

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Food Act 2003* (***the Principal Act***):

- (a) to provide a scheme for the appointment of local councils and the Director-General of the Department of Environment and Climate Change (in relation to Kosciuszko National Park) as enforcement agencies under that Act (currently they are prescribed by the regulations as enforcement agencies without the requirement for prior consultation), and
- (b) to include consultation requirements in that scheme to enable local councils and the Director-General of the Department of Environment and Climate Change to make submissions on the types of functions under that Act that they have adequate resources to exercise, and
- (c) to establish a Food Regulation Forum to provide advice to the Food Authority primarily in relation to matters affecting other enforcement agencies, and
- (d) to enable the imposition of fees for the issuing of improvement notices under that Act to food businesses, and
- (e) to make further provision in relation to the imposition and setting of fees and administration charges for functions carried out by enforcement agencies under that Act, and
- (f) to enable the transfer of information between enforcement agencies and certain government agencies carrying out functions in respect of public health.

The Bill also makes other amendments to the *Food Act 2003* of a minor or consequential nature or by way of statute law revision.

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 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Appointment of enforcement agencies

The Principal Act contains various functions to be carried out by enforcement agencies, such as the inspection of food businesses, the issue of improvement notices for food businesses and the issue of prohibition orders preventing the carrying on of a food business in certain circumstances. Currently, an ***enforcement agency*** is defined in the Principal Act as the Food Authority and persons or bodies prescribed by the regulations. The regulations prescribe all local councils, the Director-General of the Department of Environment and Climate Change in respect of Kosciuszko National Park and the Lord Howe Island Board in respect of Lord Howe Island.

Schedule 1 [1] amends the definition of ***enforcement agency*** in section 4 of the Principal Act so that it will be defined as the Food Authority, a relevant body appointed as an enforcement agency under the proposed new sections of the Principal Act referred to below or any other body that is prescribed by the regulations.

Schedule 1 [11] omits sections 110 and 111 of the Principal Act relating to the functions of enforcement agencies and inserts instead the following proposed sections:

Proposed section 110 defines certain terms used in the proposed new sections, including ***relevant body*** which is defined as a local council, or the Director-General of the Department of Environment and Climate Change (but

only in respect of Kosciuszko National Park).

Proposed section 111 enables the Food Authority to appoint a relevant body as an enforcement agency for the purposes of the Principal Act. The Food Authority must first consult with the relevant body and consider representations made by the relevant body and the resources and skills that will be available to the relevant body to carry out the functions of an enforcement agency that are proposed to be conferred or imposed on it. If the relevant body concerned is a local council, the Food Authority is also to consider whether another local council would be prepared to exercise functions in the area concerned and that other local council's available resources and skills.

Proposed section 111A enables the Food Authority to vary or revoke the appointment of a relevant body as an enforcement agency.

Proposed section 111B enables the Food Authority to impose conditions or limitations on the exercise of functions by any enforcement agency (including an enforcement agency that is not a relevant body). The proposed section is similar to existing section 111.

Proposed section 111C enables the Food Authority to issue guidelines in relation to various matters relevant to enforcement agencies, including the different categories of functions that may be exercised by enforcement agencies and the making of representations to the Food Authority by a relevant body as to its proposed appointment as an enforcement agency.

Proposed section 111D makes it clear that it is the duty of an enforcement agency to exercise the functions conferred or imposed on it, or delegated to it, under the Principal Act.

Schedule 1 [9], [10], [12] and [14] contain consequential amendments.

Schedule 1 [22] and [23] contain savings and transitional provisions.

Food Regulation Forum

Schedule 1 [15] inserts proposed Division 3A of Part 9 into the Principal Act consisting of proposed sections 115A and 115B.

Proposed section 115A establishes the Food Regulation Forum which consists of the Director-General of the Food Authority (or a nominee of the Director-General), 2 members of staff of the Food Authority and 9 other persons appointed by the Minister, on the nomination of or with the concurrence of specified persons or bodies.

Proposed section 115B specifies the functions of the Food Regulation Forum which include providing advice to the Food Authority on certain matters relating to the carrying out of functions by other enforcement agencies.

Other amendments relating to the carrying out of functions by enforcement agencies other than the Food Authority

Schedule 1 [13] inserts proposed section 113A into the Principal Act which requires the Food Authority to keep a record of the appointment of enforcement agencies, any limitations or conditions relating to their appointment and any variation or revocation of their appointment and to publish those records on its website.

Schedule 1 [16] amends section 117A of the Principal Act to enable the Food Authority Fund to be used, in cases determined by the Food Authority, to fund the exercise of functions under that Act by another enforcement agency.

Schedule 1 [17] substitutes section 136A of the Principal Act. That section currently allows the exchange of information between the Food Authority and the Department of Health and public health organisations to enable the exercise of certain functions. The proposed section enables a similar exchange of information between those organisations and other enforcement agencies under the Principal Act as well. The exchange of information is limited to circumstances where it is necessary to enable those persons and bodies to carry out functions under the Principal Act or functions

under the *Public Health Act 1991*. An example would be where there is an outbreak of foodborne illness reported to the Food Authority by the Department of Health and that Authority reports the details to a local enforcement agency to enable the tracking of the source of the illness.

Fees and charges

Schedule 1 [4] inserts proposed section 66AA into the Principal Act to require a person who is issued an improvement notice by an authorised officer of an enforcement agency to pay a fee prescribed by the regulations in relation to the issue of the notice. It will be an offence not to pay the fee required. Section 57 of the Principal Act currently allows an authorised officer to issue an improvement notice to the proprietor of a food business in specified circumstances, for example, where the officer has reasonable grounds to believe that the premises of the food business are unclean or otherwise unfit.

Schedule 1 [6] amends section 108 of the Principal Act to include as a function of the Food Authority the making of recommendations as to maximum fees to be charged by local councils for inspections of food businesses that are not required to be licensed under the Principal Act. Inspections of licensed food businesses are currently carried out by the Food Authority. Local councils have the power to charge fees under the *Local Government Act 1993*, including fees relating to functions that they carry out under other Acts.

Schedule 1 [21] amends section 139 of the Principal Act to enable regulations to be made with respect to annual administration charges for the exercise by all enforcement agencies, or any class of enforcement agency, of all or specified functions under the Principal Act in relation to food businesses that are not required to be licensed.

Other amendments

Schedule 1 [5] amends section 102 of the Principal Act to remove provisions that provide that a regulation establishing a food safety scheme does not take effect until the time for disallowance of the regulation by Parliament has expired or, if there is a motion for disallowance of the regulation, the motion has lapsed or been withdrawn or defeated.

Schedule 1 [2], [3], [7], [8] and [18]–[20] contain amendments to the Principal Act by way of statute law revision.