



Food Legislation Amendment Bill.

Second Reading

Mr NEVILLE NEWELL (Tweed—Parliamentary Secretary) [10.45 a.m.], on behalf of Mr Morris lemma: I move:

That this bill be now read a second time.

Five years ago my ministerial predecessor introduced the Food Production (Safety) Bill, which established the new agency SafeFood Production New South Wales. SafeFood was to become responsible for food safety in the primary produce and seafood industries up to the backdoor of the retail shop or restaurant. In his second reading speech the Minister said:

The Government believes that the safe food initiative will help bring about justified consumer confidence in the safety of the food supply without imposing unnecessary burdens on industry. The Government also commits to the long-term goal of establishing a comprehensive Food Safety Authority as recommended by the Kerin Review and by the Blair Review.

With the introduction of this bill, the Government delivers on that commitment. The bill will enable the merger of SafeFood with the food regulatory staff and resources of NSW Health to form the New South Wales Food Authority. The bill does this by repealing the Food Production (Safety) Act 1998 and transferring relevant provisions to the Food Act 2003, establishing the New South Wales Food Authority, and providing for staff transfer and related issues. The merger will implement the key recommendation of the comprehensive review of the New South Wales food regulatory system conducted during 2002 by the Hon. John Kerin. Mr Kerin consulted extensively with consumer and public health advocates, the food industry, local government and scientific and technical experts, and received 84 submissions in response to an issues paper. He found overwhelming support for the establishment of a single independent State agency with through-chain responsibility for food regulation.

Mr Kerin's report was publicly released in December 2002. It provides the detailed case for this initiative. Food-borne disease costs Australia \$2.26 billion each year, equating to a New South Wales cost of \$765 million. Furthermore, the incidence of food-borne disease appears to be increasing in many developed countries, including Australia. The apparent increase may in part be due to improved food-borne disease reporting, through systems such as the OzFoodNet initiative. But there is no doubt that food-borne pathogens have greater opportunity to cause disease as supply chains lengthen and become more complex through globalisation and changes in production processes.

Changing consumer habits also contribute to the increase in food-borne disease, with the average Australian now eating more than 250 meals each year prepared outside the home. In addition, more people are vulnerable to food-borne disease as the population ages and medical science prolongs life. For all these reasons, food safety management is more challenging than in the past when end-point inspectors checked for spoilage or foreign objects and consumers relied on the "sniff test". Regulators now use science to assess risks at every step in the supply chain and use a combination of preventive systems and enforcement action to minimise food safety risks. It therefore makes sense to bring the State's resources together in a single agency that can target its activities in a consistent way to the highest risks along the supply chain.

Over the past five years SafeFood NSW has brought together the former Dairy Corporation, the Meat Industry Authority, the Shellfish Quality Assurance Program from NSW Fisheries, as well as regulation of shellfish depuration, smallgoods fermentation, and goat and sheep milk production from NSW Health. It has refocused existing programs and developed new programs to address risks in the seafood and plant products industries. The merger will bring these industries, together with the retail, food service and food manufacture sectors, under the one umbrella. This will be a first for Australia, although many countries, including our New Zealand neighbours in 2002, have recognised the benefits of similar integration.

The functions of the New South Wales Food Authority, to be included in a new part 9, division 1, will enable it to carry out the objects of the Food Act, namely, to ensure that food is safe and suitable, to prevent misleading conduct in the sale of food, and to apply the National Food Standards Code in this State. These functions will include all the functions now exercised by the regulatory authority under the Food Act—currently defined to be the Director-General of the Department of Health—plus the functions of SafeFood under its current Act. In addition, the new function in proposed section 108 (2) (f) will support future consumer information and education initiatives as recommended by the Kerin review.

NSW Health will retain its responsibilities under the Public Health Act for notifiable disease and disease surveillance, and will lead investigations involving human food-borne disease, assisted by the Food Authority. NSW Health will also retain responsibility for nutrition policy and health promotion. The respective roles and responsibilities of the Food

Authority and NSW Health in these areas will be set out in a comprehensive memorandum of understanding before the merger. This will include a detailed protocol for the agencies' joint response to incidence of food-borne disease.

Because the Food Authority will be established by the Food Act with specified functions, its accountability will be clear and it will report directly to the Minister in the same way as other agencies within the portfolio. The bill also implements Kerin's recommendation that ministerial control and direction should not extend to licensing matters, which are reviewable by the Administrative Decisions Tribunal, or to decisions whether to prosecute. The Food Authority's core funding will be provided by merging the existing funding of SafeFood and the food regulatory funding of NSW Health. The Government will commit a total of \$9.48 million per annum to fund the Food Authority. The funding includes \$1.23 million for laboratory testing of food samples by the Government's Food Laboratory under service agreement with the Food Authority.

Under principles established by the Government's Food Safety Funding Review in 2001, the food industry contributes to the cost of SafeFood's preventive programs through licence fees, levies, and fees for audit and inspection services. The Government believes that these principles should apply generally to the funding of the Food Authority's preventive programs. Accordingly, items [20], [23] and [24] of schedule 1 bring together the fee visions of the Food Act with those of the Food Production (Safety) Act.

I turn now to some key features of the food regulatory framework to be provided by the bill. The Food Authority will use risk analysis to focus its resources and efforts on the areas that pose the greatest risk to public health. It will also seek to maintain the right balance between preventive approaches, such as food safety program requirements in food businesses, and enforcement action when food laws and standards are breached. The key to this risk-based and balanced approach will be the food safety scheme mechanism currently contained in part 4 of the Food Production (Safety) Act. This enables food safety schemes to be tailored to particular industries or sectors and prescribed by regulation. These schemes may include preventive requirements such as food safety programs, arrangements for auditing of these programs, licensing of food businesses, and associated fees and charges.

The schemes are based on scientific assessment of food safety risks and implement national standards such as the Food Standards Code where applicable. Over the past five years, SafeFood has introduced food safety schemes covering the dairy, meat and seafood industries, and schemes for selected plant product sectors and eggs are being developed. Item [18] of schedule 1 will transfer the food safety scheme provisions to the Food Act, where they will be available to cover food businesses anywhere in the supply chain. Existing food safety scheme regulations will be preserved as if they were made under the Food Act. The food safety scheme provisions will replace current Food Act provisions that deal with licensing of food businesses, food safety programs and auditing requirements. The bill retains the important process requirements which ensure that food safety schemes are soundly based, effectively targeted, and do not impose unnecessary costs on the food industry.

These requirements include prior risk assessment and industry consultation, preparation of a regulatory impact statement, and establishment of a structure for industry consultation on operation of the scheme and any amendments to the scheme. In accordance with national policy directions, NSW Health has already begun work to develop food safety program requirements for high-risk sectors involving food service to vulnerable populations and certain catering operations. This initiative will be transferred to the Food Authority and implemented through a food safety scheme regulation. For the primary produce and seafood industries currently covered by SafeFood, the bill makes no significant change to the regulatory and consultative arrangements established over the past five years under the Food Production (Safety) Act. In particular, the farm sector will continue to be exempt from Food Act requirements to comply with the food safety standards in part 3 of the Food Standards Code, unless compliance is specifically required by a food safety scheme regulation.

Similarly, licensing requirements will only apply to farmers, or any other food business, if provided by a food safety scheme. This is precisely the current position under the Food Production (Safety) Act. Although the two Acts contain similar enforcement provisions, some harmonisation was needed to bring the offences and penalties provisions together. The offences and penalties established under part 2 of the Food Act remain unchanged. However, the Food Act offences in section 92, which relate to food safety programs and auditing, have been combined with the food safety scheme offences in the Food Production (Safety) Act in proposed new section 104. Penalties have been harmonised to the Food Act standard by removing the different penalty for a first offence and the imprisonment option in the food safety scheme offences and by including the higher maximum penalty for corporations.

The bill makes consequential amendments to a number of Acts. In addition, following consultation with the interim Meat Industry Advisory Committee, the bill repeals the provisions of the Meat Industry Act 1978, which provide for lamb branding and the Meat Industry Consultative Council. Lamb branding ensures that consumers who pay for lamb get lamb and not hogget or mutton. These provisions will now be enshrined in the Food Act, as its objects include consumer protection. The consultative council provisions will be transferred to the Meat Food Safety Scheme Regulation, and a new council will be appointed with the revised composition agreed with the interim committee. The Meat Industry Act will continue to provide for the levy on livestock producers. Producers pay an annual levy ranging from \$5 to a maximum of \$130, with the average being \$14. The proceeds of the meat industry levy, which is collected by rural lands protection boards, together with other levies, are used solely for the Meat Food Safety Scheme. Meat industry businesses from abattoir to retail butcher are licensed by SafeFood and pay fees for the preventive programs in their sectors.

Because SafeFood does not currently implement preventive programs in the meat producer sector, the levy is the only means by which livestock producers contribute their share of costs for the meat food safety regulation from which they benefit. The New South Wales Farmers Association has raised some concerns about the levy. In response the Minister requested the Meat Industry Consultative Committee to conduct a review of the levy. The review will focus on inequities in the levy arrangements, including the possibility that it applies to occupiers of land who do not benefit from meat food safety regulation. For this reason, the bill makes no change to the current provisions. In preparation for introduction of this bill, SafeFood and NSW Health have carefully prepared for transition to the New South Wales Food Authority, which will have around 110 staff.

The New South Wales Health Food Branch co-located with SafeFood head office staff in April last year, and in November they moved together to the building in Newington, which will be the authority's head office. On the commencement of the Act, the staff of both agencies in rural and regional areas will move to common regional offices near their present locations. Work to integrate programs and review through-chain resource allocation according to food safety risk can then begin in earnest.

I conclude with some comments about the crucial role of local government in food regulation. Local councils have been involved in food regulations since 1896. A recent survey of councils found that approximately 344 staff in 172 councils performed some food regulatory work, with the total resource being equivalent to 92 full-time staff. The Food Act 2003 provides for councils to be prescribed as "enforced agencies" with broad regulatory powers, and for some co-ordination and support by the State-level agency through annual reporting requirements and the promulgation of national guidelines.

However, it is widely acknowledged that a better framework is needed to support a consistent and effective local government role and to eliminate duplication of effort. The Kerin review recommended that the New South Wales Government explore with local government a model that would mandate, support, and resource a consistent local government role in food regulation. The food authority will take this recommendation forward as a high priority. In November a directions paper entitled "Towards a strong food regulation partnership" was jointly released by State agencies, the local government and shires associations, and other local government bodies to set the scene for this important work. This bill will establish the first through-chain food regulatory agency in Australia. Completion of agency integration at a State level, complemented by a strong partnership with local government, will provide the best platform to ensure a safe food supply for New South Wales consumers without imposing excessive costs on the food industry. I commend the bill to the House.

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