

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.50 p.m.]: I move:

That this bill be now read a second time.

The Food Amendment Bill 2007 amends the Food Act 2003. The proposed amendments clarify and strengthen the respective roles of the New South Wales Food Authority and New South Wales local councils in their shared work of ensuring the safety and suitability of food for sale in New South Wales. The origins of this bill date back to 2002 when a review of the New South Wales Food Regulatory System, the Kerin review, concluded with a series of recommendations for reform. A key recommendation from that review was that the New South Wales Government should establish a through-chain food regulatory agency for New South Wales. The Government adopted that recommendation and in 2004 established the New South Wales Food authority as the sole State Government agency responsible for food safety from primary production to retail sale.

A further recommendation of that review related to the role of local government in food regulation. The review had found that the participation of local councils in the enforcement of the Food Act was crucial to success at the local level and that council's relationship with local business placed it in a unique position to provide an effective service that was appropriate to local needs. However, the review found also that there was currently no specific role for local councils in food safety work and as a result it had been predicted that with limited resources local council involvement would continue to decline. The recommendation from these findings was that the New South Wales Government should explore with local government the implementation of a model which clearly defined the responsibility of local government for food regulation and appropriately resourced the work which that sector would perform.

In order to be successful, the model would need to meet the following criteria: be commensurate with the skills, expertise and range of responsibilities of local government environmental health officers; involve activities for which cost recovery would be appropriate; be funded by a mechanism for cost recovery such as an annual administration charge; be assisted by a New South Wales Food Authority through the provision of tools and training, and be coordinated by that NSW food agency. To advance this recommendation a food regulation partnership was formed between relevant State government departments, local government and environmental health professionals to develop, through consultation with stakeholders, a model for local government food regulatory activity. This bill is the culmination of the efforts of this partnership.

There are three key areas of reform that would be achieved through the passing of this bill. The first area is the creation of a mechanism, which would enable the Food Authority to separately appoint, after appropriate consultation, each local council in New South Wales to exercise certain clearly defined functions as an enforcement agency under the Food Act. These functions would vary from council to council and be dependent upon the relevant resources and skills available to the particular council under consideration at the time. The exercise of these functions would be coordinated and supported by the Food Authority.

The second area is the creation of a secure funding base for this program, which would enable the proper performance of these functions. This would include the creation of an obligation on a food business proprietor to pay a prescribed fee for the issuing of an improvement notice on the business and a new regulation-making power for the imposition of an administration charge on food businesses that are not required to be licensed with the Food Authority but are nevertheless inspected by councils or the Food Authority. The third area is the creation of a statutory body to be known as the Food Regulation Forum. This body would consist of representatives from the State and local government sectors and would be tasked with evaluating and assisting the Food Authority in its ongoing support and coordinator roles. I will now deal with each of these areas in turn.

As the remainder of my speech is lengthy I seek leave to incorporate it in *Hansard*.

Leave granted.

Firstly, this bill creates a new mechanism which would enable the appointment of each local council to undertake specific enforcement activity under the Food Act. Currently, all local councils, and also the Director-General of the Department of Environment and Climate Change in relation to the Kosciuszko National Park and the Lord Howe Island Board in relation to Lord Howe Island, are prescribed as enforcement agencies under the Food Act. This prescription enables officers authorised by those bodies to carry out any or all of the functions attributed to them under that Act. This includes inspection, compliance and enforcement activity relating to any food business, whether that business is involved in primary production, manufacturing or retail activity.

Similarly, the Food Authority is also prescribed as an enforcement agency under the Food Act and is empowered to carry out the same functions. This current blurring of the roles between State and local governments although long standing, is not desirable. In some areas it creates a duplication of effort. In other areas, there are gaps. In day-to-day operations it can cause uncertainty as to which agency, the Food Authority or council, will take the necessary action. This can be confusing for the agencies concerned and the food businesses involved. It is not an efficient use of our resources.

This bill will overcome those problems by, within 18 months, removing local councils, and also the Director-General of the Department of Environment and Climate Change who has agreed to be involved, as generally prescribed enforcement agencies and allowing the Food Authority to individually appoint each one of them as enforcement agencies in relation to a clearly specified set of functions.

These functions may be minimal, such as carrying out of emergency response and urgent food recall activity in a designated area or may be routine work involving the inspection of premises, the investigation of complaints and the taking of necessary enforcement action in relation to food service businesses and retail food businesses in their area.

There is also scope in this process for councils with the requisite skills and resources to be appointed to undertake functions beyond these roles. The routine premise inspection of food manufacturers in a designated area, for example, could be a possible function of a council.

The value of this model is that, in making these appointments, both councils and the Food Authority will have a clear understanding of the work to be performed by the respective agencies. There will be no duplication and it will be clear which areas will require the direct attention of the Food Authority or possibly the appointment of an alternative council to perform the work.

The bill clearly outlines the mechanism for appointment. No appointment is to be made without the Food Authority undertaking appropriate consultation with the council under consideration. Councils will be invited to make representations as to the nature of the functions they wish to perform, if at all and guidelines are to be established to assist councils in formulating their submissions.

Not only will the Food Authority be obliged to consider the resources and skills of a particular council before making an appointment but it will also be necessary for the Authority to consider the willingness of other councils to perform specified enforcement agency functions in that council's area. This is particularly important for those regions where councils may indicate that they lack the resources to carry out food safety enforcement work at all.

I will now turn to the second key area of this bill—the creation of a secure funding base for food regulatory work.

There are significant indirect administrative costs in undertaking food regulatory work—an up to date directory of food businesses must be maintained, complaints must be recorded and investigated, other enforcement agencies must be consulted and reports must be prepared.

Currently, there is no provision for recovering the costs of this necessary day to day work. Some councils, in recognition of the benefit to the community of food safety work and to lessen the impact on local businesses, are content to cover the costs through general rate revenue. Other councils however, would not be able to perform the work without some scope for cost recovery. A flexible cost recovery mechanism is therefore required.

The bill creates a power to enable the making of a regulation which will allow an enforcement agency, including the Food Authority, which is undertaking at least routine inspection work to impose an annual administration charge on those food businesses within their area of responsibility that are not required to be licensed by the Food Authority but are subject to routine inspection. This would include most retail food businesses, restaurants and take-away food shops. It also includes food manufacturers who are not operating in the licensed food industries of meat, seafood, dairy and plant products. The charge would not be imposed on food businesses that raise money solely for community or charitable causes.

It will be a matter for the discretion of each council whether or not the charge would be imposed on food businesses and if so, at what rate. However, it is intended that the maximum fee that could be charged by any enforcement agency will be prescribed under the regulation and will be the same charge as that which would be imposed by the Food Authority.

Further, the power to issue improvement notices is a key regulatory tool for councils and the Food Authority alike. Under the Food Act, authorised officers can require within 24 hours, a food business to put its deficient premises, equipment or transport vehicles into a clean and sanitary condition or risk being shut down. There is a very significant resource commitment to the issuing of improvement notices and ensuring their compliance. However, there is currently no provision to require the recipient of such a notice to pay a fee for the agency's work. The bill would make it an offence for a person who receives an improvement notice not to pay any fee that has been prescribed by the regulations if the improvement notice contains a requirement to do so.

Finally, whilst the Local Government Act 1993 enables a local council to charge a fee for the inspection of a food premise, if it chooses to do so, the bill expands the functions of the Food Authority to enable it to make a

recommendation to councils as to the maximum sum that should be charged. This recommended maximum fee will be set at a rate which reflects full cost recovery for the inspection work. It is intended that this sum also be prescribed by regulation as a fee to be charged by the Food Authority for the inspection of the premises of a food business not required to hold a Food Authority licence.

The third key area of this bill which I now wish to address is the establishment of the Food Regulation Forum.

In commending this bill to the House it is important for me to acknowledge that the policy work behind its provisions was undertaken in collaboration with the peak local government bodies in NSW, namely, the Local Government and Shires Associations of NSW, the Australian Institute of Environmental Health NSW Division, the Development and Environmental Professionals Association and Local Government Managers Australia, New South Wales Division. These key stakeholders provided valuable insights into the workings of local councils and their officers in this sphere and enabled the government to prepare a proposal which is both practical and visionary in its application.

For these reforms to be implemented and maintained successfully it is absolutely essential that the resources harnessed within this food regulation partnership not be lost. This bill therefore proposes the creation of a statutory advisory body to be known as the Food Regulation Forum. This Forum would be chaired by a person appointed by the Minister with the concurrence of the Presidents of the Local Government and Shires Associations and who the Minister is satisfied has experience in local government matters. It would consist of representatives of the Food Authority and all of the non-state government stakeholders I have just mentioned. Its primary role would be to provide assistance to the Food Authority in the development of guidelines for the appointment of local councils, protocols for the continuing exercise of their functions and programs for the provision of support and assistance. The Forum will also provide an ongoing critical evaluation of the sharing arrangements between the Food Authority and councils as they emerge.

Finally, I would just like to address two matters covered in the bill which I feel require further explanation.

The first is the amendment to section 136A relating to the exchange of information between enforcement agencies and NSW Health. In the exercise of their shared enforcement roles, the Food Authority and local councils need to be in a position where they can freely exchange information that relates to the activities of a food business or the details of a complaint in relation to a food business. Furthermore, in cases involving a food borne illness outbreak, these agencies need to be able to work quickly with each other and with the various sectors of NSW Health to exchange relevant information and act upon it to combat the problem.

Some of this information may include personal information, such as the details of a food business from which the identity of a person can be reasonably ascertained or personal health information such as the symptoms and recent food consumption history of a person suffering from an alleged food borne illness. The amendment ensures that councils, the Food Authority, the Director-General of the Department of Health and any public health organisation as defined in the Health Services Act 1997 are lawfully authorised to exchange such information between themselves.

Such an exchange however is limited to circumstances where the agency providing the information considers that its provision is essential to enable the recipient to exercise its functions under the Food Act or the Public Health Act 1991. In this way I believe an appropriate balance is achieved between the need to protect the people of NSW from illness caused by the consumption of contaminated food and the need to ensure that the privacy of individuals is maintained.

The second matter I wish to raise is an amendment which has been inserted into the bill to omit section 102 (8)-(10).

These provisions are not common in legislation. Ordinarily, a regulation is made and then published in the government gazette with a specified date for commencement. The Regulation Review Committee examines the regulation and either House of Parliament may, within a specified time, disallow it.

The effect of s102(8)-(10) however is that any regulation which establishes a food safety scheme in NSW cannot specify a precise date for commencement. All the regulation can indicate is that it will commence on a day to be determined in accordance with these provisions. The regulation is gazetted with no specified commencement date and then it waits to see if either House of Parliament passes a motion to disallow it, the commencement date cannot be predicted in advance because a motion to disallow the regulation may or may not be given and if a motion is given, it may or may not be passed.

This is unsatisfactory as it creates a great deal of uncertainty for Government and stakeholders alike as to the commencement date (if any) for offences created under the proposed scheme and for requirements for relevant food businesses to be licensed and comply with any other provisions relating to their activities. It is also impossible to align the commencement date of the regulation with the commencement date of any relevant national standard which may require supporting regulation.

These current provisions are unnecessary and are not standard provisions in regulation. They were carried over into the Food Act from earlier food legislation and were not part of the uniform food provisions on which the current Act is based. If there are concerns about a regulation establishing a food safety scheme then Parliament has section 41 Interpretation Act 1987 available to it to disallow the regulation after it has taken effect and that disallowance will restore matters as they were before the regulation was made. An opportunity has therefore been taken in this bill to seek to remove these unworkable provisions.

In summary, this bill establishes in NSW a new streamlined and coordinated food regulatory system. A system which is flexible enough to enable each local council to participate according to its own skills and resources, a system which is sustainable in that it provides a secure funding base if needed and a system which is responsive in that it provides strong communication links between agencies and a collaborative advisory and assistance program.

I commend the bill to the House.