



Legislative Council

Food Bill Hansard - Extract

29/10/2002

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [2.45 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

This Bill is a major step towards a nationally uniform system of food regulation. The Bill is the culmination of extensive work by a large number of public officials from all levels of Government and all jurisdictions over a number of years.

Health Ministers in Australia have a lengthy history of co-operation in the area of food safety. Significant achievements in this history include:

In May 1975 Ministers agreed to establish a joint Commonwealth, State and Territory working party to draw up model food legislation suitable for adoption throughout Australia;

In May 1980 a draft Model Food Act was endorsed by Ministers and applied to varying extents in each jurisdiction, including via the New South Wales Food Act of 1989;

In 1986 agreement was reached to develop and implement uniform composition and labelling standards for food, which have developed into the national Food Standards Code;

In 1991 Ministers agreed to adopt by reference and without amendment food standards developed by the Australia New Zealand Food Authority and approved by the Australia New Zealand Food Standards Council, the Ministerial Council;

In 1996 an agreement was reached for the Australia New Zealand Food Authority (now known as Food Standards Australia New Zealand) to develop nationally uniform food Acts; and

The Food Standards Code has also recently been expanded to include food safety standards, which are largely handling and hygiene matters.

Following the 1996 agreement Dr Bill Blair was appointed in 1997 to chair the Food Regulation Review Committee, which was set the task of making recommendations to Government on means to reduce the regulatory burden on the food sector whilst protecting public health and safety. The Blair Report was released in August 1998.

The Blair Report noted that the Australian system of food safety management is complex and fragmented and imposes unnecessary costs on business. However, the Report also noted that the system is effective in delivering safe food to consumers. The Report recommended that Governments concentrate on improving the

efficiency of that system with a co-operative co-regulatory approach based on partnership between consumers, industry and government.

The Council of Australian Governments Senior Officials Working Group on Food Regulation was subsequently asked to further develop a nationally co-ordinated approach to food regulation based on the recommendations of the Blair Report.

On 3 November 2000 the Commonwealth and all States and Territories under the auspices of the Council of Australian Governments approved the draft Model Food Provisions presented by the Senior Officers Working Group. To date South Australia and the Australian Capital Territory have passed new Food Acts, and Queensland and Victoria have passed amendments to their existing Food Acts based on the Model Provisions.

The draft national Model Food Provisions for all jurisdictions were prepared in New South Wales by the Parliamentary Counsel's Office and are largely based on the provisions of the current New South Wales Food Act 1989. Therefore the Bill represents an incremental development in food safety legislation in New South Wales and food businesses should not experience any substantial difficulty in adjusting to and complying with the new legislation.

The objects of the Bill, which are set out in section 3, are:

to ensure food for sale is both safe and suitable for human consumption,
to prevent misleading conduct in connection with the sale of food, and
to provide for the application in New South Wales of the *Food Standards Code*.

It is important to note that primary food production, which is defined to mean the growing, raising, cultivation, picking, harvesting, collection or catching of food, and includes transportation, storage and treatment activities related to that primary production, is expressly excluded from the regulatory scope of Parts 5, 7 and 8 of the Bill. Those parts of the Bill deal with improvement notices and prohibition orders, auditing of food businesses, and the notification and registration of food businesses and approval of food premises respectively. The reason for these exclusions is that primary food production is already comprehensively regulated in those areas under the Food Production (Safety) Act 1998, which is administered by the Minister for Agriculture through Safe Food Production NSW.

It is also important to note that while drinking water is clearly within the definition of food in section 5 of the Bill, section 11 of the Bill provides that many parts of the Bill do not apply to water supply authorities (such as Sydney Water and those local government authorities that supply drinking water to their communities). Those parts of the Bill that do not apply to water supply authorities are:

Part 2, Division 1, which is titled "serious offences relating to food";

The offences created by Part 2, Division 2 of the Bill, other than those created by sections 16 (2), 17 (2) and 21 (to the extent that it requires compliance with Food Safety Standards); and

Parts 5, 7 and 8 which, as already mentioned, do not apply to primary production.

Part 2 of the Bill deals with offences with respect to food. The majority of the offences in Part 2 have been carried across from the existing Food Act 1989, although in a modified format. The obvious and significant changes between the offences contained in the 1989 Act and the Food Bill 2002 are:

Penalties have been substantially increased and there is now a distinction between the penalties that may be applied to an individual and a corporation. The 1989 Act provides for maximum penalties of between \$3,300 and \$5,500 and up to 6 months imprisonment, whereas the Food Bill 2002 provides for maximum penalties for individuals of between \$44,000 and \$110,000 and up to 2 years imprisonment and in the case of a corporation a maximum fine of between \$220,000 and \$550,000.

The Food Bill 2002 also has a wider range of offences than the Food Act 1989 with more graduated penalties. The most serious offences and penalties are reserved for conduct that is known to be unsafe, with lesser penalties for offences that do not require proof of the offender's knowledge.

Emergency powers given to the Director-General of Health, as the relevant authority, are to be used to prevent or reduce the possibility of a serious danger to

public health or to mitigate the adverse consequences of a serious danger to public health. These powers are based on existing powers in Division 1 of Part 4 of the Food Act 1989.

Importantly the Bill introduces compensation for a person who has suffered loss as the result of the making of an emergency order where there were inadequate grounds for making the order. In the first instance an application for compensation is to be made to the Director-General of Health, however an applicant who is dissatisfied with the Director-General's determination may appeal that determination to the Administrative Decisions Tribunal.

The issuing of a prohibition notice, under the Director-General's emergency powers, is clearly a very serious matter and has the potential to disrupt the operations of a food business. Such an order may therefore only be made if there are reasonable grounds to believe that an improvement notice has not been complied with, or that it is necessary to issue the prohibition order to prevent or mitigate a serious danger to public health.

Part 6 of the Bill deals with the taking and analysis of samples of food, the approval of laboratories to undertake that analysis and the approval of analysts. The provisions are based on Part 3, Divisions 3 and 4 of the Food Act 1989. The essential changes from the provisions of the 1989 Act are that the procedure and stipulations for the appointment of analysts are set out in greater detail, and the Food Bill allows for the approval of laboratories, whereas the 1989 Act only allows for the approval of individual analysts.

An important innovation in this Bill is Part 7, which makes provision for the appointment of food safety auditors and the auditing of food businesses in accordance with the requirements of a food safety program that may be required by the Regulations. Auditing of food businesses in accordance with a food safety program allows for appropriate risk management practices to be adopted. Auditors will assess a business in accordance with that risk management approach and against predetermined standards as set out in the relevant food safety program for that class of business. Food safety programs are required by Part 3.2.1 of the Food Standards Code.

In order to facilitate the effective operation of this risk management approach the Act contains provisions requiring businesses to prepare food safety programs and to ensure that the business is regularly audited for compliance with its food safety program. The Bill recognises that many food businesses are scrupulous in fulfilling their obligations while other businesses are less diligent. Therefore the Bill allows a food safety auditor to vary the frequency of auditing of a particular business, within a range of frequencies centrally determined for that type of business. Where a business has a record of operating safely and of compliance with its food safety program, less frequent auditing may be appropriate. Conversely, in the case of a business with a poor record, more frequent auditing may be appropriate.

Part 8 of the Bill provides for the notification and registration of food businesses. New South Wales has recently required food businesses to notify their existence to the Department of Health. The notification of food businesses is required by part three point two point two of the Food Standards Code, which is incorporated into NSW law by clause 4 of the Food Regulation 2001. Honourable members will be aware that the operation of the notification provision has been appropriately modified in New South Wales to exempt charitable and community fundraising events, such as a local church fete or football club sausage sizzle, where the food sold is not potentially hazardous or is to be eaten immediately after thorough cooking.

Honourable members will also be aware that the NSW Department of Health has established a free Internet based system for food businesses to notify their existence. In addition to the Internet notification system, food businesses may notify their existence via paper notification to either a local council or the Department of Health. In that case a small processing fee is charged to cover the administrative costs associated with the entering of information into the database.

In addition, any business that is of a class exempted from notification by the Food Safety Standards or otherwise registered under a law prescribed by the Regulations is not required to notify its existence. Those food businesses that are registered by SafeFood NSW are already exempt from the notification requirements of the current legislation and this exemption will continue.

Other important improvements to the enforcement of the legislation are:

Providing for the issue of penalty notices for such minor offences as may be specified by

Regulation.

Providing a power for a court to order the publication of specified information wherever a person is convicted of an offence. This power will allow the courts, in appropriate cases, to order corrective advertising, or in serious cases order advertising that alerts the public to serious breaches of food safety standards by a food business.

As is well known in the community, the most serious examples of food borne disease can lead to chronic illness and even death. Even the more benign manifestations of food borne illness can cause significant discomfort to individuals and impose substantial costs on the NSW health system and the economy in general. The introduction of consistent food legislation and standards throughout Australia is an important step to protect the health of the people of New South Wales and to limit outbreaks of food borne disease.

I commend the Bill to the House.