

Agreement in Principle

Mr NATHAN REES (Toongabbie—Minister for Emergency Services, and Minister for Water) [3.43 p.m.]: I move:
That this bill be now agreed to in principle.

The lemma Government wants New South Wales to be the leader in food safety in Australia, which is why it has taken pioneering steps to enhance food safety by establishing the New South Wales Food Authority—the only fully integrated food safety agency in Australia. Again, this bill reflects the Government's strong commitment to food safety issues in this State. This is an important bill for consumers in New South Wales.

In another Australian first, this bill will allow details of food safety breaches to be made public. As a result, consumers in New South Wales will be able to make more informed choices when it comes to food safety. In addition to people being better informed about food safety, another feature of this bill is the incentive it provides to the food industry to boost its performance. Through the local government partnership, the Food Authority and local councils work in concert to enforce the Food Act 2003. This strategy is improving food safety capabilities and is ensuring that available resources are maximised towards food safety outcomes.

In the past 12 months, the Food Authority alone successfully doubled its rate of prosecutions. It finalised 16 prosecutions comprising 70 charges, which saw a total of \$139,000 in fines being imposed and \$224,000 in costs being awarded. And this is before we include those prosecutions that are conducted by important enforcement agencies such as local councils. These penalties actively serve as notice to rogue operators that the Government will not hesitate to prosecute, fine or shut down businesses that put consumers at risk and do not follow the letter of the law. However, as members would be aware, the public's access to information about the performance of food businesses, particularly food law breaches, has emerged as a significant issue in the past year.

In response to public debate, the Food Authority commenced publishing Food Act convictions on its website in July 2007. The Government recognised that publication of successful convictions would provide additional deterrents for non-compliance by food businesses. In addition it also undertook a review to identify options for the publication of similar details of food businesses that are issued with a penalty notice for food safety breaches. In doing so the New South Wales Government's objective were clear—to push the boundaries in enhancing the public's knowledge about food safety breaches without unfair impacts on the integrity and reputation of food businesses, and to deliver the net effect of improving consumer information and industry standards.

To facilitate this review, the Food Authority convened a stakeholder forum on 15 August 2007. The forum was co-hosted with the Local Government and Shires Associations of New South Wales and was well attended by a broad cross-section of stakeholders, including those from the food industry, local government and consumer advocacy groups. The forum was critically important, as the feedback was used to refine proposals and is properly reflected in the legislation that is now before the House.

The Food Amendment (Public Information on Offences) Bill 2008 amends the Food Act 2003 to achieve three key objectives. Firstly, it finetunes the current power of the Food Authority to publish information about convictions. The bill will permit the publication of such information directly on its website without first having to publish the information in a newspaper or the *Government Gazette*, as is currently the case. This amendment ensures that information is made available as quickly as possible and in a more accessible way. It also facilitates the publication of convictions that have been secured by other enforcement agencies under the Food Act. This is appropriate, given that under the Food Act local councils perform a significant proportion of enforcement activity. The public has the right to know details of all Food Act convictions, regardless of which level of government takes action.

Secondly, the bill expands the publication requirements of names and offenders under the Act. It will give the Food Authority power to publish information about penalty notices relating to the sale and handling of food issued under the Act. Penalty notices are issued for poor food handling practices, which the public has a right to know about, as well as for other less dangerous breaches of the Food Act. I should add that offences that do not inform the public of the food safety performance matters will be excluded from publication. An example might be where a validly licensed food business fails to display its licence at the premises as required and no other food safety issues are involved.

Thirdly, a limitation of liability in respect of the disclosure and publication of such information will be provided. This protection ensures that not only can the Food Authority legally publish the relevant breach information but also that fair dealing and reporting of those matters will be protected. This is important as it will protect all proper forms of information dissemination that promotes both public interest and awareness in food safety matters. The key policy justification underpinning the proposed amendments in the bill is clear: that the public has a right to

information on food law breaches by retail and food service businesses. Informed consumers should be able to take compliance history into account when deciding where to eat or where to shop.

The authority works with local government to administer and enforce aspects of the Food Act, its regulations and the Food Standards Code. Many local councils undertake food premises inspections and follow up enforcement action in retail and food service businesses. The authority's compliance work focuses on the higher risk food businesses in the retail and pre-retail sectors, including primary production. Although the recent public debate has focused on consumer interest in information about restaurants and retail food businesses, the Government considers that the same principle justifies providing information on food law breaches elsewhere in the supply chain. In fact, a restaurant owner or retailer may well be interested in the compliance history of his or her suppliers.

Accordingly this bill entails a through-chain approach—published food law breaches also include those from the pre-retail sectors. For the public to maximise the benefits from these proposals, it is important that any published information is easily accessible and as up to date as possible. Accordingly, these considerations have been included in the design of the proposals. The proposals involve the publication of information on two types of enforcement response to food law breaches: prosecutions, where these result in conviction or a finding of guilt, and penalty notices where uncontested.

It is important to note the key distinction between the two. Prosecution of a person charged with an offence results in conviction or a finding of guilt after a court has heard evidence from both the prosecution and the person charged, and decides it is satisfied beyond reasonable doubt that the person is guilty of the offence. Alternatively, the person charged may, after considering the allegation made against him or her, choose to plead guilty to the offence before a court. In contrast, a penalty notice may be served on a person by an authorised officer if it appears to that officer that the person has committed an offence under the legislation. The recipient of a penalty notice has the option of either paying the monetary penalty or contesting the notice by electing to have the matter heard by a court.

It is important to recognise, however, that, by law, the payment of a penalty notice is not to be regarded as admission of liability or otherwise affecting any civil claim or action arising out of the same occurrence. The Government has carefully considered this matter in formulating its policy position on this issue. The fundamental policy challenge has been to strike an appropriate balance between the public's right to meaningful information on the compliance performance of food businesses and fairness to those food businesses, having regard to the potential commercial impact of easily accessible public information on food law breaches.

The Government considers that, ultimately, the public has a right to know that an enforcement officer believed that a food law breach occurred and issued a penalty notice, which is either paid or uncontested. The Government recognises also the potential for collateral benefits of these publication initiatives. Firstly, that publication will provide an additional deterrent for non-compliance by food businesses, and, secondly, greater transparency around enforcement action will help enhance consistency and best practice by those tasked with compliance and enforcement obligations.

I acknowledge the role of local government in assisting to develop and support the proposals contained within the bill. Local government has stepped up to the plate and has acknowledged its key role in this initiative. The stakeholder forum held on Wednesday 15 August 2007 provided for consultation with the food industry, local government, consumer advocacy groups and other stakeholders on the proposals. The forum was co-hosted by the New South Wales Food Authority and the Local Government and Shires Associations of New South Wales. It was jointly opened by the responsible Minister and the local government association president, councillor Genia McCaffery. More than 55 participants attended the forum.

The forum was a very powerful exercise and greatly assisted the Government in advancing this initiative. I thank all those involved for their valuable contribution. On the whole, forum attendees agreed that the main aim of such a system is to provide more information to aid consumer choice, with a longer-term aim to help raise standards across the food industry. It was agreed also that the system needs to strike a balance between the public's right to timely and useful information and fair treatment of food businesses. A range of constructive suggestions to the NSW Food Authority's proposals were put forward to improve efficiency, consistency and equity of the system.

Two key issues raised by stakeholders at the forum are worthy of mention for present purposes. Firstly, the question of consistency between enforcement agencies, and, secondly, the role, if any, of positive information on food law compliance as well as negative information on food law breaches. On the matter of consistency between enforcement agencies, it is anticipated that greater transparency around penalty notices will translate to a tighter administration of the system within councils. Under the food regulation partnership agreed between State and local governments, the food authority is working with local councils to promote best practice and therefore greater consistency in enforcement actions. Guidelines and training for council environmental health officers are an important component of this ongoing work.

Importantly the bill ensures also that an interested person has a right to review publication. This right of review is in addition to the current right available, which allows an election to contest the issue of a penalty notice in the

first instance. The food authority will assume responsibility for publication matters and will perform a gatekeeping role promoting consistency in enforcement. In relation to the second issue, stakeholders saw potential merit in exploring systems, such as inspection rating schemes, which publish or display both positive and negative information about the food business.

The food authority has identified that such systems have been implemented with varying degrees of success in a number of countries—in fact, most of these are developmental or trials. Due to the wide range of schemes and publication methods used internationally, and varying reports on their effectiveness and fairness, the authority will continue to explore the efficacy and applicability for such systems. It is important also to show appropriate deference to the nationally consistent food regulation system that operates in Australia. The key benefit of the amendments proposed by this bill is that they relate to breaches of the Food Act, which is a uniformly consistent piece of legislation—it has equivalents in operation in each Australian State and Territory.

The respective food Acts incorporate the Food Standards Code, which is applied across all Australian jurisdictions. Whilst New South Wales is taking the national lead, a consistent Australian approach to a positive-based scheme would be a long-term project requiring national effort and co-operation. The responsible Minister will advise his national counterparts on New South Wales progress and will argue for a national approach in this regard. I should refer also to specific matters in the bill that will be of broader interest to the House. The bill does enable publication of a conviction in circumstances where a person found guilty of an offence receives an order under section 10 of the Crimes (Sentencing Procedure) Act 1999. These orders may be made for first offences or in extenuating circumstances.

The main impact is that the person is not convicted of the offence and, therefore, does not have a criminal record. Having considered the matter carefully, the Government's position is that a section 10 order should not entitle the person to confidentiality in relation to the court's finding of guilt. Consumers should always have the right to information on a guilty finding. I would like also to comment on the bill with respect to privacy matters. In order to facilitate the publication of Food Act breaches, it is necessary to have in place appropriate privacy authorisations, which enable the transfer of required information to the food authority. These authorisations reflect the complexities involved in the administration of Food Act compliance arrangements. In short, every local council as well as other agencies are enforcement agencies under the Food Act 2003. Additionally, the administration of penalty notices is undertaken by the State Debt Recovery Office in accordance with the requirement of the Fines Act 1996. It is important to note that any privacy authorisation is limited to the proper purposes of the administration of this new publication scheme.

As I mentioned at the outset, this is an important bill for New South Wales consumers. To illustrate the point I would like to share with the House two examples of serious food breaches, which resulted in the issue of penalty notices. These are the kinds of matters the detail of which, including the name of the companies involved, would be made available to the public once this bill is in force. In this first example, a business was issued a penalty notice under section 17 (2) of the Food Act 2003, which requires that a person must not sell food that is unsuitable. The facts are as follows. A consumer purchased a chicken burger, which contained a white pill embedded into the bottom of the burger bun.

Investigation confirmed that the pill was in fact prescribed to the person who made the burger and it had been placed on the burger wrapping. It was identified that the person took the pill out of its foil casing, placed it on the food wrapping paper and then forgot to take it. The person then made the chicken burger and placed it on this wrapping paper where the pill became embedded in the bottom of the burger bun. The wrapped burger was then sold to the customer. The business concerned did not have an appropriate food safety program in place and the food authority was satisfied that a defence of due diligence was not available.

In this second example, a business was issued a penalty notice under section 21 (1) of the Food Act 2003, which requires that a person must comply with the Food Standards Code. The relevant requirement of the code in this case was that equipment must be designed and constructed so that there is no likelihood that it will cause food contamination and it is able to be easily and effectively cleaned. The inspector's observation were as follows:

Observed fresh baby octopus in a deteriorated cement mixer. Cement mixer was badly rusted, with the edges of the cement mixer breaking off into pieces. A plastic tub below used to catch excess liquid from the mixer contained the pieces of metal which had broken off from the mixer during the processing of the octopus. Deteriorated cement mixer, covered in rust with flaking metal was being used to clean & tenderise fresh octopus. Confirmed during inspection and during recorded interview that the product in the mixer was intended for sale and for human consumption. The business concerned did not have an appropriate food safety program.

I conclude by commending this bill to the House. It represents a victory for consumers who deserve the right to know of those food businesses that are not doing the right thing. Dodgy food businesses that cut corners with food safety are now on notice: if they do not put food safety first, then they could suffer the potential commercial detriment as informed consumers vote with their dollars on food safety matters.