

# Food Production (Safety) Act 1998 No 128

[1998-128]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
  - [Food Act 2003 No 43](#) (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Food Production (Safety) Act 1998 No 128



New South Wales

An Act to establish Safe Food Production NSW and to define its powers, authorities, duties and functions; to amend various Acts consequentially; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Food Production (Safety) Act 1998*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**Advisory Committee** means the Safe Food Production Advisory Committee established under section 16.

**animal** includes bird or fish.

**authorised officer** means a person authorised to be an authorised officer as referred to in section 14.

**Chief Executive Officer** means the Chief Executive Officer of Safe Food.

**dairy product** means any food, not being milk, in the production of which:

- (a) milk is used, or
- (b) any substance produced from milk is used.

**equipment** means the whole or part of:

- (a) any utensil, machinery, instrument, device, apparatus or article that is used, or designed or suitable or intended for use, in or in connection with the handling of primary produce or seafood, or
- (b) any utensil, machinery, instrument, device, apparatus or article that is used, or

designed or suitable or intended for use, in cleaning anything referred to in paragraph (a).

**exercise** a function includes perform a duty.

**food safety scheme** means a food safety scheme prescribed by regulations in accordance with Part 4.

**function** includes a power, authority or duty.

**handling** of primary produce or seafood includes the production, harvesting, collection, extraction, processing, storing or transporting of primary produce or seafood.

**meat** means the whole or any part of the carcase of an animal (other than a fish).

**milk** includes:

- (a) any liquid, and
- (b) any liquid of a class,

for the time being described in Schedule 2.

**primary produce** means:

- (a) animals, animal products and anything containing animal products, intended for human consumption, or
- (b) plants, plant products and anything containing plant products, intended for human consumption, or
- (c) other substances or organisms harvested, collected, extracted or processed for human consumption, or
- (d) any other thing intended for human consumption that is prescribed by the regulations for the purposes of this definition, or
- (e) the following animals, or anything containing products from the following animals, intended for use as animal food:
  - (i) any horse, donkey, kangaroo, buffalo, deer, bull, ox, steer, cow, heifer, calf, ram, ewe, wether, lamb, goat, kid, swine or rabbit,
  - (ii) any other animal that the Minister, by order published in the Gazette, declares to be primary produce for the purposes of this paragraph,

but does not include seafood.

**private corporation** means a corporation within the meaning of the [Corporations Act](#)

2001 of the Commonwealth.

**private subsidiary corporation** means a private corporation in which either Safe Food or the New South Wales Dairy Industry Conference has a controlling interest.

**relevant Ministers** means:

- (a) the Minister administering the *Food Act 1989*, and
- (b) the Minister administering the *Fisheries Management Act 1994*.

**retail premises** means premises on which primary produce or seafood is sold by retail.

**retail vehicles** means vehicles on or from which primary produce or seafood is sold by retail.

**Safe Food** means Safe Food Production NSW constituted by this Act.

**seafood** means any of the following intended for human consumption:

- (a) marine, estuarine or freshwater fish or other aquatic animal life,
- (b) aquatic plant life,
- (c) any other aquatic organisms,
- (d) any products of, or anything containing products of, fish, animal life, plant life or organisms referred to in paragraphs (a)–(c).

**sell** means sell by wholesale or retail, and includes supply for profit, barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale or cause, suffer or permit to be sold or offered for sale.

**sell by retail** means sell otherwise than by wholesale.

**sell by wholesale** means sell for the purpose of resale.

**vehicle** means any means of transport, whether self-propelled or not, and whether used on land or sea or in the air.

- (2) In this Act, a reference to primary produce or seafood that is **safe for human consumption** is a reference to primary produce or seafood that is not likely to cause harm to a person who consumes it when it is prepared, stored or consumed according to its reasonable intended use.

### **3A Amendment of Schedule 2 (meaning of milk)**

The Governor may, from time to time, by regulation, amend Schedule 2 by adding or removing the description of any liquid, or any class of liquids, specified in the regulation.



#### 4 Extension of Act to animal food

This Act applies to primary produce and seafood intended for use as animal food in the same way as it applies to primary produce and seafood intended for human consumption. In so applying the provisions of this Act:

- (a) a reference to primary produce or seafood intended for human consumption (other than a reference in the definition of **primary produce** in section 3 (1)) is to be read as a reference to primary produce or seafood intended for use as animal food, and
- (b) a reference in this Act to primary produce or seafood that is safe for human consumption is to be read as a reference to primary produce or seafood that is not likely to cause harm to an animal that consumes it when it is prepared, stored or consumed according to its reasonable intended use.

#### 5 Application of Act to retail premises and primary produce or seafood not intended for sale

- (1) This Act does not apply to or in respect of the handling of primary produce or seafood on retail premises, other than the handling of meat on meat retail premises.
- (2) This Act does not apply to or in respect of the handling of primary produce or seafood in or from retail vehicles, other than vehicles used by milk vehicle vendors.
- (3) This Act does not apply to or in respect of the handling of primary produce or seafood that is not intended for sale, other than the handling of milk and dairy products that are not intended for sale.
- (4) In this section:

**meat retail premises** means retail premises on which raw meat carcasses are processed in some way (such as boning, slicing or cutting), not being premises where all the meat sold is:

- (a) in a form ready to be consumed (such as is sold at a restaurant or take-away food shop), or
- (b) in a form commonly referred to as cook and chill (that is, cooked packaged meat that requires reheating before consumption).

**milk vehicle vendor** means a person who delivers milk by vehicle and who sells the milk so delivered.

**raw meat carcass** includes a part of a raw meat carcass.

#### 6 Application of [Food Act 1989](#)

In the event of an inconsistency between a provision of this Act or the regulations made under this Act and a provision of the [Food Act 1989](#), the [Public Health Act 1991](#) or

regulations made under the *Food Act 1989* or the *Public Health Act 1991*, the provision of the *Food Act 1989*, the *Public Health Act 1991* or regulations made under the *Food Act 1989* or the *Public Health Act 1991* prevails to the extent of the inconsistency.

## **7 Notes**

Notes included in this Act are explanatory notes and do not form part of this Act.

## **Part 2 Safe Food Production NSW**

### **8 Constitution of Safe Food Production NSW**

- (1) There is constituted by this Act a body corporate with the corporate name of Safe Food Production NSW.
- (2) The affairs of Safe Food are to be managed by the Chief Executive Officer.
- (3) Any act, matter or thing done in the name of, or on behalf of, Safe Food by the Chief Executive Officer, or with the authority of the Chief Executive Officer, is taken to have been done by Safe Food.
- (4) Safe Food is, for the purposes of any Act, a statutory body representing the Crown.

#### **Note—**

Section 50 of the *Interpretation Act 1987* provides for the powers of a statutory corporation.

### **9 Functions of Safe Food**

- (1) Safe Food has such functions as are conferred or imposed on it by or under this or any other Act.
- (2) In particular, Safe Food has the following functions:
  - (a) to keep under review the construction, hygiene and operating procedures of premises, vehicles and equipment used for the handling of primary produce and seafood,
  - (b) to provide advice or recommendations to the Minister on the establishment, development or alteration of food safety schemes,
  - (c) to regulate the handling of primary produce and seafood the subject of food safety schemes to ensure that it is safe for human consumption,
  - (d) to encourage businesses engaged in the handling of primary produce or seafood to minimise food safety risks,
  - (e) to carry out such research as is necessary in order to perform the functions referred to in paragraphs (a)–(d).

## **10 Ministerial control of Safe Food**

Safe Food is, in the exercise of its functions, subject to the control and direction of the Minister.

## **11 Chief Executive Officer**

- (1) The Governor may appoint a Chief Executive Officer of Safe Food on the recommendation of the Minister.
- (2) The Minister must obtain the concurrence of the relevant Ministers to the making of a recommendation under subsection (1).
- (3) The employment of the Chief Executive Officer is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.
- (4) The Minister may, at any time, remove a person from office as Chief Executive Officer, but only with the concurrence of the relevant Ministers.

## **12 Acting Chief Executive Officer**

- (1) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive Officer during the illness or absence of the Chief Executive Officer (or during a vacancy in the office of the Chief Executive Officer).
- (2) Before appointing a person under subsection (1), the Minister must obtain the concurrence of the relevant Ministers to the appointment.
- (3) The Chief Executive Officer may appoint a person to act in the office of Chief Executive Officer, for a period of not more than 4 weeks, during the illness or absence of the Chief Executive Officer, but only if there is no person appointed under subsection (1) who is available to act in the office of the Chief Executive Officer.
- (4) A person appointed under this section to act in the office of the Chief Executive Officer has, while so acting, all the functions of the Chief Executive Officer and is taken to be the Chief Executive Officer.
- (5) A person appointed under this section to act in the office of Chief Executive Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.
- (6) The Minister may, at any time, remove a person from the office of acting Chief Executive Officer, but only with the concurrence of the relevant Ministers.
- (7) The Chief Executive Officer may, at any time, remove a person from the office of acting Chief Executive Officer, but only if the Chief Executive Officer appointed the person to that office.

### **13 Staff of Safe Food**

- (1) Such staff as may be necessary to enable Safe Food to exercise its functions are to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) Safe Food may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department or public or local authority.
- (3) For the purposes of this Act, a person whose services are made use of under this section is a member of staff of Safe Food.

### **14 Authorised officers**

Safe Food may authorise any of the following persons to be an authorised officer for the purposes of this Act if Safe Food is satisfied that the person has appropriate qualifications or expertise to exercise the functions of an authorised officer:

- (a) any member of staff of Safe Food,
- (b) any member of staff of the Department of Agriculture or NSW Fisheries, but only with the approval of the relevant Department Head (within the meaning of the *Public Sector Management Act 1988*),
- (c) any person appointed under section 79 (1) of the *Food Act 1989*, but only with the approval of the Director-General of the Department of Health,
- (d) any employee of a local council, but only with the consent of the local council.

### **15 Use of consultants and contractors**

Safe Food may engage such consultants and contractors as may be necessary or convenient to exercise any of the functions of Safe Food.

#### **15A Private corporations**

- (1) Safe Food may, subject to subsection (2):
  - (a) form, or participate in the formation of, private corporations, and
  - (b) acquire interests in private corporations, and
  - (c) sell or otherwise dispose of interests in private corporations,whether or not the activities or proposed activities of any such private corporation are related to food safety.
- (2) Safe Food must not, without the approval of the Minister:
  - (a) form or participate in the formation of, a private subsidiary corporation, or
  - (b) acquire an interest in a private corporation so that, as a result of the acquisition,

the corporation becomes a private subsidiary corporation, or

(c) sell or otherwise dispose of any interest in a private subsidiary corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.

(3) The New South Wales Dairy Industry Conference also has the functions conferred on Safe Food by this section. Those functions may be exercised jointly with Safe Food.

(4) A private subsidiary corporation is not, and does not represent, the Crown.

### **15B Funding of private subsidiary corporations**

(1) Safe Food may, out of its funds:

(a) pay for the formation of a private corporation, or for other costs incurred, under section 15A, and

(b) with the approval of the Minister, make grants of money to a private subsidiary corporation for use in the exercise of its functions.

(2) Safe Food may, with the approval of the Minister, transfer any of its assets to a private subsidiary corporation.

(3) Safe Food may provide a private subsidiary corporation with information in relation to milk or dairy products or other products given confidentially to Safe Food.

(4) A private subsidiary corporation provided with information under this section, and the directors and employees of the corporation, are each subject to the same requirements as Safe Food in relation to the confidentiality of the information.

(5) A private subsidiary corporation which, or a director or employee who, is guilty of a breach of the confidentiality imposed by this section is guilty of an offence against this Act.

Maximum penalty: 20 penalty units, or 6 months imprisonment, or both.

### **15C Delegation to private subsidiary corporations**

The persons to whom Safe Food may delegate its functions under this or any other Act include private subsidiary corporations.

## **Part 3 Safe Food Production Advisory Committee**

### **16 Establishment of Safe Food Production Advisory Committee**

(1) The Minister is to establish a committee to be called the Safe Food Production Advisory Committee.

(2) The Advisory Committee is to consist of:

- (a) the Chief Executive Officer, who is to be the Chairperson of the Advisory Committee, and
  - (b) such other members as are appointed by the Minister, on a part-time basis, with the concurrence of the relevant Ministers.
- (3) The members of the Advisory Committee are to be appointed from persons having expertise in one or more of the following areas:
- (a) food technology or seafood technology,
  - (b) food science,
  - (c) human nutrition,
  - (d) microbiology,
  - (e) epidemiology,
  - (f) agricultural science or aquaculture science,
  - (g) veterinary science,
  - (h) design, implementation or management of food safety programs,
  - (i) (Repealed)
  - (j) food regulation systems,
  - (k) public administration,
  - (l) communications.

**Note—**

**Handling** is defined in section 3.

- (3A) Of the members of the Advisory Committee, one must be a person who has expertise in the handling or selling of primary produce or seafood.
- (4) Of the members of the Advisory Committee, one must be a person who is, in the opinion of the Minister, conversant with the interests of the public as consumers of food.
- (5) Schedule 1 has effect with respect to the members and procedure of the Advisory Committee.

## **17 Functions of Advisory Committee**

The Advisory Committee has the following functions:

- (a) to provide expert advice or make recommendations to Safe Food on any matter relating to the food safety functions of Safe Food,
- (b) to provide expert advice to Safe Food on any matter relating to food, or to the operation of this Act or the regulations, that the Minister, the Chief Executive Officer or any body that is consulted for the purposes of section 22 may from time to time refer to the Advisory Committee,
- (c) to provide expert advice or make recommendations with respect to the making of regulations (in particular, regulations prescribing food safety schemes) for the purposes of this Act,
- (d) to consider, and make recommendations to the Minister about, the funding of Safe Food's functions under this or any other Act.

### **18 Temporary members and subcommittees**

- (1) The Minister may appoint as a member on a temporary basis any person who, in the Minister's opinion, has expertise in a matter to be considered by the Advisory Committee.
- (2) The Minister may establish subcommittees to assist the Advisory Committee in the exercise of its functions.
- (3) At least one of the members of a subcommittee must be a member of the Advisory Committee, but it does not matter that none of the other members of a subcommittee is a member of the Advisory Committee.
- (4) A member of a subcommittee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.
- (5) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings is (subject to this Act, the regulations or any determination of the Advisory Committee) to be as determined by the subcommittee.
- (6) The Advisory Committee may delegate to a subcommittee any of the functions of the Advisory Committee other than this power of delegation.

## **Part 4 Food safety schemes**

### **19 Regulations relating to establishment of food safety schemes**

- (1) The regulations may make provision for or with respect to prescribing food safety schemes in relation to a type or a class or description of primary produce or seafood.
- (2) In particular, the regulations prescribing a food safety scheme may make provision for or with respect to the following:

- (a) regulating the handling of primary produce or seafood,
- (b) prohibiting activities in relation to the handling of primary produce or seafood,
- (c) without limiting the generality of paragraphs (a) and (b), regulating the temperatures at which primary produce or seafood must be kept,
- (d) the classification, marking or other identification of primary produce or seafood,
- (e) requiring the licensing of activities in relation to the handling of primary produce or seafood,
- (f) requiring the licensing of any person, business, premises, vehicle or equipment in relation to the handling of primary produce or seafood,
- (g) the imposition of conditions on a licence,
- (h) the suspension or cancellation of licences,
- (i) appeals from, or reviews of, decisions of Safe Food made in relation to a licence or an application for the granting of a licence,
- (j) requiring the preparation, implementation, maintenance and monitoring of programs to ensure that the provisions of the food safety scheme are complied with,
- (k) the certification and auditing of programs referred to in paragraph (j),
- (l) establishing committees or other bodies with specified functions relating to the monitoring of the food safety scheme at a local level and the making of recommendations on the operation of the food safety scheme at that local level,
- (m) providing for the funding of those committees or bodies by Safe Food and the accounting by those committees or bodies of any money received from Safe Food,
- (n) the assessment of risks associated with the handling of different types of primary produce and seafood as part of the same business operation,
- (o) requiring the preparation of plans in the event of the need for a recall of any primary produce or seafood,
- (p) requiring persons involved in the handling of primary produce or seafood to possess specified qualifications, skills, knowledge or expertise,
- (q) designating the persons who are to be responsible for compliance with the obligations imposed by the regulations,
- (r) requiring the giving of information, returns or notices to Safe Food,



- (ra) requiring the collection of licence fees and charges on behalf of Safe Food and the remission of any such fees or charges to Safe Food,
  - (rb) the deduction of licence fees and other charges owed to Safe Food from amounts otherwise payable to the person liable for the fees or charges,
  - (rc) the liability of persons with respect to amounts for licence fees or other charges collected on behalf of Safe Food,
  - (s) authorising the imposition of a levy under section 57 and providing for the amount of the levy or the basis on which it is to be calculated and for its recovery,
  - (t) establishing a method of consultation with the relevant industry or sector of industry for the purposes of the ongoing review of the operation of the food safety scheme,
  - (u) establishing a consultative body for the purposes of paragraph (p) and providing for its membership and procedure (including providing, where appropriate, for consumer representation on that body),
  - (v) enabling Safe Food to undertake functions relating to the education and training of persons in safe food practices in respect of the type of primary produce or seafood to which the food safety scheme relates.
- (2A) Without limiting subsection (2) (g), the regulations may permit Safe Food to impose conditions of the following kinds on licences issued under a food safety scheme:
- (a) a condition prohibiting the passing on of costs related to licences, or other fees charged under this Act, to another person subject to licence or other fees under this Act,
  - (b) a condition requiring a person licensed under this Act to collect on behalf of Safe Food licence fees or other charges payable by another person under this Act and to remit those fees or charges to Safe Food.
- (3) The regulations may provide for an application to be made to the Administrative Decisions Tribunal by a person for a review of a decision made by Safe Food in relation to a licence or an application for the granting of a licence under the regulations.
- (4) A regulation establishing a food safety scheme or amending a food safety scheme may be made only with the concurrence of the Minister administering the [Food Act 1989](#) and, if the food safety scheme relates to seafood, the Minister administering the [Fisheries Management Act 1994](#).
- (5) A regulation referred to in subsection (3) may be made only with the concurrence of the Minister administering the [Administrative Decisions Tribunal Act 1997](#).
- (6) A regulation establishing a food safety scheme in relation to a type or a class or

description of primary produce intended for human consumption, other than meat, milk or milk products, does not take effect unless:

- (a) the last day for giving notice of motion for a resolution to disallow the regulation in either House of Parliament has passed and no notice has been given in either House, or
  - (b) if notice of motion for a resolution to disallow the regulation has been given in either House of Parliament, the notice has lapsed or has been withdrawn or the motion has lapsed, been withdrawn or been defeated.
- (7) If the circumstances described in subsection (6) (a) or (b) apply to a regulation referred to in that subsection, the day on which the regulation takes effect is:
- (a) the day after the day referred to in subsection (6) (a) or the day after the lapsing, withdrawal or defeat referred to in subsection (6) (b), as the case requires, or
  - (b) if a later day is specified in the regulation for that purpose, on the later day so specified.
- (8) Sections 39 (1) (b) and (2A) and 41 (2), (4), (5) and (7) of the [Interpretation Act 1987](#) do not apply to a regulation referred to in subsection (6).
- (9) In subsection (6):
- (a) **milk** means milk from any animal, and
  - (b) **milk product** means any product in the production of which such milk is used or any substance produced from such milk is used.

## **20 Consultation to be undertaken on regulations establishing food safety schemes**

- (1) The Minister is to ensure that consultation with the relevant industry or sector of industry is undertaken before the making of any regulation that establishes a food safety scheme.
- (2) The provisions of section 5 (Regulatory impact statements) of the [Subordinate Legislation Act 1989](#) apply to a regulation that establishes a food safety scheme for a particular type of primary produce or seafood in the same way as they apply to a principal statutory rule (within the meaning of that Act).
- (3) In addition to any matters that are required to be included in a regulatory impact statement under the [Subordinate Legislation Act 1989](#), the following matters are to be included in such a statement prepared in relation to a proposed regulation establishing a food safety scheme:
  - (a) an assessment of food safety risks in the industry or sector of industry to which the food safety scheme relates in accordance with national and international

standards for risk assessment,

- (b) a statement of whether the food safety scheme is based on national standards or supplements national standards, and for those standards imposed by the food safety scheme that are not national standards, an explanation of why those standards are required,
  - (c) an explanation as to whether the food safety scheme is performance-based or prescriptive, or a combination of both, and the rationale for the approach adopted taking into account the assessed food safety risks in the relevant industry or sector of industry and the capacity of the people involved in that industry or sector of industry to deal adequately with those risks,
  - (d) an explanation of the scope of the food safety scheme, including the persons who have responsibilities under the scheme,
  - (e) an explanation of any agreements involving Safe Food and other government agencies as to the regulation of the handling of primary produce or seafood to which the food safety scheme applies,
  - (f) if a food safety scheme includes a licensing scheme, an explanation of why the licensing scheme is necessary to ensure the safety of food,
  - (g) an assessment of any quality assurance scheme operating in the industry or sector of industry to which the food safety scheme relates, including an assessment of the extent to which the scheme satisfies the requirements of any relevant national standard.
- (4) Consultation is taken to have been undertaken on a food safety scheme for the purposes of subsection (1) if notice of the proposed regulation establishing the food safety scheme is published in accordance with section 5 (2) (a) of the [Subordinate Legislation Act 1989](#), consultation on the regulation takes place in accordance with section 5 (2) (b) of that Act and comments and submissions received are appropriately considered in accordance with section 5 (2) (c) of that Act.

## **21 Offences relating to food safety schemes**

- (1) A person who handles primary produce or seafood in a manner that contravenes a provision of a food safety scheme is guilty of an offence.

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both.

- (2) The holder of a licence granted under the regulations who contravenes or fails to comply with a condition of the licence is guilty of an offence.

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6

months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both.

## **22 Consultation on operation of food safety schemes**

Safe Food is to ensure that consultation on the following matters is undertaken with the relevant industry or sector of industry and that such consultation is undertaken in accordance with the provisions of the food safety scheme:

- (a) the continuing operation of a food safety scheme,
- (b) any proposed amendment of a food safety scheme.

## **Part 5 Enforcement**

### **Division 1 Inspection and analysis**

#### **23 Powers of authorised officers**

- (1) For the purposes of this Act, an authorised officer may, at any reasonable time, do any one or more of the following:
  - (a) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any place or vehicle that the authorised officer reasonably believes is used in connection with the handling of any primary produce or seafood,
  - (b) alone, or with such police officers or other persons as the authorised officer considers necessary, enter and inspect any place or vehicle in which the authorised officer reasonably believes any records or documents are kept, being records or documents that relate to the handling of any primary produce or seafood,
  - (c) examine any primary produce or seafood,
  - (d) open and examine any package that the authorised officer reasonably believes contains any primary produce or seafood,
  - (e) open and examine any equipment for use in connection with the handling of primary produce or seafood,
  - (f) for the purpose of the analysis of any primary produce or seafood or the carrying out of any other examination in order to determine whether the provisions of this Act or the regulations are being complied with, demand, select and obtain samples, without payment, of any primary produce or seafood,
  - (g) for the purpose of analysis, take samples of water or soil or any other thing that is part of the environment in which any primary produce or seafood is handled to

determine whether that environment poses a risk to the safety of the primary produce or seafood for human consumption,

- (h) examine any records or documents referred to in paragraph (b), make copies of those records or documents or any part of them and, for that purpose, take away and retain (for such time as may be reasonably necessary) any such records or documents or any part of them,
  - (i) stop and detain any vehicle or vessel that the authorised officer is authorised by this subsection to enter,
  - (j) open, or require to be opened, any container used for the conveyance of goods, or any package, that the authorised officer reasonably believes to contain any primary produce or seafood, or any equipment used or intended for use in connection with the handling of primary produce or seafood,
  - (k) take such photographs, films or audio or visual recordings as the authorised officer considers necessary,
  - (l) require a person to provide information or answer questions in connection with the authorised officer's functions under this Act or to produce any record, document or article that an authorised officer is authorised to examine under this Act,
  - (m) require a person to state the person's name and address,
  - (n) generally make such investigations and inquiries as may be necessary to ascertain whether an offence against this Act or the regulations is being or has been committed.
- (2) A person who, without reasonable excuse, fails to comply with a requirement of an authorised officer made under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) Such a requirement is not duly made unless, at the time of the making of the requirement, the person of whom the requirement is made is informed by the inspector that a refusal or failure to comply with the requirement constitutes an offence.
- (4) This section does not authorise entry into any part of premises that is being used for residential purposes except with the consent of the occupier of the premises or under the authority of a search warrant.

## **24 Power of seizure**

An authorised officer may seize:

- (a) any primary produce or seafood, or any equipment, package or labelling or

advertising material, or any other thing at all, that the authorised officer has reasonable grounds to believe is evidence that an offence against this Act or the regulations is being or has been committed, or

- (b) any primary produce or seafood that the authorised officer has reasonable grounds to believe is intended for human consumption but is not safe for human consumption.

## 25 Search warrants

- (1) An authorised officer may apply to an authorised justice for a search warrant if the authorised officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant, when accompanied by a police officer:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (4) In this section, **authorised justice** and **premises** have the same meanings as in the [Search Warrants Act 1985](#).

## 26 Directions of Safe Food relating to primary produce or seafood

- (1) Safe Food may, by notice in writing served on a person, give any one or more of the following directions in relation to primary produce or seafood that Safe Food is of the opinion is intended for human consumption:
  - (a) if Safe Food considers that the primary produce or seafood is not safe for human consumption—a direction that the primary produce or seafood must not be supplied for human consumption and must be dealt with or disposed of in a manner specified in the notice,
  - (b) if Safe Food considers that the primary produce or seafood will not be safe for human consumption unless it is dealt with in a particular manner—a direction that the primary produce or seafood must not be supplied for human consumption unless it is dealt with in the manner specified in the notice,
  - (c) if Safe Food considers that the primary produce or seafood is described in a false or misleading way that could endanger human health—a direction that the primary produce or seafood must not be supplied for human consumption, or must

be described in some other way before being supplied for human consumption, and must be dealt with or disposed of in a manner specified in the notice.

- (2) A person on whom a notice is served under this section is guilty of an offence if the person fails, without reasonable excuse, to comply with a direction contained in the notice within the time specified in the notice for compliance.

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both.

- (3) A person who is aggrieved by a direction given under this section may appeal to a Local Court against the direction in accordance with the rules of court.
- (4) If an appeal is lodged under subsection (3) against a direction under this section, then until the appeal is determined and an order is made by the Court confirming the direction, the direction does not have effect except to the extent that it prohibits the supply of primary produce or seafood for human consumption.
- (5) If a person on whom a notice is served under this section containing a direction to deal with or dispose of any primary produce or seafood in a specified manner fails to deal with or dispose of the primary produce or seafood in that manner within the time specified in the notice, Safe Food may seize the primary produce or seafood.
- (6) A person who is the owner of any primary produce or seafood that is the subject of a notice under this section is liable for any cost incurred in dealing with or disposing of the primary produce or seafood in compliance with the notice and any such cost incurred by Safe Food is taken to be a debt due to Safe Food from that person.
- (7) In any proceedings for the recovery of any debt referred to in subsection (6), a certificate signed by Safe Food stating the amount of the costs and the manner in which they were incurred is evidence of the matters certified.

## **27 Interfering with seized items**

A person who, without the permission of Safe Food, removes or tampers with any primary produce or seafood that has been seized under this Act is guilty of an offence unless the seizure has been disallowed under Division 2.

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both.

## **28 False information**

A person who, without reasonable excuse, in connection with a requirement or direction under this Act, provides any information or produces any document that the person knows is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 50 penalty units.

### **29 Obstructing or impersonating authorised officers**

- (1) A person who, without reasonable excuse, resists or obstructs an authorised officer in the exercise of the authorised officer's functions under this Act is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) A person who impersonates an authorised officer is guilty of an offence.

Maximum penalty: 50 penalty units.

### **30 Certificates of authority**

- (1) Safe Food is to provide each authorised officer with a certificate of authority as an authorised officer.

- (2) The certificate of authority:

- (a) must state that it is issued under this Act, and
- (b) must state the name of the person to whom it is issued and bear a photograph of that person, and
- (c) must describe the nature of the powers conferred and the scope of those powers, and
- (d) must state the date (if any) on which it expires, and
- (e) must describe the kind of premises to which the powers extend, and
- (f) must bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

- (3) The powers of an authorised officer may be limited by the authorised officer's certificate of authority.

- (4) An authorised officer is required to produce the certificate of authority:

- (a) if requested to do so by the occupier of any premises that the authorised officer enters, or
- (b) if requested to do so by a person whom the authorised officer requires to produce anything or to answer any question.

### **31 Analysis of samples**

- (1) Safe Food may arrange for the analysis of any sample taken for the purposes of this Act.



- (2) The analysis of any such sample is to be carried out in accordance with the regulations.

## **Division 2 Items seized by authorised officers**

### **32 Seized items**

- (1) Any item seized under this Part may, at the option of the authorised officer who made the seizure or of any authorised officer acting in his or her place, be detained in the place or vehicle where it was found or be removed to another place and detained there.
- (2) If the item is to be detained in the place or vehicle where it was found, the authorised officer:
  - (a) may place it in a room, compartment or cabinet in that place or vehicle, and
  - (b) may mark, fasten and seal the door or opening providing access to that room, compartment or cabinet, and
  - (c) must ensure that it is marked in such a way as to indicate that it has been seized under this Act.

### **33 Return of seized item**

If, before any item seized under section 24 (a) is forfeited to the Crown under this Division, Safe Food becomes satisfied that there has been no contravention of this Act or the regulations of which the item is evidence, Safe Food may cause the item to be delivered to:

- (a) the person from whom it was seized, or
- (b) such other person as appears to Safe Food to be entitled to it.

### **34 Forfeiture of item**

- (1) An item seized under this Part is forfeited to the Crown if:
  - (a) it has not been dealt with under section 33 and no application for an order disallowing the seizure has been made in accordance with this Division, or
  - (b) an application for an order disallowing the seizure has been made in accordance with this Division but the application has been refused or has been withdrawn before a decision on the application has been made.
- (2) An item forfeited to the Crown under this section may be destroyed, sold or otherwise disposed of as Safe Food may, generally or in a particular case, direct.

### **35 Cost of destruction or disposal of forfeited item**

- (1) A person who was the owner of an item immediately before its forfeiture under this Division is liable for any cost incurred by or on behalf of Safe Food in connection with the lawful destruction or disposal of the item and any such cost is taken to be a debt due to Safe Food from that person.
- (2) In any proceedings for the recovery of the debt, a certificate signed by Safe Food stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

### **36 Return of forfeited item**

- (1) An item seized under section 24 (a) that is forfeited by the operation of section 34 (1) (a) and that has not been destroyed or otherwise disposed of in a manner that would prevent its return must immediately be delivered to the person from whom it was seized, or such other person as appears to Safe Food to be entitled to it, if Safe Food becomes satisfied that no contravention of this Act or the regulations has been committed in relation to the item.
- (2) On being delivered, any proprietary and other interests in the item that existed immediately before its forfeiture are restored.

### **37 Compensation to be paid in certain circumstances**

- (1) Safe Food is to pay such compensation as Safe Food considers to be just and reasonable in relation to any item seized under section 24 (a) if:
  - (a) Safe Food becomes satisfied that no contravention of this Act or the regulations has been committed in relation to the item, and
  - (b) the item cannot be returned or has in consequence of the seizure depreciated in value.
- (2) The compensation is to be paid to the person from whom the item was seized, or such other person as appears to Safe Food to be entitled to it.
- (3) A person dissatisfied with a determination by Safe Food as to compensation under this section may appeal to a Local Court against the determination within 10 days after the date on which notification of the determination was received.

### **38 Destruction of noxious material**

If an authorised officer who has seized primary produce or seafood under this Part is satisfied that it consists wholly or partly of filthy, decomposed or putrid matter or that it poses an immediate risk to health or property, the authorised officer (disregarding any provision to the contrary in this Part) may cause the primary produce or seafood to be destroyed in an environmentally responsible manner.

### **39 Application for order disallowing seizure**

- (1) A person claiming to be entitled to any item seized under this Part may, within 10 days after the date on which the seizure took place, lodge notice of an application in a Local Court for an order disallowing the seizure of the item.
- (2) The application is to be made in accordance with the rules of court and is not to be heard unless the applicant has previously served a copy of the application on Safe Food.

### **40 Safe Food entitled to answer application**

Safe Food is entitled to appear as respondent at the hearing of the application.

### **41 Order disallowing seizure**

A Local Court, on the hearing of an application, must make an order disallowing the seizure of an item if:

- (a) in the case of a seizure under section 24 (a)—it is proved that the applicant would, but for the seizure, be entitled to the item and it is not proved beyond reasonable doubt that an offence was being, or had been, committed, being an offence of which the item was evidence, or
- (b) in the case of a seizure under section 24 (b)—it is proved on the balance of probabilities that the item seized was safe for human consumption, or
- (c) in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the seizure,

but otherwise the Court must refuse the application.

### **42 Ancillary orders**

- (1) In the event that a Local Court makes an order disallowing the seizure of any item, it must also make one or both of the following orders:
  - (a) an order directing the respondent to cause the item to be delivered to the applicant or to such other person as appears to the Court to be entitled to it,
  - (b) if the item cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing Safe Food to pay to the applicant such amount by way of compensation as the Court considers to be just and reasonable.
- (2) The award of costs with respect to the hearing of the application lies in the discretion of the Court.
- (3) If the Court makes an order for the payment of any amount as compensation or

awards any amount as costs, the order is enforceable as a judgment of the Court.

#### **43 Adjourment pending hearing of other proceedings**

If on the hearing of an application it appears to the Local Court that the item that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence against this Act or the regulations, the Court may, on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings.

### **Division 3 Orders controlling food production**

#### **44 Making of order**

An order under this Division may be made only when Safe Food has reasonable grounds to believe that the making of one or more such orders is necessary to prevent or mitigate a serious danger to public health.

#### **45 Nature of order**

- (1) By an order under this Division, Safe Food may prohibit the cultivation, taking, harvesting or obtaining, from an area specified in the order, of any primary produce or seafood or of any primary produce or seafood of a class or description so specified.
- (2) An order under this Division:
  - (a) may prohibit absolutely the carrying on of an activity in relation to primary produce or seafood or may permit the carrying on of the activity in accordance with conditions specified in the order, and
  - (b) may, without limiting the generality of paragraph (a), impose conditions relating to the taking and analysis of samples of the primary produce or seafood or of water or soil or any other thing that is part of the environment in which that activity is carried on in relation to the primary produce or seafood, and
  - (c) specify methods of analysis (not inconsistent with methods prescribed by the regulations) of any samples required to be taken in accordance with the order.
- (3) An order under this Division may be varied or revoked by Safe Food in the same way as the order was made.

#### **46 Manner of making orders**

- (1) An order under this Division:
  - (a) may be made in writing addressed to the person intended to be bound by it, and served on that person, or
  - (b) may be addressed to several persons, or to all persons, and published in the

Gazette.

- (2) In either case, the order, when it takes effect, is binding on the person or persons to whom it is addressed.
- (3) An order that is served on a person takes effect on the date of service or a later date specified in the order.
- (4) An order that is published in the Gazette takes effect on the date of publication or a later date specified in the order.
- (5) An order ceases to have effect 90 days after it takes effect unless it is sooner revoked.
- (6) Subsection (5) does not prevent a further order being made in the same terms as an order that has expired.

#### **47 Review of order**

A person bound by any order under this Division that imposes a prohibition or direction may apply to the Administrative Decisions Tribunal for a review of the prohibition or direction.

#### **48 Failure to comply with directions**

A person who:

- (a) carries on an activity in relation to any primary produce or seafood in contravention of any prohibition imposed on the person by an order under this Division, or
- (b) neglects or refuses to comply with a direction given by such an order,

is guilty of an offence.

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both.

### **Division 4 Improvement notices and prohibition orders for unfit premises**

#### **49 Improvement notice**

- (1) If Safe Food is satisfied, by Safe Food's own inspection or by the report of an authorised officer, that:
  - (a) any premises, vehicle or equipment used in connection with the handling of primary produce or seafood is in an unclean or insanitary condition, or is otherwise unfit for the purpose for which it is intended, or
  - (b) it is necessary to install any equipment on premises used in connection with the

handling of primary produce or seafood to ensure that the primary produce or seafood will be safe for human consumption,

Safe Food may serve an improvement notice on the owner of, or the person in charge of, the premises, vehicle or equipment.

(2) An improvement notice is to take the form of an order that:

- (a) the premises, vehicle or equipment be put into a clean and sanitary condition, or be repaired, to the satisfaction of an authorised officer, or
  - (b) the vehicle or equipment be replaced, or
  - (c) specified equipment be installed on the premises,
- within a period specified in the notice.

#### **50 Prohibition order**

(1) If, after the expiration of the period specified in the notice under section 49 (2), Safe Food is not satisfied that the premises, vehicle, vessel or equipment to which an improvement notice relates has been dealt with in accordance with the notice or that equipment has been installed as required by the notice, Safe Food may serve on the owner or person in charge a prohibition order.

(2) A prohibition order is to take the form of an order that:

- (a) no primary produce or seafood is to be handled on the premises, or
- (b) no primary produce or seafood is to be conveyed in the vehicle or vessel, or
- (c) the equipment is not to be used in connection with the handling of primary produce or seafood,

as the case requires, until an authorised officer has given the owner or person in charge a certificate of clearance certifying that the premises, vehicle or equipment has been dealt with or installed in accordance with the improvement notice.

#### **51 Request for re-inspection**

(1) The owner of, or person in charge of, premises or a vehicle or equipment affected by a prohibition order may at any time after the order has been served make a written request to Safe Food to cause the premises to be inspected by an authorised officer, or the vehicle or equipment to be so inspected:

- (a) at the place where it was originally inspected, or
- (b) if it is not convenient for it to be inspected at that place, at some other place that Safe Food has agreed to.

- (2) If such a request is made and the premises, vehicle or equipment, through no fault of the owner or person in charge, is not inspected by an authorised officer within the period specified in the notice under section 49 (2), a certificate of clearance is taken to have been given to the proprietor under section 50.

## **52 Contravention of prohibition order**

A person must not contravene or fail to comply with a prohibition order served on the person under section 50.

Maximum penalty: In the case of a first offence, 50 penalty units or imprisonment for 6 months, or both. In the case of a second or subsequent offence, 500 penalty units or imprisonment for 2 years, or both.

## **53 Scope of notices and orders**

An improvement notice or a prohibition order under this Division may be made with respect to any one or more of the following:

- (a) any premises, vehicle or equipment specified in the notice or order,
- (b) all equipment contained on premises, or in a vehicle, specified in the notice or order, or any specified equipment so contained.

## **54 Review of decision to refuse certificate of clearance**

A person aggrieved by a decision of an authorised officer to refuse to give a certificate of clearance under section 50 may apply to the Administrative Decisions Tribunal for a review of the decision.

# **Part 6 Finance**

## **55 Safe Food Production Fund**

- (1) There is to be established in the Special Deposits Account a Safe Food Production Fund (the **Fund**) into which is to be paid:
- (a) all money advanced to Safe Food by the Treasurer or appropriated by Parliament for the purposes of Safe Food, and
  - (b) all money directed or authorised to be paid into the Fund by or under this or any other Act, and
  - (c) the proceeds of the investment of money in the Fund, and
  - (d) all money received by Safe Food under this Act from any other source.
- (2) The Fund is to be applied for the purpose of enabling Safe Food to exercise its functions under this Act.

- (3) All expenditure incurred by Safe Food under this Act is to be paid from the Fund.
- (4) A separate account is to be maintained in the Fund in relation to each levy under section 57 imposed in respect of a particular industry or sector of industry.

## **56 Investment**

Safe Food may invest money held by it:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*,  
or
- (b) if that Act does not confer power on Safe Food to invest the money, in any other manner approved by the Minister with the concurrence of the Treasurer.

## **57 Industry levies**

- (1) Safe Food may levy a contribution towards the cost of the administration of this Act on any person, or member of a class of persons, who is subject to the requirements of a food safety scheme, but only if authorised to do so by the provisions of a food safety scheme.
- (2) A levy under this section is to be of an amount, or calculated on a basis, specified in the relevant food safety scheme.
- (3) Safe Food is to ensure, as far as is reasonably practicable, that money received from levies imposed under this section in relation to an industry or sector of industry that is subject to a food safety scheme is not used to cross-subsidise the expenses of Safe Food in carrying out its functions in relation to any other industry or sector of industry that is subject to a food safety scheme.
- (4) Nothing in this section prevents a cost of a kind referred to in this section from being covered by a licence fee charged under a food safety scheme.

## **Part 7 Miscellaneous**

### **58 Delegation**

- (1) Safe Food may delegate to:
  - (a) a member of staff of Safe Food, or
  - (b) an authorised officer, or
  - (c) a person holding a position, or a person of a class, prescribed by the regulations, any function of Safe Food, other than this power of delegation.
- (2) A delegate may sub-delegate to a person referred to in subsection (1) any function delegated by Safe Food if the delegate is authorised in writing to do so by Safe Food.



## 59 Authorised officers may perform functions under Commonwealth legislation

The Minister may, on behalf of the State, enter into arrangements with a Commonwealth Minister or officer of the Commonwealth government in relation to the exercise under Commonwealth legislation, by authorised officers authorised under this Act, of functions relating to food inspection.

## 60 Protection from liability

- (1) Any matter or thing done or omitted to be done by Safe Food, the Advisory Committee, a body consulted for the purposes of section 22 or a protected person does not, if the matter or thing was done or omitted in good faith for the purpose of executing any provision of this or any other Act or the regulations, subject a protected person personally to any action, liability, claim or demand.
- (2) In this section, **protected person** means:
  - (a) the Chief Executive Officer,
  - (b) any member of staff of Safe Food,
  - (c) an authorised officer,
  - (d) any person acting under the direction of Safe Food,
  - (e) any member of the Advisory Committee,
  - (f) any member of a body that is consulted for the purposes of section 22.

## 61 Disclosure and misuse of information

A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the [Ombudsman Act 1974](#), the [Freedom of Information Act 1989](#) or the [Independent Commission Against Corruption Act 1988](#), or
- (e) as permitted by the regulations, or
- (f) with other lawful excuse.

Maximum penalty: 50 penalty units.

## **62 Penalty notices**

- (1) An authorised officer or a police officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice is to be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## **63 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.
- (2) If proceedings for an offence against this Act or the regulations are taken before a Local Court, the maximum monetary penalty that the Court may impose is, despite any provision of this Act to the contrary, 100 penalty units or the maximum monetary penalty provided by this Act for the offence, whichever amount is the smaller.
- (3) If proceedings for an offence against this Act or the regulations are taken before the Supreme Court, the Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations for the offence.

#### **64 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

#### **65 Recovery of charges, fees and other money**

Any charge, fee or money due to Safe Food under this Act is recoverable by Safe Food as a debt.

#### **66 Evidence**

In any proceedings for an offence against this Act or the regulations, it is presumed until, on the balance of probabilities, the contrary is proved that:

- (a) primary produce or seafood found on premises in a quantity that is in excess of that reasonably required for the personal use of the occupiers of the premises is intended to be sold for the purposes of human consumption, and
- (b) primary produce or seafood found on premises usually used in connection with the handling of primary produce or seafood intended for human consumption is intended for human consumption.

#### **67 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

#### **68 Annual report**

- (1) In addition to any other requirements under any other law, Safe Food is to include in its annual report under the *Annual Reports (Statutory Bodies) Act 1984* the following matters, if known to Safe Food, relating to the period to which the annual report applies:
  - (a) the number of food safety schemes, and food safety programs under those schemes, implemented,
  - (b) the number of inspections or audits conducted to ensure compliance with food safety schemes and the level of compliance found,

- (c) the number of recalls (whether voluntary or mandatory) of primary produce or seafood carried out,
  - (d) whether or not enforcement action has been taken following a finding that the Act or regulations have not been complied with or that certain primary produce or seafood has been found to be not safe for human consumption,
  - (e) whether any investigations have been conducted by Safe Food in relation to an outbreak of disease transmitted by primary produce or seafood.
- (2) Safe Food is to ensure that:
- (a) the copies of its annual report required to be kept under the *Annual Reports (Statutory Bodies) Act 1984* to meet normal public demand are kept in a computer readable format as well as in a printed form, and
  - (b) if practicable, its annual report is made available in a searchable format on the Internet.

## 69 Exemptions

- (1) The Minister may, by order published in the Gazette, exempt any of the following from any or all of the provisions of this Act or the regulations:
- (a) any person or class of persons,
  - (b) any premises or class of premises,
  - (c) any vehicle or class of vehicle,
  - (d) any equipment or class of equipment,
  - (e) any activity,
  - (f) any primary produce or seafood or class or description of primary produce or seafood.
- (2) An order under this section may only be made with the concurrence of the relevant Ministers.
- (3) An order under this section takes effect from the date on which it is gazetted or, if a later date is specified in the order, on that later date.
- (4) An order under this section may provide for an exemption to be subject to such conditions as are specified in the order.
- (5) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order under this section in the same way as they apply to a statutory rule within the meaning of that Act.

## 70 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the manner of taking samples for the purposes of this Act,
  - (b) the methods of analysis to be observed in analyses under this Act,
  - (c) fees or charges for the purposes of a food safety scheme, including (but not limited to) licence fees and fees or charges for the provision of services to applicants for licences and licence holders,
  - (d) fees or charges for the provision of information, or for the carrying out of any inspection or analysis for the purposes of this Act or any audit of a program relating to food safety implemented in accordance with a food safety scheme (whether or not the inspection, analysis or audit is requested or agreed to).
- (2A) A regulation for or with respect to licence fees or other fees or charges charged for the purposes of a food safety scheme may enable Safe Food to determine a licence fee or other fee or charge or the basis on which a fee or charge is to be determined.
- (2B) Without limiting subsections (2) (c) and (2A), a licence fee established by or under a food safety scheme may cover the following matters:
  - (a) a fee for participation in the industry covered by the scheme,
  - (b) the costs of Safe Food in administering the food safety scheme and other related provisions of this Act.
- (2C) Without limiting subsections (2) (c) and (2A), a fee or charge (other than a licence fee) established by or under a food safety scheme may cover the following matters:
  - (a) the costs of the processing of applications for licences and for the grant or renewal of licences,
  - (b) other costs of providing services to applicants for licences and licence holders (whether or not the provision of the service is requested or agreed to),
  - (c) a commercially appropriate profit in relation to the provision of services by Safe Food.
- (3) A regulation may create an offence punishable by a penalty not exceeding 25 penalty units.
- (4) The regulations may incorporate by reference, wholly or in part and with or without

modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by an authority or body (whether or not it is a New South Wales authority or body).

## **71 (Repealed)**

## **72 Savings, transitional and other provisions**

Schedule 5 has effect.

## **73 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of section 8.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.
- (4) In particular, the review is to address the following matters:
  - (a) the coverage and effectiveness of the food safety schemes in operation at the time of the review,
  - (b) the extent to which national food hygiene standards have been implemented in food safety schemes,
  - (c) whether food safety operations undertaken by different government agencies in New South Wales should be undertaken by a single agency and, if so, the means of achieving that objective.

## **Schedule 1 Provisions relating to members and procedure of Advisory Committee**

(Section 16 (5))

### **Part 1 Members**

#### **1 Definitions**

In this Schedule:

**Chairperson** means the Chief Executive Officer.

**member** means any member of the Advisory Committee, other than the Chief Executive Officer.

## **2 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **3 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **4 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person:
  - (a) has all the functions of the member and is taken to be a member, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

## **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause.
- (2) The Minister may at any time remove a member from office, but only with the concurrence of the relevant Ministers.

## **6 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Committee.

(2) A disclosure by a member at a meeting of the Advisory Committee that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Advisory Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Advisory Committee.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Advisory Committee otherwise determines:

- (a) be present during any deliberation of the Advisory Committee with respect to the matter, or
- (b) take part in any decision of the Advisory Committee with respect to the matter.

(5) For the purposes of the making of a determination by the Advisory Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Advisory Committee for the purpose of making the determination, or
- (b) take part in the making by the Advisory Committee of the determination.



- (6) A contravention of this clause does not invalidate any decision of the Advisory Committee.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **Part 2 Procedure**

### **9 General procedure**

The procedure for the calling of meetings of the Advisory Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Committee.

### **10 Quorum**

The quorum for a meeting of the Advisory Committee is a majority of its members for the time being.

### **11 Presiding member**

- (1) The Chairperson is to preside at a meeting of the Advisory Committee.
- (2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Advisory Committee at which a quorum is present is the decision of the Advisory Committee.

### **13 Visitors**

If the Advisory Committee sees fit to do so, it may permit non-members who have expertise in a matter being considered by the Advisory Committee to attend any of its meetings, but no such visitor has a right to vote.

## **14 First meeting**

The Minister may call the first meeting of the Advisory Committee in such manner as the Minister thinks fit.

## **Schedule 2 Milk**

(Section 3 (1))

Skim milk

Milk for separation into skim milk

Milk or skim milk that has been treated for the purpose of pasteurising or sterilising the milk or skim milk, whether or not the pasteurisation or sterilisation is complete

Milk that has been treated for the purpose of homogenising the milk, whether or not the homogenisation is complete

Ultra heat treated milk, or milk that has been treated by an ultra heat treatment method, whether or not the treatment is complete

Ultra heat treated skim milk, or skim milk that has been treated by an ultra heat treatment method, whether or not the treatment is complete

Any liquid fitting the description of modified milk as contained in clause (14) (a) Standard H1 of the Food Standards Code

Any liquid fitting the description of flavoured liquid milk products as contained in clause (15) (a) Standard H1 of the Food Standards Code

## **Schedules 3, 4 (Repealed)**

## **Schedule 5 Savings, transitional and other provisions**

(Section 72)

## **Part 1 Preliminary**

### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

*Dairy Industry Act 2000*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than

the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

- (4) Regulations under this clause may make provision for or with respect to preserving the superannuation rights and entitlements of members of staff of a former authority.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definitions**

In this Schedule:

**former authority** means:

- (a) the New South Wales Dairy Corporation dissolved under clause 3 (1), and
- (b) the New South Wales Meat Industry Authority dissolved under clause 3 (2).

**member of staff** of a former authority means an officer or employee of the former authority.

### **3 Dissolution of Dairy Corporation and Meat Industry Authority**

- (1) The New South Wales Dairy Corporation is dissolved.
- (2) The New South Wales Meat Industry Authority is dissolved.
- (3) No remuneration or compensation is payable to any member of a former authority as a result of the dissolution of the former authority.

### **4 Transfer of assets, rights and liabilities of former authorities**

- (1) On the dissolution of a former authority, the assets, rights and liabilities of the former authority are transferred to Safe Food.
- (2) On the transfer, the following provisions have effect:
  - (a) the assets of the former authority vest in Safe Food by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of the former authority become by virtue of this clause the rights and liabilities of Safe Food,

- (c) all proceedings by or on behalf of, or against, the former authority pending immediately before the transfer are taken to be proceedings pending by or against Safe Food,
- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the former authority is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of Safe Food,
- (e) a reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the former authority is, subject to the regulations under clause 1, to be read as, or as including, a reference to Safe Food.

(3) The operation of this clause is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or other instrument.

#### **5 Orders of Minister in relation to assets of former authority**

- (1) The Minister may give Safe Food a direction, in writing, that specified assets of a former authority transferred to Safe Food by the operation of clause 4 are to be used for specified purposes only.
- (2) Before giving a direction under subclause (1), the Minister must consult with:
  - (a) the New South Wales Dairy Industry Conference constituted under the *Dairy Industry Act 1979*, if the former authority was the New South Wales Dairy Corporation, or
  - (b) the Meat Industry Consultative Council established under the *Meat Industry Act 1978*, if the former authority was the New South Wales Meat Industry Authority.

#### **6 Duty**

Duty is not chargeable in respect of:

- (a) the transfer of assets, rights or liabilities under clause 4, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

## **7 General Manager of NSW Dairy Corporation**

- (1) The person who, immediately before the dissolution of the New South Wales Dairy Corporation, held office as General Manager of the Corporation ceases on that dissolution to hold that office.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (3).
- (3) Part 2A of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as if the person had ceased to be an executive officer as referred to in section 42Q of that Act.

## **8 Chairman of Meat Industry Authority**

- (1) The person who, immediately before the dissolution of the New South Wales Meat Industry Authority, held office as chairman of the Authority ceases on that dissolution to hold that office.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (3).
- (3) Part 2A of the *Public Sector Management Act 1988* applies to a person who so ceases to hold office as if the person had ceased to be an executive officer as referred to in section 42Q of that Act.

## **9 Staff of former authorities**

- (1) On the dissolution of a former authority, each member of staff of the former authority is transferred to the employment of Safe Food.
- (2) Each such member of staff becomes after the transfer a member of staff of Safe Food and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the former authority.
- (3) Neither the contract of employment nor the period of employment of each member of staff concerned is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff.
- (4) Without limiting this clause, this Act does not affect any accrued rights that the member of staff concerned had immediately before the transfer in relation to any kind of leave.
- (5) A member of staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the former authority.

(6) A member of staff concerned is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

**10 Saving of existing orders**

Any order made under a provision of Part 5 of the *Dairy Industry Act 1979* that was in force immediately before the commencement of clause 3 (1) is taken to be an order made under that provision of Part 5 by Safe Food.

**11 Saving of existing delegations**

Any delegation under section 18 of the *Dairy Industry Act 1979* that was in force immediately before the commencement of clause 3 (1) is taken to be a delegation made under section 58 of this Act and continues in force unless revoked or varied by Safe Food.