

The purpose of food law is to protect public health and provide information enabling consumers to make informed choices. Legislation provides a framework aimed at ensuring that food, as one of the important potential means of transmitting illness, is correctly labelled, safe and wholesome.

Australian food law generally comprises three regulatory elements:

- an Act which establishes principles, framework, administrative structures, offences and penalties,
- food standards which set down compositional, microbiological, chemical, labelling and quality criteria which food is required to meet,
- food hygiene regulations which relate to ensuring the production, processing, storage and handling of food does not result in microbiological or chemical contamination.

To promote greater national uniformity of food standards in Australia, the Food Standards Code (FSC, the Code) was adopted by States and Territories. The FSC prescribes compositional, chemical, microbiological and labelling standards for food offered for sale in Australia.

Each Australian State and Territory has been responsible for developing its own regulations for food hygiene, resulting in significant variation across Australia. The Australia New Zealand Food Authority (ANZFA) is developing a national uniform food safety standard. The aim of the ANZFA reform process is to attain national uniformity with respect to food hygiene, similar to that achieved with food standards, so that food businesses trading nationally only have to comply with one food standard. It will also ensure that Australian food is identified with a single hygiene standard which promotes a safe food supply and thereby has advantages for promotion of Australian food overseas.

A Model Food Bill has been drafted which aims to protect public health and safety by enabling the effective and uniform adoption and implementation of the national Food Safety Standard, facilitate uniform interpretation of the Food Standards Code and rectify past deficiencies which have been identified through the many years of operation of current Food Acts.

The reviews relating to the Model Food Bill and the Food Safety Standards are part of a comprehensive overhaul of the way the food industry is regulated in Australia. This has included the Food Regulatory Review ("Blair Review"), under the auspices of the Council of Australian Governments (COAG), with a view to reducing the regulatory burden on businesses.

ANZFA's proposed Standards include a requirement for a food business to have a food safety program based on Hazard Analysis Critical Control Point (HACCP) concepts. This is a common practice for many food businesses already, particularly the larger manufacturing companies. This requirement will be phased in based on risk. Exceptions are proposed for some charitable and community organisations.

The Standards propose a requirement for the independent auditing of food safety programs. In South Australia, the inspection of food businesses for compliance with food hygiene requirements is presently the responsibility of local government. Under the Food Safety Standards, third party auditing would be an alternative.

In August 2000 a draft SA Food Bill and draft Food Safety Standards were released for public consultation.

Public consultation on the SA food safety reform proposals included meetings with key stakeholders including local government and 31 public consultation meetings at 22 metropolitan and regional centres throughout the State attended by approximately 1150 people. 95 written submissions were received.

The package comprised

- A draft Food Bill based on the national model.
- Food Safety Standards related to
 - Food Safety Practices and General Requirements (3.2.2)
 - Food Premises and Equipment (3.2.3)
 - Food Safety Programs [3.2.1]
 - Interpretation and Application [3.1.1]

In July 2000, the Australian New Zealand Food Standards Council (ANZFSC), comprising Health Ministers from all jurisdictions, approved the incorporation of Standards 3.2.2 (Food Safety Practices) and 3.2.3 (Food Premises and Equipment) into the Food Standards Code. The Code is adopted into SA law by regulation. However, as with some other jurisdictions, implementation of these Standards will be deferred until after the commencement of the new Act as the current SA Food Act does not create the necessary offences to make the Standards enforceable.

FOOD BILL

Second reading.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

All States and Territories are participating in a comprehensive national reform of food safety.

On 3rd November 2000, the Prime Minister, Premiers, Chief Ministers and the President of the Australian Local Government Association signed the Food Regulation Agreement (at COAG). The Agreement commits jurisdictions to using their best endeavours to introduce legislation into their Parliament based on the Model Food Bill within 12 months. Provisions in Annex A of the Model relating to definitions, application of the Act, offences, penalties, defences, and emergency powers are to be introduced in the same terms as the Model (ie using the same wording). The administrative provisions in Annex B, if included in the legislation, do not need to be in the same terms, but are to be consistent with the Model.

Much of the comment on the SA consultation draft was directed towards the draft Food Safety Program Standard. There was generally strong industry support for Food Safety Programs as important in securing a safe food supply. The need for the requirement to be nationally consistent and sufficiently planned and resourced was highlighted.

As work is progressing on a national standard and there is strong support for South Australia to implement a requirement for food safety programs on a nationally consistent basis, it is not proposed to implement these requirements until the national standard is adopted. The proposed national standard provides for a lead in time for the requirement based on the risk classification of the business. For high risk food businesses there is a proposed 2 year period for implementation after the operation of the new Standard, a 4 year period for medium risk businesses and a 6 year period for low risk businesses.

Turning to the main features of the Bill—

Administrative Structure

The Bill provides for a two-tiered administrative system similar to that under the current *Food Act 1985*. Under the Bill, the—

- Relevant authority is the Minister.
- Enforcement Agency includes the relevant authority and other persons or bodies prescribed by regulation; it is intended to prescribe local councils.

The administrative provisions are set out in Part 9; although the functions of the authority and agency are identified in specific clauses throughout the Bill.

Adoption of Food Standards

The definitions of "Food Safety Standards" and "Food Standards Code" are in line with the requirements of the Food Regulation Agreement. They provide for the Code to be adopted or incorporated by regulation.

Food Businesses

The Act will apply widely, including charitable and community bodies, and one-off events—in other words, they will be obliged to produce safe food. However, it is intended to use the power of exemption so that fundraising events for community or charitable purposes or micro-businesses are not required to have a Food Safety Program based on the national draft. It is also intended that flexibility will be applied in relation to businesses in areas outside local government boundaries so that they are not required to comply with onerous requirements.

Application to Primary Food Production

Clause 7 defines primary food production, in particular for the purposes of Clause 10. The Bill provides a broad obligation on all persons involved in the food supply system from source to consumption to produce safe food.

The provisions of the Bill in relation to notices, auditing and notification do not apply to primary food production and there are limits on the exercise of the inspection and sampling powers in relation to primary food producers.

Requirements in the Bill applying to food businesses do not apply to primary food production.

It is intended to prescribe the *Meat Hygiene Act* and *Dairy Industry Act* under Clause 7(1)(e).

Offences

The offence provisions follow the Model Food Bill. The penalties are significantly higher than those that currently apply, especially in cases where a person knows that he or she is acting in breach of the requirements of the Act.

Defences are provided if the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence. Defences are also provided for non-compliance with a provision of the Food Standards Code if the food is to be exported and complies with the laws of the country to which it is to be exported.

Emergency Powers

These powers are exercisable if there is a serious danger to public health and are vested in the Minister. They provide for publication of warnings; prohibition of cultivation, harvesting, advertising or sale of food; recalls; destruction of food.

There is a right of review of such orders to seek compensation

Inspection and Seizure Powers

Authorised officers are appointed by enforcement agencies (Division 3 of Part 9). Clause 37 sets out the usual powers of such officers to inspect premises, take samples, examine records etc. It also enables an officer to seize and retain or issue a seizure order for things which may be used as evidence. Provisions relating to seizure orders, and compensation for seized goods are set out in Division 2.

Improvement Notices and Prohibition Orders

Authorised officers can issue improvement notices to remedy unclean or insanitary conditions and require compliance with the Code. The relevant authority or head of an enforcement agency may issue a prohibition order if an improvement order is not complied with or there is a serious danger to public health. There are provisions for reviewing such orders.

Auditing

There is provision for approval of food safety auditors, in particular for the purpose of ensuring proprietors of food businesses prepare, implement and maintain a food safety program.

The requirement for businesses to have a food safety program will be a new legislative requirement. Many businesses, particularly larger manufacturers already have such programs. However for the majority of food businesses, this will require them to develop a program, document it and ensure it is audited. A food safety program involves a systematic analysis of all food handling operations, identification of potential hazards which could be reasonably anticipated, documentation and implementation of the program, maintaining records and regular auditing.

A proposed national standard is being developed. In October 1999, it was agreed by a majority at the ANZ Food Standards Council to defer implementation for 2 years.

However, as mentioned previously, in South Australia it is intended to use the power of exemption so that fundraising events for community or charitable purposes and micro-businesses are not required to have a Food Safety Plan based on the National draft. It is also intended that flexibility will be applied in relation to businesses in areas outside local government boundaries so that they are not required to comply with onerous requirements.

The provision in the Bill provide for food businesses to ensure that their food safety program is audited as required by the enforcement agency. This permits food businesses to select third party auditors.

As work is progressing on a national standard and there is strong support for South Australia to implement a requirement for food safety programs on a nationally consistent basis, it is not proposed to implement these requirements until the national standard is adopted. The proposed national standard provides for a lead in time for the requirement based on the risk classification of the business.

Notification of Food Businesses

This provision requires a food business to provide a "one off" notification to the enforcement agency. It includes a requirement to notify changes of ownership, name or address.

Administrative Arrangements

The Bill spells out the role of the relevant authority and the enforcement agency. It is intended to work closely with local government to further define roles, responsibilities and procedures in working towards implementation. The Bill also provides for the appropriate enforcement agency to be notified of the existence of a food business, to determine the risk classification and frequency of auditing, and to receive audit reports. The specification of the appropriate agency is to be done by regulation. It may be appropriate, for instance, for the Minister as the State agency to be responsible as enforcement agency for businesses with multiple sites to ensure consistency. Also the Minister may need to act in particular circumstances eg where substantial problems exist which while emanating locally are of wide significance, localised problems of particular State policy significance or requiring DHS expertise or to deal with long standing complaints not acted upon by the local council.

Miscellaneous

A general power of Ministerial exemption is included.

The provisions relating to confidentiality are much more limited than those in the current Act. They relate only to information relating to manufacturing secrets, commercial secrets or working processes. They do not extend to include inspection reports generally, reports

to councils recommending prosecution or the issue of an order, or similar which are not disclosed under the current Act.

The regulation making power includes provision for the adoption of codes or standards with or without modification.

I commend this bill to honourable members.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Objects of Act

The objects of the measure include—

(a) to ensure food for sale is both safe and suitable for human consumption;

(b) to prevent misleading conduct in connection with the sale of food;

(c) to provide for the application of the Food Standards Code.

Clause 4: Definitions

This clause sets out the defined terms for the purposes of the measure.

Clause 5: Meaning of 'food'

For the purposes of the measure, food is to include any substance or thing used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared), ingredients or additives, any substances used in the preparation of food, chewing gum, and other prescribed material (the presumption being made on the basis to a declaration under the *Australian New Zealand Food Authority Act 1991* of the Commonwealth). However, food will not include a therapeutic good. Food may include live animals and plants.

Clause 6: Meaning of 'food business'

For the purposes of the measure, a food business is a business, enterprise or activity, other than primary food production, that involves the handling of food intended for sale, or the sale of food, regardless of whether the activity is of a commercial, charitable or community nature, or whether the handling or sale occurs on one occasion only.

Clause 7: Meaning of 'primary food production'

For the purposes of the measure, primary food production is the growing, raising, cultivation, picking, harvesting, collection or catching of food, and specifically includes certain activities, including any activity regulated by or under an Act prescribed by the regulations for the purposes of the provision. However, primary food production will not include a process that involves the substantial transformation of food, the sale or service of food directly to the public, or an activity prescribed by the regulations.

Clause 8: Meaning of 'unsafe' food

For the purposes of the measure, food will be taken to be unsafe if it would be likely to cause physical harm to a person who might consume it, assuming it was subjected to any process relevant to its intended use, not affected by anything that would prevent it being used for its reasonable intended use, and consumed according to its reasonable intended use. Special provision is made for food that may cause adverse reactions only in persons with certain allergies or sensitivities that are not common to the majority of persons.

Clause 9: Meaning of 'unsuitable' food

For the purposes of the measure, food will be taken to be unsuitable if it is damaged, deteriorated or perished to an extent that affects its reasonable intended use, contains any damaged, deteriorated or perished substance that affects its reasonable intended use, is the product of a diseased animal or an animal that has died otherwise than by slaughter and is not declared under another Act to be suitable for human consumption, or contains some agent foreign to the nature of the food.

Clause 10: Application of Act to primary food production

Certain Parts of the Act will not apply to or in respect of primary food production.

Clause 11: Application of Act to water suppliers

Special arrangements are to apply with respect to the application of the Act to the supply of water for human consumption through a reticulated water system by a water supplier.

Clause 12: Act binds Crown

This clause expressly provides that the Act is to bind the Crown. No criminal liability will attach to the Crown itself (as distinct from its agencies, instrumentalities, officers and employees) under the Act.

Clause 13: Handling of food in unsafe manner

It will be an offence for a person to handle food intended for sale in a manner that the person knows will render, or is likely to render, the food unsafe. It will also be an offence for a person to handle food

intended for sale in a manner that the person ought reasonably to know is likely to render the food unsafe.

Clause 14: Sale of unsafe food

It will be an offence for a person to sell food that the person knows is unsafe. It will also be an offence for a person to sell food that the person ought reasonably to know is unsafe.

Clause 15: False description of food

Various offences will apply to circumstances where food intended for sale is falsely described where a consumer who relies on the description may suffer physical harm.

Clause 16: Handling and sale of unsafe food

It will also be an offence to handle food in a manner that will render, or is likely to render, the food unsafe. It will also be an offence to sell unsafe food.

Clause 17: Handling and sale of unsuitable food

It will also be an offence to handle food intended for sale in a manner that will render, or is likely to render, the food unsuitable. It will also be an offence to sell unsuitable food.

Clause 18: Misleading conduct relating to sale of food

It will be an offence, in the course of carrying on a food business, to engage in misleading or deceptive conduct in relation to the advertising, packaging or labelling of food. It will also be an offence to falsely describe food (via an advertisement, package or label) in connection with carrying on a food business.

Clause 19: Sale of food not complying with purchaser's demand

It will be an offence under this measure to supply, in the course of carrying on a food business, food by way of sale that is not of the nature or substance demanded by the purchaser.

Clause 20: Sale of unfit equipment or packaging or labelling material

It will be an offence to sell equipment that, if used for the purposes for which it was designed or installed, would render, or be likely to render, food unsafe. It will also be an offence to sell packaging or labelling material that, if used for the purposes for which it was designed or intended to be used, would render, or be likely to render, food unsafe.

Clause 21: Compliance with Food Standards Code

A person will be required to comply with the Food Standards Code in relation to the conduct of a food business or food intended for sale. A person must also comply with any relevant requirement of the Food Standards Code in relation to the sale or advertisement of food.

Clause 22: False descriptions of food

This clause sets out various circumstances where food will be taken to have been falsely described.

Clause 23: Application of provisions outside jurisdiction

These provisions will extend to food sold, or intended for sale, outside the State (subject to a specific defence for food intended for export).

Clause 24: Defence relating to publication of advertisements

It will, in relation to the publication of an advertisement, be a defence for a person to prove that the person published the advertisement in the ordinary course of carrying on an advertising business. However, this defence will not apply if the person should reasonably have known that the publication of the advertisement would constitute an offence, or the person had been warned that publication would constitute an offence, or the person published the advertisement as the proprietor of a food business or in connection with the conduct of a food business by the person.

Clause 25: Defence in respect of food for export

It will be a defence in connection with a breach of the Food Standards Code to prove that the food in question is to be exported to another country and complies with corresponding laws of that other country.

Clause 26: Defence of due diligence

It will be a defence to proceedings for an offence to prove that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the relevant offence by the person or by another person under the person's control. This defence may be satisfied by proving compliance with a relevant food safety program that complies with the requirements of the regulations.

Clause 27: Defence in respect of handling food

It will be a defence to prove, in relation to an offence concerning the handling of food, that the food was destroyed or otherwise disposed of immediately after the food was handled in the unlawful manner.

Clause 28: Defence in respect of sale of unfit equipment or packaging or labelling material

It will be a defence to prove, in relation to an offence involving the sale of equipment or material, that the equipment or material was not intended for use in connection with the handling of food.

Clause 29: Nature of offences

Generally speaking, offences under Part 2 of the measure are to be classified as minor indictable offences. However, the prosecution may elect to charge a person who has allegedly committed an offence against Division 2 with a summary offence. An offence against Division 2 will be an expiable offence. The defence of mistaken but reasonable belief as to the facts constituting an offence will not apply with respect to a summary offence. The maximum penalty for an offence dealt with as a summary offence will be \$10 000.

Clause 30: Alternative verdicts for serious food offences

It will be possible in certain cases to find a person not guilty of an offence, as charged, but guilty of an alternative (and lesser) offence.

Clause 31: Making of order

It will be possible for the relevant authority to issue an order under Part 3 if the relevant authority has reasonable grounds to believe that the making of the order is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of such a danger.

Clause 32: Nature of order

An order may, for example, require the publication of warnings, prohibit the harvesting of particular food located in a specified area, prohibit the sale of particular food, or direct that food be recalled.

Clause 33: Special provisions relating to recall orders

A recall order may require the publication of certain information to the public.

Clause 34: Manner of making orders

A recall order may be addressed to a particular person, to several persons, to a class of persons, or to all persons. An order will expire after 90 days, unless sooner revoked. However, it is possible to make a further order in an appropriate case.

Clause 35: Review of order

A person who has suffered loss as the result of the making of an order may apply to the relevant authority for compensation if the person considers that there were insufficient grounds for the making of the order. A determination of the relevant authority on such an application will be capable of being reviewed on application to the Administrative and Disciplinary Division of the District Court.

Clause 36: Failure to comply with emergency order

It will be an offence to act, without reasonable excuse, in contravention of an order under this Part.

Clause 37: Powers of authorised officers

This clause sets out the powers of an authorised officer to carry out inspections and to undertake other activities for the purposes of the Act. The powers will include the ability to seize anything that the authorised officer reasonably believes has been used in, or may be used as evidence of, a contravention of the Act or the regulations. An authorised officer will also be able to require a person to answer questions or to produce a record, document or other thing.

Clause 38: Search warrants

A search warrant will be required to enter any part of premises being used solely for residential purposes (unless the entry is with the consent of the occupier of the premises or the relevant part of the premises is being used for the preparation of meals provided with paid accommodation), to break into premises, or to undertake an inspection that is not authorised under clause 37.

Clause 39: Failure to comply with requirements of authorised officers

It will be an offence to fail to comply, without reasonable excuse, with the requirement of an authorised officer.

Clause 40: False information

It will be an offence for a person to provide any information or to produce a document that the person knows is false or misleading in a material particular.

Clause 41: Obstructing or impersonating authorised officers

It will be an offence for a person, without reasonable excuse, to resist or obstruct an authorised officer, or to impersonate an authorised officer.

Clause 42: Seizure

This clause provides for the operation of seizure orders.

Clause 43: Unclean or unfit premises, vehicles or equipment

If an authorised officer believes, on reasonable grounds, that premises, equipment or a food transport vehicle used by a food business in connection with the handling of food is unclean or unfit, or is not in compliance with the Food Safety Standards, a food safety program or the Food Standards Code, the authorised officer may issue an improvement notice.

Clause 44: Improvement notice

An improvement notice will require certain action to be taken within a specified period of at least 24 hours (which period may be subsequently extended).

Clause 45: Compliance with improvement notice

Compliance with an improvement notice will be noted (by an authorised officer) on a copy of the notice.

Clause 46: Prohibition order

If a relevant authority or the head of an enforcement agency believes, on reasonable grounds, that circumstances justifying the issue of an improvement notice exist and that an improvement notice has not been complied with, or action must be taken to prevent or mitigate a serious danger to public health, then the relevant authority or the head of the enforcement agency may issue a prohibition order under this clause.

Clause 47: Scope of notices and orders

An improvement notice or prohibition order may be expressed in various terms.

Clause 48: Notices and orders to contain certain information

An improvement notice or prohibition order must specify any provision of the Food Standards Code to which it relates, and may specify particular action to ensure compliance with the Food Standards Code.

Clause 49: Request for re-inspection

The proprietor of a food business affected by a prohibition order may request that an authorised officer conduct an inspection of the relevant premises, vehicle or equipment.

Clause 50: Contravention of improvement notice or prohibition order

It will be an offence for a person, without reasonable excuse, to contravene or to fail to comply with an improvement notice or a prohibition order.

Clause 51: Review of decision to refuse certificate of clearance

A person aggrieved by a decision to refuse to issue a certificate of clearance may apply for a review of that decision.

Clause 52: Review of order

A person who has suffered loss as the result of the making of a prohibition order may apply to the authority or person who made the order for compensation if the person believes that there were no grounds for the making of the order. A determination on such an application is capable of being reviewed on application to the Administrative and Disciplinary Division of the District Court.

Clause 53: Proprietor to be informed

An authorised officer who obtains a sample of food for the purposes of analysis must inform the proprietor of the relevant business (or another person in the proprietor's absence) of the intention to have the sample analysed.

Clause 54: Payment for sample

An authorised officer must tender an appropriate amount when obtaining a sample of food.

Clause 55: Samples from vending machines

Clauses 53 and 54 do not apply to samples obtained from vending machines where the officer makes a proper payment and no-one appears to be in charge of the machine.

Clause 56: Packaged food

An authorised officer who takes a sample of packaged food must take the whole package unless the relevant package contains two or more smaller packages of the same food.

Clause 57: Procedure to be followed

This clause sets out the procedure for the taking of samples for the purposes of the Act (to the extent that the Food Standards Code does not otherwise apply). Basically, an authorised officer will divide the food into three parts, one for the proprietor of the business, one for analysis, and one for future comparison.

Clause 58: Samples to be submitted for analysis

The authorised officer will submit a sample for analysis, unless analysis is no longer required.

Clause 59: Compliance with Food Standards Code

An analysis must be carried out in accordance with any relevant requirement of the Food Standards Code.

Clause 60: Certificate of analysis

A certificate of analysis will be prepared in accordance with the requirements of the Act and the Food Standards Code.

Clause 61: Approval of laboratories

The relevant authority will approve laboratories for the purposes of carrying out analyses under the Act. An approval may be granted on conditions.

Clause 62: Term of approval

Unless suspended, an approval will remain in force until cancelled.

Clause 63: Approved laboratory to give notice of certain interests

The relevant authority must be notified if a person involved in the management of an approved laboratory, or an employee, has an interest in a food business.

Clause 64: Variation of conditions or suspension or cancellation of approval of laboratory

This clause sets out procedures relating to the variation of conditions of an approval, or the suspension or cancellation of an approval.

Clause 65: Review of decisions relating to approval

Various decisions of the relevant authority relating to the approval of a laboratory (or to the rejection of an application for approval) will be reviewable by the Administrative and Disciplinary Division of the District Court.

Clause 66: List of approved laboratories to be maintained

The relevant authority will keep a list of approved laboratories, which will be open to the public.

Clause 67: Approval of persons to carry out analyses

The relevant authority may approve natural persons for the purposes of carrying out analyses under the Act.

Clause 68: Term of approval

Unless suspended, an approval will remain in force until cancelled.

Clause 69: Approved analyst to give notice of certain interests

The relevant authority must be notified if an approved analyst has an interest in a food business.

Clause 70: Variation of conditions or suspension or cancellation of approval of analyst

This clause sets out procedures relating to the variation of conditions of an approval, or the suspension or cancellation of an approval.

Clause 71: Review of decisions relating to approval

Various decisions of the relevant authority relating to the approval of an analyst (or to the rejection of an application for approval) will be reviewable by the Administrative and Disciplinary Division of the District Court.

Clause 72: List of approved analysts to be maintained

The relevant authority will keep a list of approved analysts, which will be open to the public.

Clause 73: Approval of food safety auditors

The relevant authority may approve natural persons as food safety auditors under this Act. An approval will be given if the authority is satisfied that the person is competent to carry out functions of a food safety auditor having regard to the person's technical skills and experience and any guidelines relating to competency criteria approved by the relevant authority.

Clause 74: Term of approval

Unless suspended or cancelled, an approval will remain in force for the period specified in the approval.

Clause 75: Food safety auditor to give notice of certain interests

The relevant authority must be notified if a food safety auditor has an interest in a food business.

Clause 76: Variation of conditions or suspension or cancellation of approval of auditor

This clause sets out procedures relating to the variation of conditions of an approval, or the suspension or cancellation of an approval.

Clause 77: Review of decisions relating to approvals

Various decisions of the relevant authority relating to the approval of a food safety auditor (or to the rejection of an application for approval) will be reviewable by the Administrative and Disciplinary Division of the District Court.

Clause 78: Food safety programs and auditing requirements

The proprietor of a food business must ensure compliance with any prescribed requirements relating to the preparation, implementation, maintenance or monitoring of a food safety program for the business. The proprietor of a food business must ensure that a food safety program is audited in accordance with the scheme under the Act.

Clause 79: Priority classification system and frequency of auditing

The appropriate enforcement agency will determine the priority classification of individual food businesses for the application of the requirements of the regulations relating to food safety programs, and the frequency of program auditing.

Clause 80: Duties of food safety auditors

An audit of a food safety program must be carried out having regard to the requirements in the regulations. It may be necessary for an auditor to conduct follow-up audits. Auditors will be required to assess compliance with the Food Safety Standards, and to undertake any reporting required by the regulations.

Clause 81: Reporting requirements

A report on the results of any audit or assessment carried out by a food safety auditor must be furnished to the appropriate enforcement agency. The report may recommend that the priority classification

of a food business be changed. A copy of a report will be given to the proprietor of the relevant business.

Clause 82: Redetermination of frequency of auditing

A food safety auditor may determine that the audit frequency of a food safety program be changed.

Clause 83: Certificates of authority of food safety auditors

A food safety auditor will be issued with a certificate of authority.

Clause 84: List of food safety auditors to be maintained

The relevant auditor will keep a list of approved auditors, which will be open to the public.

Clause 85: Obstructing or impersonating food safety auditors

It will be an offence for a person, without reasonable excuse, to resist or obstruct a food safety auditor in the exercise of a function under the Act, or to impersonate a food safety auditor.

Clause 86: Notification of food businesses

The proprietor of a food business will not be able to conduct the business without first giving notice to the appropriate enforcement agency in accordance with any requirements of the Food Safety Standards. The proprietor of a food business in operation when the notification requirements commence will have 3 months to give the notice. A notification will also need to be given if a food business is transferred to another person, or if there is a change in the name or the address of a food business. These requirements will not apply to a food business that is not required to give a notification under the Food Safety Standards.

Clause 87: Provision relating to functions

The relevant authority will have the functions in relation to the administration of the Act that are conferred or imposed by or under the Act. The relevant authority may take such measures as the authority considers appropriate to ensure the effective administration and enforcement of the Act.

Clause 88: Delegations by relevant authority

The relevant authority will be able to delegate a power or function vested or conferred under the Act. The relevant authority will not be able to delegate a power to an enforcement agency or the head of an enforcement agency without the consent of the agency or the head of the agency (as the case may require).

Clause 89: Functions of enforcement agencies in relation to this Act

An enforcement agency will have the functions in relation to the administration of the Act that are conferred or imposed by or under the Act, or as are delegated to it under the Act.

Clause 90: Conditions on exercise of functions by enforcement agencies

The relevant authority may, after consultation with an enforcement agency, impose conditions or limitations on the exercise of functions under this Act by the enforcement agency.

Clause 91: Delegations by enforcement agency

An enforcement agency, or the head of an enforcement agency, will be able to delegate powers and functions vested or conferred under the Act.

Clause 92: Exercise of functions by enforcement agencies

It will be possible to adopt national guidelines prepared by ANZFA for the purposes of the Act.

Clause 93: Reports by enforcement agencies

The head of an enforcement agency will be required to furnish periodic reports to the relevant authority on the performance of functions under the Act.

Clause 94: Appointment of authorised officers

An enforcement agency will be able to appoint authorised officers for the purposes of the Act.

Clause 95: Certificates of authority

Each authorised officer will be issued with a certificate of authority, which must be produced on request.

Clause 96: Agreement and consultation with local government sector

Consultation will occur between the Minister and the LGA in relation to various matters associated with the administration and enforcement of the Act. The Minister will report to Parliament on the Minister's interaction with the LGA.

Clause 97: Offences by employers

An employer will be responsible for a contravention of the Act by an employee. It will be a defence to prove that the employer could not, by taking all reasonable precautions and exercising all due diligence, have prevented the contravention.

Clause 98: Offences by bodies corporate

A member of the governing body of a body corporate, or concerned in the management of a body corporate, will be taken to have

contravened any provision contravened by the body corporate if the person knowingly authorised or permitted the contravention.

Clause 99: Liability of employees and agents

It will not be a defence in proceedings for an offence to claim that the defendant was acting as an employee or agent of another person. However, it is a defence for person to prove that he or she was acting under the personal supervision of the proprietor of a food business.

Clause 100: No defence to allege deterioration of sample

In proceedings for an offence it is not a defence to allege that a sample of food retained for future comparison has, from natural causes, deteriorated, perished or undergone any material change in constitution.

Clause 101: Onus to prove certain matters on defendant

If it is alleged that a statement on a package or in an advertisement relating to the composition or properties of food has caused the food to be falsely described, the onus on proving the correctness of the statement will be on the defendant.

Clause 102: Presumptions

Various presumptions will apply for the purposes of proceedings under the Act.

Clause 103: Certificate evidence and evidence of analysts

This clause deals with the status of certificates of the results of an analysis carried out under the Act.

Clause 104: Power of court to order further analysis

A court may order that a sample retained under the Act be analysed by an independent analyst.

Clause 105: Court may order costs and expenses

A court will be able to make orders in respect of the costs and expenses of an incidental to the examination, seizure, storage, analysis or disposal of any thing the subject of proceedings for an offence under the Act or regulations.

Clause 106: Court may order forfeiture

A court by which a person is convicted of an offence under the Act or regulations may order the forfeiture to the Crown of anything used in the commission of the offence.

Clause 107: Court may order corrective advertising

A court may order a person convicted of an offence under Part 2 to disclose specified information to specified persons or classes of persons, or to pay for advertisements containing material specified by the court.

Clause 108: Special power of exemption

The Minister will be able, by notice in the *Gazette*, to confer exemptions from the Act or specified provisions of the Act. An exemption may be granted on conditions, and may be varied or revoked by further notice in the *Gazette*.

Clause 109: Annual report

The Minister will prepare an annual report on the operation of the Act.

Clause 110: Protection from liability

This clause provides protection from liability for bodies and persons engaged in the administration of the Act with respect to an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under the Act.

Clause 111: Disclosure of certain confidential information

This clause provides for the protection of information relating to manufacturing secrets, commercial secrets or working processes.

Clause 112: Disclosure of certain information

Multiple-site food businesses will have to make certain information available to members of the public in accordance with the regulations.

Clause 113: Regulations

The Governor may make regulations for the purposes of the Act.

Clause 114: Repeal of Food Act 1985

The Food Act 1985 is repealed.

Clause 115: Savings and transitional regulations

The Governor will be able to make saving or transitional provision by regulation.

The Hon. P. HOLLOWAY secured the adjournment of the debate.