

Food Legislation Amendment Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to repeal the *Food Production (Safety) Act 1998* and to provide for the matters currently dealt with by that Act to be transferred to the *Food Act 2003*.

The Bill amends the *Food Act 2003* (the **Principal Act**):

- (a) to establish the NSW Food Authority (which will replace Safe Food Production NSW), and
- (b) to extend the operation of that Act to primary food production, and
- (c) to transfer to that Act the provisions of the *Food Production (Safety) Act 1998* enabling the establishment of food safety schemes by regulation, and
- (d) to make other miscellaneous amendments as a consequence of the transfer of those provisions.

The Bill also amends the *Meat Industry Act 1978* to repeal the provisions relating to the Meat Industry Consultative Council as that Council will be re-established under the *Food Act 2003* and to remove obsolete provisions.

Outline of provisions

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 is a formal provision that gives effect to the amendments to the *Food Act 2003* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and regulations set out in Schedule 2.

Clause 5 repeals the *Food Production (Safety) Act 1998*.

Schedule 1 Amendment of Food Act 2003

NSW Food Authority

Schedule 1 [21] replaces the provisions of the Principal Act that provide for the functions of the regulatory authority under the Act (currently the Director-General of the Department of Health) with a new Division 1 of Part 9 that establishes the NSW Food Authority. That Authority will have the functions currently exercised by the regulatory authority. **Schedule 1 [1]** changes references throughout the Principal Act to the regulatory authority to references to the Food Authority. **Schedule 1 [7], [10] and [11]** contain consequential amendments.

The new Division contains the following provisions which are based on current sections 10–15C of the *Food Production (Safety) Act 1998*:

- (a) proposed section 107 constitutes the NSW Food Authority as a body corporate to be managed by the Director-General of the Food Authority,
- (b) proposed section 108 sets out the functions of the Food Authority,
- (c) proposed section 109 provides that the Food Authority is generally subject to the control and direction of the Minister,
- (d) proposed section 109A deals with the staff of the Food Authority,
- (e) proposed section 109B enables the Food Authority to engage consultants and contractors,
- (f) proposed section 109C enables the Food Authority to form and have certain dealings with private corporations subject to certain restrictions,
- (g) proposed section 109D enables the Food Authority to make use of its funds in its dealings with private corporations under proposed section 109C or in relation to private subsidiary corporations controlled by the

Food Authority, subject to certain restrictions,

(h) proposed section 109E enables the Food Authority to delegate its functions to certain persons.

Schedule 1 [22] inserts Division 5 into Part 9 of the Principal Act which deals with the finances of the Food Authority and is similar to provisions currently contained in Part 6 of the *Food Production (Safety) Act 1998*. The proposed Division contains the following provisions:

(a) proposed section 117A establishes the Food Authority Fund,

(b) proposed section 117B enables the Food Authority to invest money held by it in certain ways,

(c) proposed section 117C enables the Food Authority to levy contributions from industry towards the administration of the Principal Act through the provisions of a food safety scheme prescribed by the regulations.

Schedule 1 [25] and [26] enable regulations to be made with respect to fees and charges for the purposes of the Principal Act and food safety schemes prescribed under the Principal Act. Those new provisions are similar to provisions currently contained in the *Food Production (Safety) Act 1998*.

Schedule 1 [24] inserts proposed section 136A into the Principal Act to enable the Food Authority to provide information to a member of staff of the Department of Health or of a public health organisation if it is necessary for the carrying out of functions by the member of staff under the *Public Health Act 1991*. Similarly, information may be provided by such members of staff to the Food Authority to enable the Food Authority to carry out its functions under the Principal Act.

Food safety schemes

Schedule 1 [20] replaces sections 102–107 of the Principal Act (currently dealing with the registration of food businesses) with provisions relating to food safety schemes. The new provisions are currently contained in Part 4 of the *Food Production (Safety) Act 1998*.

Proposed section 102 enables regulations to be made prescribing food safety schemes. The regulation-making power covers a broad range of matters including regulating the handling and sale of food, setting up licensing schemes in relation to the handling and sale of food and requiring the preparation and implementation of food safety programs to ensure that food safety schemes are being complied with. The regulations may extend to anything intended as animal food, but only for the purposes of ensuring the safe handling of food for human consumption.

Proposed section 103 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.

Proposed section 104 creates offences relating to contraventions of food safety schemes and licensing requirements of food safety schemes and failures to audit food safety programs required to be prepared under food safety schemes.

Proposed section 105 requires the Food Authority to undertake industry consultation on the continuing operation or the proposed amendment of a food safety scheme and enables the Minister to confer certain functions on consultative bodies.

Proposed section 106 requires each enforcement agency to prepare and maintain a list of food businesses notified to it or licensed by it. Enforcement agencies include the Food Authority and local councils.

Schedule 1 [15] repeals section 92 of the Principal Act. That section contains

offences that will be re-enacted in proposed section 104 referred to above.

Schedule 1 [16] and [19] contain consequential amendments.

Extension of Principal Act to primary food production

Currently, section 6 of the Principal Act makes it clear that a reference to a food business does not include a business, enterprise or activity that is primary food production. Section 10 of the Principal Act provides that Parts 5, 7 and 8 of the Principal Act do not apply to primary food production, namely, provisions relating to the issuing of improvement notices to food businesses and prohibition orders, the auditing of food businesses and the registration of food businesses. Also, the application of inspection and seizure powers in relation to primary food production is limited to enabling the investigation and prosecution of offences against the Principal Act and the making and enforcement of emergency orders under the Principal Act. That is because those matters in relation to primary food production are largely covered by the *Food Production (Safety) Act 1998*.

Schedule 1 [4] removes the qualification to section 6 of the Principal Act so that a reference to a food business will include a reference to primary food production.

Schedule 1 [5] repeals the current section 10 so that, generally, all the provisions of the Principal Act will apply to primary food production.

Schedule 1 [6] provides that the offence contained in section 21 of the Principal Act of not complying with the Food Standards Code does not apply to a food business that is primary food production unless a food safety scheme so provides.

Schedule 1 [18] provides that the offence contained in section 100 of the Principal Act of conducting a food business without giving written notice to the appropriate enforcement agency does not apply to a food business that is primary food production unless a food safety scheme so provides.

Schedule 1 [8], [9] and [13] contain consequential amendments.

Miscellaneous amendments

Schedule 1 [2] and [3] omit a definition from the Principal Act that will no longer be needed and insert new definitions, including definitions of the Food Authority, the Director-General and food safety scheme.

Schedule 1 [12] provides that the scheme for taking and analysing samples set out in Division 1 of Part 6 of the Principal Act applies only to the taking and analysis of samples by authorised officers exercising functions of inspection and seizure under the Principal Act.

Schedule 1 [14] enables the Food Authority to authorise a member of staff of the Food Authority as a food safety auditor for the purposes of the Principal Act if the member of staff is appropriately qualified. The current provisions that enable any other natural person to apply for approval to be a food safety auditor remain unchanged.

Schedule 1 [17] increases the penalty in relation to corporations for failure to notify of the carrying on of a food business.

Schedule 1 [23] extends the protection from personal liability contained in section 134 of the Principal Act for certain persons carrying out functions under the Principal Act to members of consultative bodies that are consulted in relation to food safety schemes under the Principal Act. That protection is currently contained in section 60 of the *Food Production (Safety) Act 1998*.

Schedule 1 [27] and [28] contain savings, transitional and other provisions, including a statement that the Food Authority is a continuation of, and the same legal entity as, Safe Food Production NSW, a provision dissolving the Safe Food Production Advisory Committee and provisions relating to staff.

Schedule 2 Amendment of other Acts and regulations

Schedule 2 makes consequential amendments to various Acts and regulations.

In particular, the Schedule repeals provisions of the *Meat Industry Act 1978* dealing with the Meat Industry Consultative Council. It is intended that the Council be re-established under the *Food Act 2003*.