

[Act 1998 No 128]



New South Wales

Food Production (Safety) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*
The *Meat Industry Amendment Bill 1998* is cognate with this Bill.

Overview of Bill

The objects of this Bill are:

- (a) to constitute a body called Safe Food Production NSW ("Safe Food") with functions related to ensuring the safe handling of primary produce and seafood during the production, processing or transportation stages, and
- (b) to dissolve the New South Wales Dairy Corporation and the New South Wales Meat Industry Authority and to transfer their staff, assets and liabilities to Safe Food, and
- (c) to amend the *Dairy Industry Act 1979* and the *Meat Industry Act 1978* to remove provisions relating to the safety of food and the New South Wales Dairy Corporation and the New South Wales Meat Industry Authority and to transfer the functions of those bodies to Safe Food, and

* Amended in committee—see table at end of volume

- (d) to establish a Safe Food Production Advisory Committee, and
- (e) to enable regulations to be made establishing food safety schemes, and
- (f) to provide for related matters.

Outline of provisions

Part 1 Preliminary

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 defines certain words and expressions used in the proposed Act.

Clause 4 extends the proposed Act to primary produce or seafood intended for use as animal food.

Clause 5 provides that the proposed Act does not apply to the handling of primary produce or seafood on retail premises (except for certain retail premises where meat is processed) or from retail vehicles (except dairy retail vehicles) or to the handling of primary produce or seafood not intended for sale (except milk or dairy products).

Clause 6 provides that in the event of an inconsistency between the proposed Act and the *Food Act 1989* or the *Public Health Act 1991*, the *Food Act 1989* or the *Public Health Act 1991* prevails.

Clause 7 provides that notes in the proposed Act do not form part of the Act.

Part 2 Safe Food Production NSW

Clause 8 constitutes a body corporate with the corporate name Safe Food Production NSW (referred to in the proposed Act as Safe Food).

Clause 9 sets out the functions of Safe Food. In particular, Safe Food has the functions of keeping under review operating procedures for the handling of primary produce or seafood and of regulating the handling of primary produce or seafood by means of food safety schemes to ensure its safety for consumption.

Clause 10 makes Safe Food subject to the control and direction of the Minister.

Clause 11 provides for the appointment of a Chief Executive Officer of Safe Food.

Clause 12 provides for the appointment of an acting Chief Executive Officer in the illness or absence of the Chief Executive Officer or during a vacancy in the office of Chief Executive Officer.

Clause 13 enables staff of Safe Food to be employed.

Clause 14 enables Safe Food to authorise certain persons to be authorised officers for the purposes of the proposed Act.

Clause 15 enables Safe Food to engage consultants and contractors.

Part 3 Safe Food Production Advisory Committee

Clause 16 requires the Minister to establish the Safe Food Production Advisory committee.

Clause 17 sets out the functions of the Advisory Committee. One of the primary functions of the Advisory Committee is to provide expert advice to Safe Food on any matter relating to Safe Food's functions.

Clause 18 enables the Minister to appoint temporary members of the Advisory Committee and to establish subcommittees of the Advisory Committee.

Part 4 Food safety schemes

Clause 19 enables regulations to be made prescribing food safety schemes in relation to a type of primary produce or seafood. The regulation-making power covers a broad range of matters including regulating the handling of primary produce or seafood, setting up licensing schemes in relation to the handling of primary produce or seafood and requiring the preparation and implementation of food safety programs to ensure that food safety schemes are being complied with.

Clause 20 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.

Clause 21 makes it an offence for a person to handle primary produce or seafood in contravention of a provision of a food safety scheme or to contravene or fail to comply with a condition of a licence granted in accordance with a regulation establishing a food safety scheme.

Clause 22 requires Safe Food to undertake industry consultation on the continuing operation or the proposed amendment of a food safety scheme.

Part 5 Enforcement

Division 1 Inspection and analysis

Clause 23 sets out the powers of authorised officers under the proposed Act and makes it an offence not to comply with a requirement of an authorised officer.

Clause 24 enables an authorised officer to seize primary produce or seafood in connection with a suspected offence against the proposed Act or regulations or where the authorised officer has reasonable grounds to believe that the primary produce or seafood is not safe for human consumption.

Clause 25 enables an authorised officer to apply for a search warrant under the *Search Warrants Act 1985* authorising entry to premises.

Clause 26 enables Safe Food to give directions in relation to primary produce or seafood that is believed to be not safe for human consumption or in order to ensure that primary produce or seafood is safe for human consumption. Safe Food may seize primary produce or seafood that is not dealt with in accordance with a direction. The clause also provides a right of appeal to a Local Court against a direction.

Clause 27 makes it an offence for a person to remove or tamper with primary produce or seafood that has been seized under the proposed Act.

Clause 28 makes it an offence for a person to provide false information in response to a direction or request under the proposed Act.

Clause 29 makes it an offence to obstruct or impersonate an authorised officer.

Clause 30 provides that a certificate of authority is to be issued to each authorised officer.

Clause 31 enables Safe Food to arrange for the analysis of samples taken in accordance with the proposed Act.

Division 2 Items seized by authorised officers

Clause 32 enables items seized under the proposed Part to be detained in the place where they were seized or removed to another place.

Clause 33 enables items seized in connection with a suspected contravention of the proposed Act or the regulations to be returned if Safe Food is satisfied that there has been no such contravention.

Clause 34 provides for items seized under the proposed Part to be forfeited to the Crown provided the seizure has not been disallowed under the proposed Part.

Clause 35 provides that the cost of destroying or disposing of a seized item in accordance with the proposed Part is to be borne by the owner of the item.

Clause 36 provides that an item that has been forfeited in connection with a suspected offence against the proposed Act or the regulations must be returned if Safe Food is satisfied that no contravention of the proposed Act or the regulations has been committed.

Clause 37 provides for compensation to be paid by Safe Food in respect of a seized item if Safe Food is satisfied that no contravention of the proposed Act or the regulations has been committed in relation to the item and the item cannot be returned or has depreciated in value.

Clause 38 enables an authorised officer who seizes primary produce or seafood under the proposed Part to cause it to be destroyed if it is filthy, decomposed or putrid or poses an immediate risk to health or property.

Clause 39 enables a person who claims to be entitled to an item that has been seized under the proposed Part to apply to a Local Court for a disallowance of the seizure.

Clause 40 provides for Safe Food to appear as respondent at a hearing of an application for disallowance of a seizure.

Clause 41 enables a Local Court to make an order disallowing a seizure under the proposed Part in certain circumstances.

Clause 42 enables a Local Court to make ancillary orders when making an order for the disallowance of a seizure under the proposed Part.

Clause 43 enables a Local Court to adjourn proceedings in relation to the disallowance of a seizure under the proposed Part if satisfied that the item seized is required as evidence in other proceedings.

Division 3 Orders controlling food production

Clause 44 provides that an order may be made under the proposed Division only if it is necessary to prevent or mitigate a serious danger to public health.

Clause 45 enables Safe Food to make an order prohibiting the cultivation, taking, harvesting or obtaining of primary produce or seafood from a particular area.

Clause 46 provides for the manner in which such an order is to be made.

Clause 47 enables a person aggrieved by such an order to apply to the Administrative Decisions Tribunal for a review of the order.

Clause 48 makes it an offence for a person not to comply with such an order.

Division 4 Improvement notices and prohibition orders for unfit premises

Clause 49 enables Safe Food to issue an improvement notice on a person requiring any unclean, insanitary or unfit premises, vehicle or equipment used in connection with the handling of primary produce or seafood to be dealt with in a certain manner, or replaced, or requiring any equipment to be installed on premises used in connection with the handling of primary produce or seafood in order to ensure that the primary produce or seafood will be safe for human consumption.

Clause 50 provides that if Safe Food is satisfied, after the expiration of a specified period from service of an improvement notice, that the notice has not been complied with, Safe Food may give a prohibition order. A prohibition order is an order prohibiting a person from handling primary produce or seafood on the relevant premises, conveying primary produce or seafood in the relevant vehicle, or using the relevant equipment in connection with the handling of primary produce or seafood until a certificate of clearance is obtained from an authorised officer.

Clause 51 enables a person served with a prohibition order under the proposed Division to request Safe Food to re-inspect the premises, vehicle or equipment concerned.

Clause 52 makes it an offence for a person to fail to comply with a prohibition order under the proposed Division.

Clause 53 enables improvement notices and prohibition orders under the proposed Division to be drafted so as to apply to specified equipment or all equipment on specified premises or in a specified vehicle.

Clause 54 enables a person aggrieved by a refusal to issue a certificate of clearance under the proposed Division to apply to the Administrative Decisions Tribunal for a review of the decision to refuse.

Part 6 Finance

Clause 55 establishes the Safe Food Production Fund.

Clause 56 provides for the investment powers of Safe Food in relation to money held in the Safe Food Production Fund.

Clause 57 enables Safe Food to levy contributions towards the administration of the proposed Act from persons the subject of a food safety scheme under the proposed Act. Such a levy must be of an amount, or calculated on a basis, specified in the regulations for the relevant food safety scheme. The clause requires Safe Food to ensure, as far as is reasonably practicable, that levies from one industry or sector of an industry are not used to cross-subsidise any other industry or sector of an industry.

Part 7 Miscellaneous

Clause 58 enables Safe Food to delegate functions to certain persons.

Clause 59 enables the Minister to enter into arrangements with the Commonwealth allowing authorised officers under the proposed Act to exercise functions relating to food inspection under Commonwealth legislation.

Clause 60 protects certain persons from liability in connection with acts done in good faith for the purpose of executing a provision of the proposed Act or any other Act or the regulations.

Clause 61 prevents persons from disclosing information obtained in the execution of the proposed Act except in certain circumstances.

Clause 62 enables penalty notices to be issued for prescribed offences against the proposed Act or the regulations.

Clause 63 provides for proceedings for offences against the proposed Act or the regulations to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone or by the Supreme Court.

Clause 64 deals with offences committed by corporations.

Clause 65 enables Safe Food to recover money due to it under the proposed Act as a debt.

Clause 66 contains a provision relating to evidence.

Clause 67 provides that the proposed Act binds the Crown

Clause 68 enables orders to be made containing exemptions from provisions of the proposed Act or the regulations.

Clause 69 enables regulations to be made for the purposes of the proposed Act.

Clause 70 gives effect to Schedules 2, 3 and 4 containing amendments to certain other Acts.

Clause 71 gives effect to Schedule 5 containing savings, transitional and other provisions.

Clause 72 provides for a review of the operation of the proposed Act to be undertaken after 3 years from the establishment of Safe Food.

Schedule 1 Provisions relating to members and procedure of Advisory Committee

Schedule 1 contains provisions relating to the members and procedure of the Advisory Committee, including provisions relating to terms of office of members, deputies of members and vacation of office of members and voting at meetings.

Schedule 2 Amendment of Dairy Industry Act 1979

Schedule 2 contains consequential amendments to the *Dairy Industry Act 1979* that provisions relating to ensuring the safety of food for human consumption, delete provisions establishing the New South Wales Dairy Corporation and providing for its staff and change references in the Act to the New South Wales Dairy Corporation to Safe Food.

Schedule 3 Amendment of Meat Industry Act 1978

Schedule 3 contains consequential amendments to the *Meat Industry Act 1978* that remove provisions relating to ensuring the safety of food for human consumption, delete provisions establishing the New South Wales Meat Industry Authority and providing for its staff and change references in the Act to the New South Wales Meat Industry Authority to Safe Food. The Schedule also establishes a consultative body called the Meat Industry Consultative Council.

Schedule 4 Amendment of other Acts

Schedule 4 contains consequential amendments to the *Fines Act 1996*, the *Public Authorities (Financial Arrangements) Act 1987*, the *Public Finance and Audit Act 1983*, the *Public Sector Management Act 1988* and the *Search Warrants Act 1985*.

Schedule 5 Savings, transitional and other provisions

Schedule 5 contains provisions of a savings and transitional nature, including provisions providing for the dissolution of the New South Wales Dairy Corporation and the New South Wales Meat Industry Authority and the transfer of their staff, assets and liabilities to Safe Food. The Schedule also contains a provision enabling the Minister to give Safe Food a direction that a transferred asset only be used for certain purposes. The Minister is required to consult with the New South Wales Dairy Industry Conference and the Meat Industry Consultative Council (to be established by proposed amendments to the *Meat Industry Act 1978*) before making such a direction.