

FOOD BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to consolidate and, in minor respects, to amend the law relating to the preparation, handling, composition and sale of food for human consumption.

The proposed Act will replace the Pure Food Act 1908, but preserves (in a more modern drafting style) its more important provisions.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or proclaimed days.

Clause 3 defines terms used in the Bill.

Clause 4 allows the Governor-in-Council to declare substances or compounds used, or represented as being for use, for human consumption or use to be food for the purposes of the proposed Act.

Clause 5 provides that food supplied in certain circumstances, even though not actually sold, is to be regarded as having been sold.

Clause 6 describes certain circumstances in which food is to be regarded as being for human consumption or use or for sale for human consumption or use.

Clause 7 provides that food or appliances are to be regarded as sold or offered for sale if they are for commercial reasons given away in certain circumstances.

Clause 8 describes the circumstances in which food may be regarded as having been adulterated or falsely described.

PART 2 - UNLAWFUL PRACTICES

Clause 9 prohibits the sale of food which is adulterated or falsely described and the preparation or sale of food not complying with a prescribed standard.

Clause 10 prohibits the sale of food that is not of the nature, substance, quality, composition, or standard demanded by the purchaser.

Clause 11 prohibits, with minor exceptions, the consignment of food that is adulterated or falsely described or that does not comply with the requirements of the proposed Act or regulations in relation to packaging and labelling of food or food packages.

Clause 12 prohibits the sale of food that does not comply with the requirements of the proposed Act or regulations in relation to packaging.

Clause 13 prohibits the sale of food that does not comply with certain requirements in relation to labelling of food or food packages.

Clause 14 prohibits false advertising of food.

PART 3 - INSPECTION AND ANALYSIS

Division 1 - Inspectors' powers

Clause 15 sets out the powers of inspectors under the proposed Act to enter places and vehicles and to inspect records, appliances, food and food packages, advertising materials and other matter connected with food and its preparation. Inspectors are also empowered to select and obtain samples of food for sale in order to analyse them to see whether the food complies with the proposed Act and the regulations.

Clause 16 empowers an inspector to seize any food, appliance, packaging or labelling or advertising material which the inspector reasonably believes is evidence of an offence against the proposed Act or the regulations.

Clause 17 empowers an inspector who has entered any place or vehicle pursuant to proposed section 15 to require a person engaged or employed in that place or vehicle to produce records relating to food or its manufacture or handling or appliances used in connection with food.

Clause 18 allows a justice to issue a warrant permitting an inspector to enter a place or vehicle which is unoccupied or to which admission is likely to be refused.

Division 2 - Items seized by inspectors

Clause 19 defines a term used in the proposed Division.

Clause 20 provides for the keeping of any item seized under the proposed Part pending its production as evidence.

Clause 21 provides for the return of any seized item where it appears that it is not evidence of any offence.

Clause 22 provides that, subject to any successful action for disallowance of the seizure, a seized item becomes the property of the Crown after 10 days.

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Clause 23 provides that any costs incurred by the Department of Health in destroying or disposing of a forfeited item may be recovered from the owner if the owner is convicted of an offence in respect of the item.

Clause 24 provides for the return of any item forfeited to the Crown under proposed section 22 where it appears that it is not evidence of any offence.

Clause 25 allows an inspector to destroy any seized food item that has gone rotten.

Clause 26 allows a person claiming entitlement to any seized item to apply to the District Court, within 10 days after the seizure, for an order disallowing the seizure.

Clause 27 provides that the authority by whom the inspector who seized an item was appointed is entitled to appear as respondent to an application under proposed section 26.

Clause 28 provides that the court, on hearing an application for disallowance of a seizure, must grant the application if it is satisfied that the applicant is entitled to the seized item, unless it is proved beyond reasonable doubt that an offence was committed, of which the item was evidence, or unless there are other exceptional circumstances.

Clause 29 allows the court to make orders ancillary to an order disallowing a seizure.

Clause 30 allows the court to adjourn an application for disallowance of a seizure if it is satisfied that the seized item is required to be produced as evidence in proceedings pending in another court.

Division 3 - Procedure on taking samples

Clause 31 requires an inspector taking a sample of food for analysis to inform the owner or person in charge of the food of the inspector's intention to have the sample analysed.

Clause 32 requires an inspector to tender an amount fixed by the regulations (or, if the regulations do not fix the amount, the market value of the sample) when taking a sample of food for analysis. The taking of a sample is regarded as a sale for the purposes of a prosecution.

Clause 33 prescribes procedures to be followed in relation to the sampling of any food.

Clause 34 requires an inspector to take the whole package as a sample in the case of food that is packaged.

Clause 35 declares that any requirement of proposed section 33 to leave part of a sample with the owner of the food (or his or her representative) is satisfied on delivery of the requisite part of the sample. It does not matter whether the person to whom it is delivered purports to refuse to accept it.

Clause 36 dispenses with some of the requirements relating to sampling when the sample is taken from a vending machine.

Clause 37 requires an inspector who has taken a sample of food for analysis to submit the sample for analysis. If the sample is sealed, the fact that the seal is unbroken when received by the analyst is evidence that the sample is genuine and has not been tampered with.

Clause 38 requires an inspector to comply with any person's written request to obtain a sample of food for analysis.

Division 4 - Analysis of samples

Clause 39 requires an analyst to whom a sample is submitted to carry out (or supervise the carrying out of) an analysis in accordance with the proposed Act and regulations. When the analysis is completed, the analyst is to certify the results of it.

Clause 40 provides that a certificate of the results of an analysis (or a duplicate copy) is admissible as evidence of the matters certified in it.

Clause 41 sets out the circumstances in which the third part of a sample taken by an inspector (the part retained for future comparison with the analysed portion) is to be analysed and produced in evidence in any proceedings under the proposed Act or regulations.

Clause 42 gives the owner or manufacturer of food that has been sampled a right to obtain a copy of the result of the analysis.

Clause 43 prohibits the use, for trade purposes or advertisement, of an analysis carried out under the proposed Act.

PART 4 - PARTICULAR POWERS OF THE DIRECTOR-GENERAL

Division 1 - Orders controlling food production etc.

Clause 44 describes the grounds on which the Director-General of the Department of Health is empowered to make orders prohibiting or controlling the production and distribution of food and ancillary matters.

Clause 45 sets out the kinds of things an order of the Director-General under this Division may provide for.

Clause 46 allows 2 kinds of orders to be made. An order can be made and served on an individual person or corporation, or it can be published in the Gazette.

Clause 47 provides for an appeal to the District Court against an order of the Director-General.

Clause 48 sets out the Court's powers on the hearing of an appeal under proposed section 47.

Clause 49 provides that it is an offence to contravene an order of the Director-General.

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Division 2 - Closure of dirty food stores etc.

Clause 50 defines terms used in the proposed Division.

Clause 51 allows the Director-General to serve a clean-up notice on the owner of a food store, food vehicle or food appliance. The notice requires the owner to put the store, vehicle or appliance into a clean and sanitary condition within 24 hours.

Clause 52 provides that if the Director-General is not satisfied that a clean-up notice has been complied with, the Director-General can serve a further notice. This notice prohibits the operation of the offending food store, food vehicle or food appliance until a certificate of clearance is obtained.

Clause 53 enables the owner of a store, vehicle or appliance affected by an order under proposed section 52 to apply to the Director-General for a further inspection in order to obtain a clearance.

Clause 54 prohibits the operation of a food store, food vehicle or food appliance while it is affected by an order under proposed section 52.

Clause 55 allows an order to be served either in relation to a food store or food vehicle as such or in relation to food appliances in it, or both.

Clause 56 enables the owner of a food store, food vehicle or food appliance affected by an order under proposed section 52 to appeal to the District Court against the refusal of an inspector to issue a certificate of clearance.

PART 5 - LEGAL PROCEDURES AND ENFORCEMENT

Clause 57 provides for offences against the proposed Act or the regulations to be prosecuted in a summary manner in a Local Court.

Clause 58 provides that, with certain exceptions, a prosecution for an offence in relation to which a sample of food was taken by an inspector must be commenced within 90 days of obtaining the sample.

Clause 59 provides that it is an offence for a person to assault an inspector exercising his or her functions.

Clause 60 creates offences relating to obstruction of an inspector. The maximum penalty is 50 penalty units.

Clause 61 states that if an offence is committed in relation to food that is labelled, a person stated on the label to be the importer, manufacturer, processor or packager is presumed to be so, until the contrary is established.

Clause 62 prohibits interference with any official mark or seal affixed by an inspector on any container or enclosure.

Clause 63 provides for presumptions that may be made in legal proceedings. The presumptions are:

- (a) that food which was sold or prepared for sale or conveyed or intended for sale was sold, prepared, conveyed or intended for sale for human consumption; and

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- (b) that food found in any premises or vehicle used for the sale, preparation, packing, storage, handling, serving, supply or conveyance of food for sale was intended for sale for human consumption; and
- (c) that food found in any premises used for the preparation for sale of food, or in any vehicle so used, was intended to be prepared for sale.

The clause also provides that if in any proceedings under the proposed Act the defendant alleges that food sold by the defendant was not sold for human consumption, the defendant bears the onus of proving that claim.

Clause 64 excuses publishers who, in the course of business, publish an advertisement that contravenes the proposed Act or regulations.

Clause 65 requires a copy of a certificate of analysis of any food to be served on the defendant if the certificate is intended to be used as evidence in a prosecution. It must be served at least 7 days before the hearing.

Clause 66 allows a certified copy, taken by an inspector, of any record to be admitted in evidence in any proceedings.

Clause 67 provides for confidentiality of information given to inspectors by members of the public. An inspector cannot be compelled in any proceedings to reveal the name of an informant.

Clause 68 provides that a document purporting to be a notice or other instrument of the Director-General is to be presumed to be authentic and is admissible in evidence in proceedings under the proposed Act without proof of the Director-General's signature.

Clause 69 requires details of prosecutions initiated by local councils or by the police to be forwarded to the Director-General.

Clause 70 allows a person charged with an offence under the proposed Act or the regulations to plead, as a defence, that the person relied on a warranty of the supplier of the food concerned in the offence.

Clause 71 provides that a person, company or firm named in any proceedings referred to in proposed section 70 as having given a warranty in relation to food has a right to appear at those proceedings.

Clause 72 prescribes the offence of giving a false warranty in relation to food.

Clause 73 makes an employer liable for offences committed by his or her employees.

Clause 74 sets out the circumstances in which employees or agents, by virtue of their status as such, have a good defence to charges under the proposed Act or regulations.

Clause 75 requires an employee who intends to rely on a defence made available by proposed section 74 to give notice of that intention to the prosecutor.

Clause 76 provides that the directors or managers of a corporation that contravenes the proposed Act or regulations are themselves guilty of the same offence if they knowingly authorised or permitted the contravention.

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PART 6 - ADMINISTRATION

Clause 77 continues in existence the Pure Food Advisory Committee established under the Pure Food Act 1908. The committee is to be known as the Food Advisory Committee.

Clause 78 sets out the functions of the committee.

Clause 79 enables inspectors to be appointed for the purposes of the proposed Act by the Director-General, local councils and police and makes provision with respect to an inspector's authority.

Clause 80 enables the Minister for Health to withdraw from a local council its power to appoint inspectors for the purposes of the proposed Act.

Clause 81 provides for the appointment by the Director-General of analysts for the purposes of the proposed Act.

Clause 82 provides for the appointment by councils of analysts for the purposes of the proposed Act.

Clause 83 provides for the disqualification of an analyst who wilfully or negligently contravenes the proposed Act.

Clause 84 enables the court to order a person who has been convicted of an offence against the proposed Act or regulations to pay the costs of analysis of food that was involved in the commission of the offence.

Clause 85 protects the Minister, the Director-General, inspectors, analysts and others from being sued for things they do in good faith in the execution of the proposed Act.

Clause 86 prohibits the divulgence, by inspectors or other persons, of knowledge of manufacturing or trade processes which they come by in the course of carrying out their functions.

PART 7 - MISCELLANEOUS

Clause 87 provides that the proposed Act binds the Crown.

Clause 88 provides that the proposed Act and regulations, in the event that they are inconsistent with other laws of the State, prevail to the extent of the inconsistency, and requires new legislative proposals dealing with certain subject-matter to be submitted to the Minister for approval before being made law.

Clause 89 enables the Director-General to publish in the Government Gazette, and in an ordinary newspaper, the names and business addresses of persons convicted of second and subsequent offences against the proposed Act or the regulations.

Clause 90 enables the Governor-in-Council to make regulations in aid of the proposed Act. Any such regulations may adopt the provisions of any Commonwealth or other standard, rule, code or method relating to food.

PART 8 - REPEAL AND AMENDMENTS

Clause 91 repeals the Pure Food Act 1908.

Clause 92 is a formal provision that gives effect to the Schedule of savings and transitional provisions.

Clause 93 is a formal provision that gives effect to the Schedule of amendments to other Acts.

**SCHEDULE 1 - MEMBERS AND PROCEDURE OF THE FOOD
ADVISORY COMMITTEE**

SCHEDULE 2 - CERTIFICATION OF AUTHORITY OF INSPECTORS

SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS

SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS
