Registration in respect of certain interstate activities

Omit the section.

[39] Section 35D Removal of power to refuse or cancel registration of vehicle vendor on certain economic and other grounds

15

Omit "the Corporation". Insert instead "Safe Food".

[40] Section 35E Distribution Sector Rationalisation Scheme

Omit the section.

[41] Section 35F Compensation for deregulation

20

Omit "the Corporation" wherever occurring.

Insert instead "Safe Food".

[42] Section 35F (4)

Omit "General Manager". Insert instead "Chief Executive Officer".

[43] Section 36 Directions to dairy produce merchants (shop)

Omit "The Corporation" wherever occurring.
Insert instead "Safe Food".

5

[44] Section 37 Directions prohibiting sale of milk by retail shop

Omit "The Corporation" and "the Corporation" wherever occurring.
Insert instead "Safe Food".

[45] Part 4, Division 3 Regulation of quality of milk and dairy products (sections 41–44)

10

Omit the Division.

[46] Section 52 Notice of milk etc delivered

Omit "the Corporation" from section 52 (1) (b).
Insert instead "Safe Food".

15

[47] Part 5 Fixing of certain dairy industry prices

Omit "the Corporation" and "The Corporation" wherever occurring.
Insert instead "Safe Food".

[48] Part 6, heading

20

Omit "the Corporation". Insert instead "Safe Food".

[49] Section 61 Acquisition of land

Omit "The Corporation" from section 61 (1).
Insert instead "Safe Food".

[50] Section 61 (2)

25

Omit "the Corporation". Insert instead "Safe Food".

[51] Section 64 Resumption of undertaking

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[52] Section 65 Valuation

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

5

[53] Section 65 (2) and (6)

Omit "The Corporation" wherever occurring.
Insert instead "Safe Food".

[54] Section 66 Appeal

10

Omit "the Corporation" and "The Corporation" wherever occurring.
Insert instead "Safe Food".

[55] Section 67 Interest

Omit "the Corporation". Insert instead "Safe Food".

15

[56] Section 68 Owner to carry on until undertaking handed over

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[57] Section 69 Purchase

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

20

[58] Part 7, Division 1

Omit the Division. Insert instead:

Division 1 Funding of Safe Food**70 Funding of operations of Safe Food**

Safe Food is to ensure, as far as is reasonably practicable, that money received by Safe Food after the commencement of this section: 5

- (a) under this Act, or
- (b) from interests in private corporations acquired under Division 2A of Part 8 (whether those interests were acquired before or after that commencement), 10

is used for the purposes of the carrying out of its functions under this Act or in connection with any food safety scheme (within the meaning of the *Food Production (Safety) Act 1998*) relating to the dairy industry. 15

[59] Section 72 Investment of funds

Omit "The Corporation may invest moneys held".
Insert instead "Safe Food may invest money received by Safe Food under this Act". 20

[60] Section 73 Temporary accommodation

Omit "the Corporation" from section 73 (1).
Insert instead "Safe Food in the carrying out of its functions under this Act". 25

[61] Section 73 (1)

Omit "the Corporation's". Insert instead "Safe Food's".

[62] Section 73 (2)

Omit "the Corporation".

Insert instead "Safe Food for the purpose of the carrying out of its functions under this Act".

[63] Section 74 Purposes for which money may be borrowed

5

Omit "The Corporation". Insert instead "Safe Food".

[64] Section 74 (a)

Insert "under this Act" after "functions".

[65] Section 75 Reserves for repayment

Omit "The Corporation" wherever occurring.
Insert instead "Safe Food".

10

[66] Section 75 (1)

Omit "the Corporation".

Insert instead "Safe Food under this Act".

[67] Section 75 (2), (3), (6) and (7)

15

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[68] Section 76 Debentures etc

Insert "under this Act" after "borrowed" in section 76 (1).

[69] Section 76

20

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[70] Section 77 Trustees

Omit "stock inscribed by the Corporation" wherever occurring.
Insert instead "stock inscribed by Safe Food under this Act".

[71] Section 77 (3)

Omit "the Corporation" where firstly and secondly occurring. 5
Insert instead "Safe Food".

[72] Section 78 Lost debentures

Omit "issued by the Corporation" from section 78 (1).
Insert instead "issued by Safe Food under this Act".

[73] Section 78 (1) 10

Omit "the Corporation" where secondly occurring.
Insert instead "Safe Food".

[74] Section 78 (3) and (4)

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food". 15

[75] Section 79 Protection of investments

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food under this Act".

[76] Section 80 Debentures and bonds to rank pari passu

Omit "the Corporation". 20
Insert instead "Safe Food under this Act".

[77] Section 83 Inspection of vehicles

Omit "the Corporation" from section 83 (1).
Insert instead "Safe Food".

[78] Part 8, Division 2A, heading

Omit "Corporation". Insert instead "Safe Food".

5

[79] Part 8, Division 2A

Omit "The Corporation" and "the Corporation" wherever
occurring.
Insert instead "Safe Food".

[80] Section 91D Delegation to private subsidiary corporation

10

Omit "section 18". Insert instead "this Act".

[81] Section 93 Informations

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[82] Section 93

15

Omit "secretary" wherever occurring.
Insert instead "Chief Executive Officer".

[83] Section 94 Proof of certain matters not required

Omit "General Manager, Deputy General Manager or an officer of
the Corporation".
Insert instead "Chief Executive Officer or an officer of Safe Food".

20

[84] Section 95 Evidence

Omit "General Manager or a Deputy General Manager" from section 95 (b).

Insert instead "Chief Executive Officer".

[85] Section 95 (b)

5

Omit "the Corporation" wherever occurring.

Insert instead "Safe Food".

[86] Section 95 (b) (i)

Omit "under section 18".

Insert instead "for the purposes of this Act".

10

[87] Section 97 Annual report

Omit "the Corporation" where firstly occurring in section 97 (1).

Insert instead "Safe Food".

[88] Section 97 (1)

Omit "the Corporation" where secondly occurring.

Insert instead "Safe Food under this Act".

15

[89] Section 99 Fixing of fees and charges

Omit "the Corporation" wherever occurring.

Insert instead "Safe Food".

[90] Section 99A Fees for testing etc by Corporation

20

Omit the section.

[91] Section 100 Recovery of charges, fees or other money due

Omit "the Corporation". Insert instead "Safe Food".

[92] Section 101 Power to impose conditions and fix liquidated damages

Omit "The Corporation". Insert instead "Safe Food".

5

[93] Section 101

Insert "under this Act" after "it".

[94] Section 102 Service of proceedings on Safe Food

Omit "the Corporation". Insert instead "Safe Food under this Act".

[95] Section 102

10

Omit "General Manager, a Deputy General Manager or the secretary".

Insert instead "Chief Executive Officer".

[96] Section 103 Regulations

Omit "from ingredients not approved, or from ingredients obtained from a source not approved," from section 103 (1) (c).

15

Insert instead "from ingredients obtained from a source not approved".

[97] Section 103 (1) (d), (e), (f), (g) and (h) and (4)

Omit the paragraphs and subsection.

20

[98] Section 103

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[99] Section 103 (5)

Omit "subsection (1) (a), (b), (g) or (h)".
Insert instead "subsection (1) (a) or (b)".

5

[100] Section 105 Offences

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[101] Section 107 Repeal and amendment of certain Acts

10

Omit the section.

[102] Section 109 Trade Practices exemption

Omit "the Corporation" wherever occurring.
Insert instead "Safe Food".

[103] Schedule 2 Provisions relating to General Manager

15

Omit the Schedule.

[104] Schedule 4 Repeals and amendment of Acts

Omit the Schedule.

Schedule 3 Amendment of Meat Industry Act 1978

(Section 70 (2))

[1] Long title

Omit "Authority" where firstly occurring.
Insert instead "Consultative Council".

5

[2] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Council means the Meat Industry Consultative Council
established under section 47.

10

Safe Food means Safe Food Production NSW
constituted by the *Food Production (Safety) Act 1998*.

[3] Clause 4 (1)

Omit the definitions of *animal food processing plant*, *animal food van*, *Authority*, *Commonwealth body*, *destruction*, *game meat processing plant*, *game meat van*, *knackery*, *inspector*, *licence*, *licensed premises*, *licensed vehicle*, *meat processing plant*, *meat safety officer*, *meat van*, *member*, *offal*, *processed animal food*, *processed meat*, *rendering plant*, *retail meat premises*, *sell*, *slaughter* and *vehicle*.

15

20

[4] Section 8 Act not to extend to slaughtering animals for use of family etc

Omit the section.

[5] Part 2 Licences

Omit the Part.

25

[6] Part 3 Inspections and regulation of the meat industry

Omit the Part.

[7] **Part 4, heading**

Omit the heading. Insert instead:

Part 4 Functions of Safe Food

[8] **Section 44 Constitution of Authority**

Omit the section.

5

[9] **Section 45 Members of Authority**

Omit the section.

[10] **Section 46 Functions of Safe Food**

Omit section 46 (1).

[11] **Section 46 (1A)**

10

Omit "the Authority". Insert instead "Safe Food".

[12] **Section 46 (1A) (a), (b), (c) and (e)**

Omit the paragraphs.

[13] **Section 46 (2)**

Omit "The Authority". Insert instead "Safe Food".

15

[14] **Section 46 (2) (c), (h1), (i), (j), (l), (m) and (n)**

Omit the paragraphs.

[15] **Sections 47–50**

Omit the sections.

[16] Part 5 (sections 47 and 48)

Insert after section 46:

Part 5 Meat Industry Consultative Council

47 Establishment of Meat Industry Consultative Council

- | | | |
|-----|---|----|
| (1) | The Minister is to establish a committee to be called the Meat Industry Consultative Council. | 5 |
| (2) | The Council is to consist of 12 members appointed by the Minister of whom: | |
| (a) | one is to be a person appointed to be Chairperson, and | 10 |
| (b) | one is to be an officer of the Department of Agriculture who is to be the Deputy Chairperson, and | |
| (c) | one is to be an officer of the Department of Health, and | 15 |
| (d) | one is to be a representative of red meat processors, and | |
| (e) | one is to be a representative of poultry processors, and | |
| (f) | one is to be a representative of other meat processors, and | 20 |
| (g) | one is to be a representative of meat retailing, and | |
| (h) | 4 are to be representatives of livestock producers, and | |
| (i) | one is to be a representative of livestock selling centres. | 25 |
| (3) | Schedule 2 has effect with respect to the constitution and procedure of the Council. | |

48 Functions of Council

- | | | |
|-----|---|----|
| (1) | The Council has such functions as are conferred or imposed on it by or under this or any other Act. | 30 |
|-----|---|----|

(2) In particular, the Council has the following functions:

- (a) to provide advice to the Minister on the operations of Safe Food as they relate to the meat industry and on any other matter relating to the meat industry, 5
- (b) to consult with Safe Food on food safety schemes under the *Food Production (Safety) Act 1998* relating to the meat industry,
- (c) to assist in achieving industry support for the implementation of such food safety schemes, 10
- (d) to assist in promoting the safe handling of meat to industry and the community.

49 Reports and advice of Council furnished to Minister

- (1) The Minister is to consider any advice furnished by the Council in accordance with section 48 and take such action in the matter as the Minister considers appropriate. 15
- (2) Without affecting the generality of subsection (1), the Minister may, in relation to any advice concerning the operations of Safe Food: 20
 - (a) forward the advice to Safe Food for consideration, or
 - (b) in accordance with section 10 of the *Food Production (Safety) Act 1998* give such directions to Safe Food in respect of the matter as the Minister considers appropriate. 25

[17] Section 59A Meat industry levy

Omit "the Authority" wherever occurring.
Insert instead "Safe Food".

[18] Section 59C Liability—generally

Omit "the Authority" wherever occurring.
Insert instead "Safe Food".

- [19] Section 59D Liability where an estate or interest is transferred**
Omit "the Authority" wherever occurring.
Insert instead "Safe Food".
- [20] Section 59E Notice of changes in occupancy or ownership of land** 5
Omit "the Authority" from section 59E (1).
Insert instead "Safe Food".
- [21] Section 59F Liability of person becoming occupier or owner**
Omit "the Authority" wherever occurring.
Insert instead "Safe Food". 10
- [22] Section 59H Overdue meat industry levies—extra charges**
Omit "the Authority" from section 59H (2).
Insert instead "Safe Food".
- [23] Section 59I Recovery of meat industry levies**
Omit "the Authority" wherever occurring in section 59I (1) and (3). 15
Insert instead "Safe Food".
- [24] Section 59J Collection of meat industry levies**
Omit "The Authority" from section 59J (1).
Insert instead "Safe Food".
- [25] Section 59J** 20
Omit "the Authority" wherever occurring.
Insert instead "Safe Food".
- [26] Section 59K Waiver or refund of meat industry levies**
Omit "the Authority" wherever occurring.
Insert instead "Safe Food". 25

[27] Section 59L Levy book

Omit "the Authority" wherever occurring.
Insert instead "Safe Food".

[28] Section 59L (2)

Omit "The Authority". Insert instead "Safe Food".

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[29] Section 59N Evidence of agent

Omit "the Authority". Insert instead "Safe Food".

[30] Section 61 Financial year

Omit the section.

[31] Section 63 Investment

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Omit "The Authority may invest money held by it".
Insert instead "Safe Food may invest money held by it under this Act".

[32] Sections 66 and 67

Omit section 66. Insert instead:

15

66 Fund to be established

All money received under this Act by Safe Food or its officers or employees, and all money appropriated by Parliament for the purposes of the functions of Safe Food under this Act are to go to form a fund out of which may be paid:

20

- (a) the expenses of the Council, and
- (b) all expenses of Safe Food in the carrying out of its functions under this Act.

67 Funding of operations of Safe Food

Safe Food is to ensure, as far as is reasonably practicable, that money received by Safe Food under this Act after the commencement of this section is used for the purposes of carrying out its functions under this Act or in connection with any food safety scheme (within the meaning of the *Food Production (Safety) Act 1998*) relating to the meat industry. 5

[33] Sections 68–75 and 76

Omit the sections. 10

[34] Section 77 Regulations

Omit section 77 (2). Insert instead:

- (2) In particular, the regulations may make provision for:
- (a) the form, manner of service and time of issue in any year of notices specifying the amount of a meat industry levy, or 15
 - (b) objections by occupiers to the validity of a meat industry levy, or
 - (c) all other matters incidental to the regulation of meat industry levies. 20

[35] Schedule 2

Omit the Schedule. Insert instead:

Schedule 2 Constitution and procedure of Meat Industry Consultative Council

(Section 47) 25

Part 1 General

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the Council.

Deputy Chairperson means the Deputy Chairperson of the Council.

member means any member of the Council.

Part 2 Constitution

2 Terms of office of members

5

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

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A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Deputies

15

(1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the member's deputy may, if available, act in the place of the member.

20

(3) While acting in the place of a member, a person:

(a) has all the functions of the member and is taken to be a member, and

(b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

25

(4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or 5
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or 10
15
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 20
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable. 25
- (2) The Minister may at any time remove a member from office.

6 Filling of vacancy in office of member 30

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Chairperson and Deputy Chairperson

- (1) In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.
- (2) While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson. 5
- (3) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person:
 - (a) is removed from office by the Minister under this clause, or 10
 - (b) ceases to be a member.
- (4) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson. 15

8 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, and 20
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council. 25
- (2) A disclosure by a member at a meeting of the Council that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or 30
 - (b) is a partner, or is in the employment, of a specified person, or

- (c) has some other specified interest relating to a specified company or other body or to a specified person.
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). 5
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Council. 10
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines: 15
- (a) be present during any deliberation of the Council with respect to the matter, or
- (b) take part in any decision of the Council with respect to the matter. 20
- (5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or 25
- (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council. 30

9 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

-
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office. or
 - (b) prohibiting the person from engaging in employment outside the duties of that office. 5
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member. 10

Part 3 Procedure

10 General procedure

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council. 15

11 Quorum

The quorum for a meeting of the Council is a majority of its members, of whom one must be the Chairperson or Deputy Chairperson. 20

12 Presiding member

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 25

13 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council. 30

14 Transaction of business outside meetings or by telephone

- (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council. 5
- (2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. 10
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or 15
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council. 20
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned. 25

15 First meeting

The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

Schedule 4 Amendment of other Acts

(Section 70 (3))

4.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

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Insert "*Food Production (Safety) Act 1998*, section 62" in alphabetical order.

4.2 Public Authorities (Financial Arrangements) Act 1987 No 33

[1] Schedule 1 Authorities

10

Omit "New South Wales Meat Industry Authority."

[2] Schedule 1

Insert in alphabetical order:

Safe Food Production NSW.

4.3 Public Finance and Audit Act 1983 No 152

15

[1] Schedule 2 Statutory bodies

Insert in alphabetical order:

Safe Food Production NSW

[2] Schedule 2

Omit "New South Wales Dairy Corporation".

[3] Schedule 2

Omit "New South Wales Meat Industry Authority".

4.4 Public Sector Management Act 1988 No 33

5

[1] Schedule 1 Departments

Insert in alphabetical order in Columns 1 and 2:

Safe Food Production NSW

Chief Executive Officer of Safe
Food Production NSW

[2] Schedule 1

10

Omit the matter relating to the New South Wales Dairy Corporation.

[3] Schedule 1

Omit the matter relating to the New South Wales Meat Industry
Authority.

4.5 Search Warrants Act 1985 No 37

15

Section 10 Definitions

Insert in alphabetical order of Acts in the definition of *search
warrant*:

section 25 of the *Food Production (Safety) Act 1998*.

Schedule 5 Savings, transitional and other provisions

(Section 71)

Part 1 Preliminary

- 1 Regulations** 5
- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 10
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 15
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20
- (4) Regulations under this clause may make provision for or with respect to preserving the superannuation rights and entitlements of members of staff of a former authority.

Part 2 Provisions consequent on enactment of this Act 25

2 Definitions

In this Schedule:

former authority means:

- (a) the New South Wales Dairy Corporation dissolved under clause 3 (1), and 30

- (b) the New South Wales Meat Industry Authority dissolved under clause 3 (2).

member of staff of a former authority means an officer or employee of the former authority.

3 Dissolution of Dairy Corporation and Meat Industry Authority 5

- (1) The New South Wales Dairy Corporation is dissolved.
- (2) The New South Wales Meat Industry Authority is dissolved.
- (3) No remuneration or compensation is payable to any member of a former authority as a result of the dissolution of the former authority. 10

4 Transfer of assets, rights and liabilities of former authorities

- (1) On the dissolution of a former authority, the assets, rights and liabilities of the former authority are transferred to Safe Food.
- (2) On the transfer, the following provisions have effect:
- (a) the assets of the former authority vest in Safe Food by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance, 15
- (b) the rights and liabilities of the former authority become by virtue of this clause the rights and liabilities of Safe Food,
- (c) all proceedings by or on behalf of, or against, the former authority pending immediately before the transfer are taken to be proceedings pending by or against Safe Food, 20
- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former authority is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of Safe Food, 25

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- (e) a reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the former authority is, subject to the regulations under clause 1, to be read as, or as including, a reference to Safe Food.
- (3) The operation of this clause is not to be regarded: 5
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or 10
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or other instrument. 15

5 Orders of Minister in relation to assets of former authority

- (1) The Minister may give Safe Food a direction, in writing, that specified assets of a former authority transferred to Safe Food by the operation of clause 4 are to be used for specified purposes only. 20
- (2) Before giving a direction under subclause (1), the Minister must consult with:
- (a) the New South Wales Dairy Industry Conference constituted under the *Dairy Industry Act 1979*, if the former authority was the New South Wales Dairy Corporation, or 25
- (b) the Meat Industry Consultative Council established under the *Meat Industry Act 1978*, if the former authority was the New South Wales Meat Industry Authority. 30

6 Duty

Duty is not chargeable in respect of:

- (a) the transfer of assets, rights or liabilities under clause 4, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land). 5

7 General Manager of NSW Dairy Corporation

- (1) The person who, immediately before the dissolution of the New South Wales Dairy Corporation, held office as General Manager of the Corporation ceases on that dissolution to hold that office. 10
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (3).
- (3) Part 2A of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as if the person had ceased to be an executive officer as referred to in section 42Q of that Act. 15

8 Chairman of Meat Industry Authority

- (1) The person who, immediately before the dissolution of the New South Wales Meat Industry Authority, held office as chairman of the Authority ceases on that dissolution to hold that office. 20
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (3).
- (3) Part 2A of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as if the person had ceased to be an executive officer as referred to in section 42Q of that Act. 25

9 Staff of former authorities

- (1) On the dissolution of a former authority, each member of staff of the former authority is transferred to the employment of Safe Food.
- (2) Each such member of staff becomes after the transfer a member of staff of Safe Food and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the former authority. 5
- (3) Neither the contract of employment nor the period of employment of each member of staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff. 10
- (4) Without limiting this clause, this Act does not affect any accrued rights that the member of staff concerned had immediately before the transfer in relation to any kind of leave. 15
- (5) A member of staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the former authority. 20
- (6) A member of staff concerned is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

10 Saving of existing orders

- Any order made under a provision of Part 5 of the *Dairy Industry Act 1979* that was in force immediately before the commencement of clause 3 (1) is taken to be an order made under that provision of Part 5 by Safe Food. 25

11 Saving of existing delegations

Any delegation under section 18 of the *Dairy Industry Act 1979* that was in force immediately before the commencement of clause 3 (1) is taken to be a delegation made under section 58 of this Act and continues in force unless revoked or varied by Safe Food. 5