

These Acts contain legislative elements not included in the *Food Act 2001* such as significant provision for consultation with stakeholders; recognition of industry food safety systems and programs; an ability to accredit businesses; an ability to manage delivery of audit services and an ability to implement food safety systems to underpin access to markets. To incorporate these legislative elements in the *Food Act 2001* would require amendment to that Act. It was decided to consolidate primary industry food safety legislation into one Act rather than reopen and amend the recently passed Food Act.

In October 2002 the Government released for public consultation a discussion paper "Legislation for implementing food safety systems in the primary industry sector to support trade, industry development and public health outcomes".

Key elements for effective food safety legislation identified by industry through consultation were strong industry involvement; recognition of industry risk management systems; avoiding duplication of audits or inspections; cost effective administration; making public health the clear priority while allowing trade food safety issues to be addressed; having government and industry meet their own respective costs; and following national standards.

On 1 December 2002 the *Food Act 2001* was proclaimed along with the *Food Regulations 2002*. The regulations included recognition of the *Meat Industry Act 1994* and *Dairy Industry Act 1992* as these industries were deemed to comply with the outcomes required by the new national food safety standards.

In November 2003 a draft Primary Produce (Food Safety Schemes) Bill 2003 was released for public consultation. The Bill was strongly supported by the dairy industry and most submitters supported the legislation for high-risk primary industry sectors such as meat and dairy. The shellfish industry also provided significant support for the Bill.

As a result of consultation there were a number of amendments made to the Bill, including significant additional requirements for consultation and adjustments to enable minimum regulatory schemes for lower risk sectors, for example by allowing notification instead of accreditation.

In the Bill the term "food safety arrangement" describes an arrangement or system or program, used by an industry or business to ensure that the required food safety outcomes are achieved, and are shown to have been achieved. A food safety arrangement may be an industry quality assurance or food safety program with a private or government (eg AQIS) auditor. This allows the regulator to specify the outcomes to be achieved, usually by mandating a standard, and industry to use whatever methods are best suited to meet the standard, with the regulator having the ability to recognise these methods as approved food safety arrangements. It provides flexibility and enables recognition of existing industry and government systems, thereby minimising duplication and costs.

The Bill indicates what parts of primary industry can have food safety schemes developed, but does not itself directly impose food safety requirements on any part of primary industry. For a number of low risk industries this may mean they are never included in a food safety scheme. The Bill does not allow for the regulation of retail business or activities incidental to retail businesses (other than in the meat sector).

The Government has listened to industry's request for a strong voice in the establishment or variation of a Scheme. The Bill provides for significant consultation directly and through an advisory committee. Industries, such as the transport industry, that could be potentially affected by all food safety schemes will be consulted during the development of each scheme.

Food safety schemes are a set of regulations that define the food safety requirements and administrative arrangements for an industry sector and will be tailored to the sector and risks involved. Three schemes will be developed initially to continue current regulatory food safety arrangements in the meat, dairy and shellfish industries.

In the future it is expected that most schemes will be based on national primary production or processing standards developed and approved by Food Standards Australia New Zealand (FSANZ). Consultation on a scheme based on a FSANZ standard would relate to the proposed administrative arrangements, not the standard, as development of the FSANZ standards includes oversight by an industry-government committee, a scientific risk assessment and at least two rounds of public consultation with a regulatory impact assessment. Sectors flagged to have national standards developed over the next few years include poultry, dairy, eggs, seed sprouts and red meat.

PRIMARY PRODUCE (FOOD SAFETY SCHEMES) BILL

Received from the House of Assembly and read a first time.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is about maintaining the excellent reputation of food produced in South Australia, and with the Food Act, providing a legislative food safety framework that underpins the whole food chain in South Australia.

The Bill will consolidate existing primary industry food safety legislation into one Act and extend this legislative framework to all primary industries to enable the implementation of new national primary production and processing standards, to manage significant food safety risks and provide opportunities for industry to voluntarily meet their own food safety standards.

In South Australia the *Food Act 2001* is the primary piece of food safety legislation and provides the framework within which all food safety and suitability issues are regulated. The Act requires that all parts of the food industry, including primary industries, produce safe and suitable food or face significant penalties. The Act provides for extensive powers to prevent or mitigate a serious threat to public health and this includes the power to apply emergency orders to all parts of the food industry, including primary industries. However the Act has limited the application of parts of the Act with regard to primary food production. This Bill will complete the legislative framework for primary food production.

South Australia has successfully implemented mandatory food safety programs and hygiene standards in the meat and dairy industries under the *Meat Industry Act 1994* and *Dairy Industry Act 1992* and a risk management system for growing shellfish as a condition of licence under the *Aquaculture Act 2001*, and is currently extending this system through harvested shellfish as a condition of licence under the *Fisheries Act 1982*.

In practice, Government would initiate a scheme where a significant unmanaged risk is identified in a part of primary industry. Any consideration of this action would include advice from the Minister for Health and would be based on an assessment of public health risks and the need for regulation.

Alternatively, industry could approach the Government to develop and implement a scheme. This may occur where industry believes there are market or trade opportunities in having a higher standard or Government endorsement of industry practices. There would need to be a full appraisal of the benefits and costs and demonstration of full industry support before the Government would consider such a request.

If accreditation is necessary, the Minister or a public agency could be designated as an accreditation body to oversee a food safety scheme, and accredit businesses, approve food safety arrangements and collect and administer funds. The Minister can delegate powers of approving auditors and authorised persons to the accreditation body. It is intended to approve the current Dairy Authority as the accreditation body for the dairy industry and the Minister for Agriculture, Food and Fisheries as the accreditation body for the meat industry. This will continue the current arrangements under the *Meat Industry Act 1994* and *Dairy Industry Act 1992*.

Accreditation will be a tool primarily used for higher risk activities and sectors. It means that businesses can only be established and operate if they have systems that produce safe food, a necessary requirement for industries such as the meat, dairy and shellfish industries. Generally, only businesses in higher risk sectors will be accredited.

The Act provides for the Minister to approve suitably qualified individual auditors and/or an auditing service for part, or all, of an industry. Approval of one or two audit companies for the meat industry, through an open tender process, has proved to be a significant tool in ensuring audit consistency and in minimising costs.

I commend this Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

Division 1—Formal

1—Short title

2—Commencement

These clauses are formal.

Division 2—Interpretation

3—Interpretation

Clause 3 contains definitions of words and phrases used in the Bill.

4—Interaction with other Acts

Clause 4 provides that the Bill is in addition to, and does not limit or derogate from the provisions of any other Act.

5—Food safety arrangements

Clause 5 defines *food safety arrangement* as a set of processes adopted by a producer relating to one or more of the following:

- operations before, during and after the production of primary produce;
- the maintenance of premises, vehicles, plant and equipment used in connection with the production of the produce;
- auditing of compliance with the processes.

6—Meat and meat processing

Clause 6 defines *meat* and *meat processing* reflecting the terms as currently defined under the *Meat Hygiene Act 1994*.

7—Primary produce

Clause 7 defines *primary produce* as an animal, plant or other organism or parts thereof intended for consumption by humans or pets or food produced in the production of primary produce.

8—Production of primary produce

Clause 8 sets the scope for the activities for which a food safety scheme may be established by regulation under clause 12.

The activities include:

- the growing, raising, cultivation, picking, harvesting, collection or catching of primary produce;
- the sorting or grading of primary produce;
- the freezing, packing, refrigeration, storage treating or washing of primary produce;
- the pasteurisation or homogenisation of milk, or manufacturing of other dairy produce;
- meat processing;

- the shucking of molluscs;
- the transportation, delivery or handling of primary produce;
- the sale of livestock at saleyards;
- any other activity prescribed by regulation.

Clause 8(2) sets out what does not constitute the production of primary produce, namely

- activities carried out incidentally to the carrying on of a retail business, with the exception of activities relating to meat; and
- processes (other than those specified in subclause (1)) by which produce is altered or added to in order to increase its shelf life.

Division 3—Object

9—Object

Clause 9 sets out the object of the Bill, namely to develop food safety schemes for primary industries that reduce risks to consumers and primary industry markets associated with unsafe or unsuitable primary produce.

Part 2—Food safety schemes

10—Establishment of advisory committees for class of activities

Clause 10 enables the making of regulations for the establishment of advisory committees which will have the function of advising the Minister about food safety schemes. If such regulations are made, the Minister is required (under clause 11(4)) to consult with such a committee before a food safety scheme for a particular class of activities is made, varied or revoked.

11—Food safety schemes

Clause 11(1) provides for the making of regulations establishing food safety schemes. Clause 11(2) sets out the scope of such regulations. Clause 11(3) sets out additional regulation-making powers in relation to meat allowing for the same legislative scope as currently exists in the *Meat Hygiene Act 1994*. Clause 11(4) sets out the consultation requirements to be observed by the Minister before the establishment, variation or revocation of food safety schemes. Clause 11(5) provides that bodies corporate established by regulation will be agencies of the Crown and hold property on behalf of the Crown.

Part 3—Accreditation

12—Obligation to be accredited

Clause 12 sets out the principal regulatory provision of the Bill, namely that producers of primary produce must not engage in a class of activities to which a food safety scheme applies without an accreditation if accreditation is required by the scheme. Failure to be accredited as required is an offence attracting a maximum penalty of \$20 000.

13—Application for accreditation

Clause 13 sets out the procedure for applying for accreditation, including that it is to be made to the accreditation body. (An *accreditation body* is defined in clause 3 of the Bill as being either the Minister or the body corporate established for a particular class of primary production activities (to be found in the relevant regulations).)

14—Temporary accreditation

Clause 14 provides that the accreditation body may grant temporary accreditation for a maximum period of 6 months pending determination of an application for accreditation.

15—Grant of accreditation

Clause 15(1) provides that accreditation must be granted if the applicant is a suitable person to hold accreditation and in the case of a body corporate applicant, each director is a suitable person, and the applicant satisfies the relevant requirements for accreditation.

Clause 15(2) sets out some of the considerations that may be taken into account in determining whether a person is a "suitable person" under clause 15(1). These are: offences against specified laws and offences of dishonesty committed by the applicant.

16—Conditions of accreditation

Clause 16(1) provides that an accredited producer must, as a condition of accreditation—

- if a food safety arrangement applies, comply with such an arrangement, allow audits to be performed and pay for or contribute to the cost of such audits; and
- comply with the regulations; and

comply with any other conditions imposed by the accreditation body under the relevant food safety scheme. Clause 16(2) makes contravention of a condition of accreditation an offence attracting a maximum penalty of \$20 000. Clause 16(3) makes it an offence to hinder or obstruct a person performing an audit under a condition of accreditation. The maximum penalty for such an offence is \$5 000.

17—Annual return and fee

Clause 17 requires accredited producers to pay annual fees and lodge annual returns. Failure to do so can lead to suspension or cancellation of accreditation.

18—Variation of accreditation

Clause 18 enables the accreditation body to impose, vary or revoke conditions of accreditation, approve food safety arrangements or vary approved food safety arrangements.

19—Application for variation of accreditation

Clause 19 sets out the procedure for applying for a variation or revocation of a condition of accreditation or for the approval or variation of a food safety arrangement.

20—Transfer of accreditation

Clause 20 provides that an accreditation is transferable (unless the conditions of accreditation provide otherwise) to a suitable person who has capacity, or has made arrangements, for ensuring compliance with the conditions of accreditation. The clause sets out the process for applying for a transfer.

21—Suspension or revocation of accreditation

Clause 21 sets out the circumstances in which the Minister may suspend or revoke an accreditation. These include where there is a breach of conditions, commission of an offence against the Act or non-payment of fees. The accredited producer must be given 14 days to respond to a proposed suspension or revocation.

22—Surrender of accreditation

Clause 22 provides that an accredited producer may surrender the accreditation to the accreditation body.

Part 4—Enforcement

Division 1—Approved auditors

23—Approved auditors

Clause 23(1) provides for the approval by the Minister of auditors. (Approved auditors are referred to in clause 16 which deals with conditions of accreditation. In particular, an accredited producer who has an approved food safety arrangement must, in certain circumstances, allow approved auditors to carry out spot audits.)

Clause 23(2) enables the Minister to impose conditions of approval on auditors.

The rest of this clause provides for the content of agreements entered into by an auditor and the Minister. It provides for the Minister's powers in respect of the variation or termination of agreements, the imposition of further conditions of approval, the variation or revocation of approval and the withdrawal of approval.

24—Duty of auditors to report certain matters

Clause 24 requires an auditor who forms a reasonable belief that a producer has engaged in conduct creating a serious risk to the safety of primary produce or conduct of a prescribed kind to report the producer to the Minister. Failure to do so is an offence attracting a maximum penalty of \$2 500 or imprisonment for 6 months.

Division 2—Authorised persons

25—Appointment of authorised persons

Clause 25(1) provides for the appointment by the Minister of authorised persons. Clause 25(3) enables agreements to be made in respect of the exercise by employees or agents of the Commonwealth or a local government authority of the powers and functions of an authorised person.

26—Identification of authorised persons

Clause 26 requires authorised persons to carry identification and to produce it on request.

27—General powers of authorised persons

Clause 27 sets out the general powers of authorised persons to administer and enforce the Act and regulations. They may not break into a place or vehicle without a warrant.

28—Provisions relating to seizure

Clause 28 provides for the issuing of seizure orders and also sets out how an authorised person is to deal with things seized by the person.

29—Offence to hinder etc authorised persons

Clause 29 makes it an offence to hinder or obstruct, use offensive language to, refuse or fail to comply with a requirement of, or answer a question asked by, an authorised person or a person assisting an authorised person attracting a maximum penalty of \$5 000. Assaulting such persons is an offence carrying a maximum penalty of \$10 000 or imprisonment for 2 years.

30—Self-incrimination

Clause 30 provides that any answer, copy of a document or information required and given under Part 4 Division 2 that would tend to incriminate the person or make the person liable to a penalty, must nevertheless be given, but the answer or document or information is inadmissible in evidence against the person in proceedings other than in proceedings relating to the making of a false or misleading statement or declaration.

Division 3—Compliance orders

31—Power to require compliance with legislative requirements

Clause 31 enables authorised persons to issue notices of compliance to producers suspected of contravening requirements of the Act including conditions of accreditation and requirements of a food safety scheme or approved food safety arrangement.

32—Offence of contravening compliance order

Clause 32 makes contravention by a producer of a requirement or prohibition under a notice of compliance an offence attracting a maximum penalty of \$20 000.

Part 5—Review and Appeal

33—Review by Minister

Clause 33 provides a right of appeal to persons whose interests are affected by a decision under Part 3 or Part 4 Division 3. The appeal is directed to the Minister.

34—Appeal to District Court

Clause 34 provides that persons not satisfied with the decision of the Minister under clause 33 may appeal to the Administrative and Disciplinary Division of the District Court. Clause 34(3) requires the Minister to provide reasons for the decision if so required by the applicant for the review.

Part 6—Miscellaneous

35—Exemptions

Clause 35 gives the Minister the power to issue exemptions to persons from compliance with the Act, individually or by class, by notice in the Gazette.

36—Delegation by Minister

Clause 36 gives the Minister the power to delegate functions or powers (except a function or power prescribed by regulation) to a body or person.

37—Immunity from personal liability

Clause 37 provides for immunity to members of accreditation bodies, authorised persons or any other persons engaged in the administration of the Act.

38—False or misleading statements

Clause 38 prohibits the making of false or misleading statements and imposes a maximum penalty of \$10 000 or imprisonment for 2 years for statements made that were known to be false or misleading, and \$5 000 for those not so known.

39—Statutory declaration

Clause 39 enables the Minister or an accreditation body to require information required under or by the Act to be verified by statutory declaration.

40—Confidentiality

Clause 40 prohibits the divulging of information obtained in the administration of the Act relating to business processes or financial information except under certain circumstances. Contravention of this clause is an offence attracting a maximum penalty of \$10 000.

41—Giving of notice

Clause 41 provides for the methods of giving notice under the Act.

42—Evidence

Clause 42 provides evidentiary assistance for the prosecution of offences under the Act.

43—General defence

Clause 43 provides for a defence to a charge of any offence against the Act of taking reasonable care to avoid the commission of the offence.

44—Offences by bodies corporate

Clause 44 provides that, if a body corporate is guilty of an offence, then each director and the manager of the body corporate are also guilty.

45—Continuing offences

Clause 45 provides for an additional penalty of one-fifth of the maximum penalty for an offence for each day that the offence continues.

46—Regulations

Clause 46 sets out the regulation-making powers. In addition to other powers, there is the power to make regulations incorporating standards or codes.

Schedule 1—Related amendments, repeals and transitional provisions

Part 1 (clause 1) of Schedule 1 is formal.

Part 2 (clause 2) of Schedule 1 makes a consequential amendment to the *Prevention of Cruelty to Animals Act 1985*, replacing a reference to the *Meat Hygiene Act 1994* with a reference to this Bill.

Part 3 (clause 3) of Schedule 1 repeals the *Dairy Industry Act 1992* and the *Meat Hygiene Act 1994*.

Part 4 of Schedule 1 contains transitional provisions.

Clause 4 provides for the temporary accreditation under the new system of persons licensed under the *Dairy Industry Act 1992* or accredited under the *Meat Hygiene Act 1994*.

Clause 5 provides that the regulations establishing a food safety scheme for the production of dairy produce may provide for the continuation of the Dairy Authority of South Australia established under the *Dairy Industry Act 1992* as the accreditation body. Because a body corporate is, through a regulation under clause 5(a) taken to be the same body corporate as the Dairy Authority of South Australia, the staff of the body are unaffected by the legislation in respect of their employment.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

ADJOURNMENT

At 9.37 p.m. the council adjourned until Tuesday 25 May at 2.15 p.m.