FOOD BILL 1985

Legislative Council, 28 February 1985, Page 2966

Second Reading

**The Hon. J.R. CORNWALL (Minister of Health)**obtained leave and introduced a Bill for an Act to impose standards with respect to food intended for human consumption; to ensure the observance of proper standards of hygiene in relation to the manufacture, distribution and storage of food that is to be sold for human consumption; to repeal the Bread Act, 1954, and the Bakehouses Registration Act, 1945; to amend the Food and Drugs Act, 1908, the Health Act, 1935, and the Local Government Act, 1934; and for other purposes. Read a first time.

**The Hon. J.R. CORNWALL**: I move:

That this Bill be now read a second time.

I have had an indication from the Hon. Mr Burdett that he is amenable to having the explanation of the Bill inserted in Hansard. Therefore, I seek leave to have it inserted in Hansard without my reading it.

Leave granted.

**Explanation of Bill**

The purpose of this Bill is to rewrite South Australia's food laws in a form suitable for the 1980s and beyond. South Australia's existing food legislation had its origins in nineteenth century English law. The first Act for the Prevention of the Adulteration of Food and Drink was passed in the United Kingdom in 1860, following disclosure of widespread adulteration. In 1873, South Australia's Health Act included a provision for the seizure of unwholesome food. Later, in 1878, its provisions were expanded to include a food division dealing with water, meat and milk. The year 1882 saw the enactment of South Australia's first Food and Drugs Act, an Act very similar to its English counterpart.

That Act, however, apparently lacked strength in terms of enforcement and was superseded by the 1908 Food and Drugs Act. Few would argue with the then Chief Secretary who, when moving the second reading, said that 'the Bill was one of the most important measures to be discussed by the Council that session because, next to the protection of the lives of the people, the health of the people was a close second'.

It is in fact that Act, with minor amendments, which remains in force today. As section 8 puts it, it is an Act to ‘... provide proper securities for the sale of food in a pure and genuine condition...'. Its purpose is as relevant today as it was in 1908. Its provisions, however, have become somewhat anachronistic. It was framed at a time when the range of foods was limited, when production was local and distribution was by horse and cart.

Advances in food technology have revolutionised our system of food processing and distribution. No longer is the majority of our food industry catering just for a localised domestic market, but is increasingly catering on an Australia-wide or international scale. Perishable foods are traded long distances as a result of refrigeration. Much packaged food is of complex formulation, involving numbers of ingredients and food additives. Contaminants have become more complex involving metals, pesticide residues, micro-organisms and their metabolites. There is a far greater range of media avenues available for marketing and promotional strategies. Consumer awareness demands improved labelling of packaged foods to enable informed choice.

It was against this changed background that Health Ministers in 1975 mooted the development of model food legislation as a basis for adoption in each jurisdiction. A model bill was developed and endorsed by the 1980 Conference of Ministers for adoption by the States and Territories. By October 1981, model food standards regulations had been prepared to support the model Bill, and drafting of model food hygiene regulations is currently proceeding.

The Bill before honourable members today is based on the model Bill. It is essentially enabling legislation. Following its passage, regulations will be necessary to spell out detailed requirements. It will provide the vehicle for the adoption of model food regulations. It is through such regulations that uniformity between the States can be achieved.

Turning to some of the main features of the Bill, clause 6 vests in the South Australian Health Commission responsibility for the administration of the Act throughout the State. The Commission will be able to draw on the expert advice of a Food Quality Committee to assist it, particularly in the making of regulations. Clause 10 provides for the establishment of the Food Quality Committee, whose 14 members will bring together a wide range of expertise—the Health Commission's responsibility for the legislation is recognised by the appointment of two members, one of whom will chair the committee; the important role of local government is recognised by the appointment of two members; the perspective of the Consumer Affairs and Agriculture portfolios will be brought to the committee by members from each area; scientific and technological expertise will be available on the committee; the particular interests of manufacturers, retailers and employees will be represented; and importantly, the consumer will have a voice through a position set aside specifically for 'a suitable person to represent the interests of consumers'.

Honourable members will be aware that a Food and Drugs Advisory Committee has existed for many years under the Food and Drugs Act. With the splitting up of food and drugs controls into two separate pieces of legislation, the Controlled Substances Act and this Bill, and the creation of an Advisory Committee under each, the Food and Drugs Advisory Committee will be phased out. I take this opportunity to pay a tribute to the work of the committee over many years.

To consider the administration of the Act in more detail, the attention of honourable members is drawn to the overall scheme of the Bill whereby offences are created in three broad areas: first, food quality, as set out in clauses 17 and 18, covering unfit for human consumption, non-compliance with a prescribed standard, and misrepresentation of the nature or quality; secondly, food labelling, as set out in clause 19; and, thirdly, food hygiene, as set out in clauses 20 and 21, covering premises, equipment and vehicles, and food handlers.

The South Australian Health Commission has overall responsibility for the administration and enforcement of the Act throughout the State. The Health Commission will be the central body responsible for the enforcement of standards of food composition, wholesomeness, packaging and labell­ing, and advertising.

Local councils, under clause 26, have responsibility for ensuring proper standards of hygiene within their area, and for ensuring that food sold within their areas is fit for human consumption. Where a council does not properly carry out its duty, the Health Commission is empowered to take the necessary action on those matters. The manner in which councils administer these provisions will be a matter for them to decide. Some councils may wish to do so individually. Others may find it more efficient to join together to establish a controlling authority and share officers between them. The Bill provides the flexibility to accommodate either arrangement.

Returning to the central administration of the legislation, honourable members will note that provision is made for the Metropolitan County Board to be disbanded. The Met­ropolitan County Board had its origins in the early 1900s. It has been the body responsible for policing standards, composition, labelling, sampling, supervising premises preparing food for human consumption, investigating complaints and taking legal action in relation to the twenty-member councils coming within its area.

At the time of the formation of the Metropolitan County Board, the bulk of the State's population lived within its area. However, the growth of population outside its area now means that it no longer directly services the bulk of the population. In addition, some current member councils are anxious to withdraw. Various options for the future of the County Board were considered at length and discussed with the Local Government Association, member councils and the staff of the County Board and the Municipal Officers Association.

The resulting request to the Government was that the Metropolitan County Board be disbanded. Accordingly, the Bill makes the necessary provision. Persons employed by the Board are able to transfer to the Health Commission with their rights preserved. I pay tribute to the Board and its staff for the manner in which it has carried out its role. It is intended to build on to the expertise already existing in the South Australian Health Commission and the specialised knowledge which transferring County Board officers will bring by developing an expanded food surveillance unit within the Health Commission to meet the administrative requirements of the new legislation. The rationalisation of central administration will also be welcomed by industry, particularly in relation to the development and marketing of new products.

Returning to the offences provisions of the legislation, honourable members will note that the Bill provides for substantially increased penalties over the existing legislation. Under existing legislation, penalties are of the order of $200, and up to $1 000 for continuing offences. This Bill upgrades penalties to $2 500 for various offences. The Health Commission and councils may appoint authorised officers to carry out functions under the Act. Authorised officers have powers of entry and inspection. They may stop and detain vehicles, inspect food in premises or vehicles, ask questions of people in the premises or vehicle, take food samples, take photographs and copies of documents and remove any object which may constitute evidence. Anyone hindering an authorised officer or refusing to answer a question to the best of their knowledge is guilty of an offence carrying a penalty of $5 000.

Clause 23 provides the Health Commission with substantial powers with respect to food unfit for human consumption. Where the Commission believes that food is not fit for human consumption, or that food derived from a particular source may not be fit for human consumption, it may prohibit the sale of the food, prohibit or restrict its movement or disposal or require its destruction. If a person does not, within a specified time, comply with a destruction order, the Commission may remove and destroy the food and recover the cost.

Where the Commission believes that a particular area is affected by dangerous contaminants and should not be used for food production, it may prohibit the use of that area for food production. Contravention or non-compliance with an order under clause 23 attracts a penalty, for a first offence, of $5 000 and for a second or subsequent offence, of $10000. Under clause 24, where the Commission has reasonable grounds to suspect that premises or a vehicle contains food unfit for human consumption, and that destruction of the food is necessary or desirable in the public interest, it may specifically authorise an authorised officer to take the necessary action to remove and destroy the food.

Another important provision is clause 25, which empowers the Commission, where it believes there is substantial risk that food sold to the public is unfit for human consumption, to require a manufacturer, importer or wholesale or retail vendor of the food to publish advertisements in a form acceptable to the Commission, warning against that risk. The Commission itself may publish such warnings and recover the cost from the body to which the advertisements relate.

Turning to clause 26 and the duties of councils in relation to hygiene, honourable members will note that councils may prohibit the use of unsanitary premises, vehicles or equipment until they have been cleaned or repaired to the satisfaction of an authorised officer. I now draw honourable members' attention to the regulation-making powers of clause 32. As I have already indicated, the legislation is essentially enabling legislation and will require extensive supporting regulations. The legislation will be the vehicle for adoption of model food regulations. I would mention that, as far as our existing legislation permits, South Australia has already, and is in the process of, adopting various standards of the Model Food Standards regulations. There is, however, still some way to go.

One area to which particular attention will be given is labelling. Today's consumer has a vast range of processed foods from which to choose. He has a legitimate claim to know what is in that food in order that he may make an informed choice. He may, for instance, seek nutritional information in order to formulate, or comply with, a particular dietary plan. He may seek information as to additives in order to avoid a particular adverse reaction. It is not good enough for a consumer to have to work on a 'hit or miss' basis—he has a right to be informed. Various organisations, such as the Consumers' Association and health professional bodies and organisations, support the call for comprehensive food labelling. It is a call which the Government will heed and accord a high priority.

In summary, the Bill before honourable members today provides a modern legislative framework of controls over food production and distribution. The existing legislation and administrative structure have served us well in the past. However, if the protection of the health of the public is to be maintained, legislation and administrative structures must keep pace with technological developments and changing patterns in the industry the legislation seeks to cover.

If the general spirit of co-operation and consensus between health professionals, local government and industry which has prevailed in the drafting and consultative process which this Bill has followed is any guide, I have every confidence that the proposed legislation will serve us well in the future.

Clauses 1 and 2 are formal.

Clause 3 provides for the definition of expressions used in the measure. Of the defi­nitions, the following are significant:

'area' means the area in relation to which a council is constituted;

'the Commission' means the South Australian Health Commission;

'corresponding law' means a law of another State or of a Territory of the Commonwealth declared by proclamation to be a law that corresponds with the measure;

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'food' means any substance (liquid or solid) for or represented to be for human consumption including a gaseous food additive and a substance intended to be introduced into the mouth but not ingested;

'manufacture' in relation to food means process, treat, cook, prepare, pack;

'owner' in relation to any property includes a person entitled to possession of the property;

'prohibited substance or organism' means a substance or organism declared by regulation to be a prohibited substance or organism;

'to sell' includes to offer or expose or possess for sale, to deliver in pursuance of sale, to supply for the purpose of a contract for the performance of a service, to give or offer as a prize in a competition or game of chance or to give away in the course of promotional activities.

Clause 4 provides that the Acts referred to in the first schedule are repealed; the Acts referred to in the second and third schedules are amended as shown in those schedules; and transitional provisions consequent upon the amendment of the Food and Drugs Act, 1908, are set out in the fourth schedule.

Clause 5 provides that the measure binds the Crown. Clause 6 provides that the Commission is responsible, subject to the Act, for the administration and enforcement of the measure throughout the State. The Commission is for that purpose subject to the control and direction of the Minister.

Clause 7 provides that the Commission may by instrument in writing, delegate any of its powers or functions under the measure. The delegation may be absolute or conditional, is revocable at will, and does not derogate from the Commission's power to act. No delegation may be made to a council except with its concurrence.

Clause 8 provides for the appointment by the Commission and councils of authorised officers. A person is not eligible for such appointment unless he holds qualifications approved by the Commission, or was a health surveyor under the Food and Drugs Act, 1908, immediately before the commencement of this Act, and he is an officer of the Commission or of a council (subclause (3)). The Commission shall not appoint an officer of a council unless the council consents (subclause (4)). Authorised officers must carry certificates to be produced on demand (subclause (5)).

Clause 9 provides that the Commission may appoint suitable persons to be analysts. Clause 10 provides for the Food Quality Committee. The committee consists of 14 members including two who are officers or members of the Commission; two members, officers or employees of a council or councils selected by the Minister from a panel of five nominated by the Local Government Association; one nominated by the Minister of Consumer Affairs; one nominated by the Minister of Agriculture; one nutritionist; one toxicologist; one microbiologist; one who has a wide knowledge of and experience in food technology; one to represent the interests of food manufacturers; one to represent the interests of employees of food manufacturers and retailers; one who must represent the interests of consumers; and one analyst (subclause (2)). One of the members of the committee who is an officer or member of the Commission shall be appointed to be Chairman. Subclause (3) provides for the appointment by the Governor of deputies of members of the committee.

Clause 11 provides that members of the committee are appointed for a term not exceeding three years (subclause (1)). A member is eligible for reappointment at the expiration of his term of office. Subclause (2) provides for the removal from office by the Governor of members of the committee on the ground of mental or physical incapacity to carry out satisfactorily the duties of office, dishonourable conduct and neglect of duty. Under subclause (3) a member's office becomes vacant if he dies, his term of office expires, he resigns or he is removed from office by the Governor.

Clause 12 provides that a member of the committee is entitled to such allowances and expenses as the Governor may determine. Clause 13 provides that the Chairman or his deputy presides at any meeting of the committee (subclause (1)). Under subclause (2), in the absence of both the Chairman and his deputy, the members present shall elect one of their number to preside. Seven members constitute a quorum (subclause (3)). A decision carried by a majority of votes is a decision of the committee and, in the event of an equality of votes, the Chairman has a second or casting vote.

Clause 14 provides that an act or proceeding of the committee is not invalid by reason of a vacancy in the membership, or a defect in an appointment. Clause 15 provides that the functions of the committee are to advise the commission on any matter relating to the administration or enforcement of the measure, to consider and report to the commission on proposals for the making of regulations under the measure, and to investigate and report to the commission on any matters referred to the committee for advice.

Clause 16 provides that a person shall not divulge information acquired by reason of his being employed in the administration of the measure except with the consent of the person from whom the information was obtained; in connection with the administration of the measure; to a person employed in the administration of a corresponding law (with the consent of the commission); or for the purpose of legal proceedings.

Clause 17 provides that a person who manufactures food for sale that is unfit for human consumption or that does not comply with a prescribed standard in relation to that food is guilty of an offence. The penalty is $2 500 (sub clause (1)).Under subclause (2) a person who sells such food is also guilty of an offence—penalty $2 500.

Clause 18 provides that a person who misrepresents the nature or quality of food offered by him for sale is guilty of an offence punishable by a fine of $2 500. Under sub clause (2) a person is taken to misrepresent the quality of food if he represents expressly or by implication that the food is food of a particular description and the regulations provide that food offered for sale under that description must comply with prescribed standards and the food offered for sale does not comply with the prescribed standards.

Clause 19 applies by virtue of subclause (1) to food of a kind required by the regulations to be labelled in accordance with requirements laid down by the regulations. Under subclause (2), a person who sells food to which the clause applies that is not labelled in accordance with the regulations is guilty of an offence punishable by a fine of $2 500.

Clause 20 provides that all premises, equipment and vehicles used for the manufacture, transport or storage of food for sale or the sale of food must be kept clean and sanitary at all times. Under subclause (2), where any premises, equipment or vehicle is not kept clean and sanitary as required by subclause (1), the person in charge of the premises, equipment or vehicle is guilty of an offence punishable by a fine of $2 500.

Clause 21 provides that a person who handles food in the course of manufacture transportation or storage for sale, or for the purposes of its sale, and who is suffering from a prescribed disease, contravenes a regulation relating to hygiene or otherwise fails to observe reasonable standards of personal hygiene, is guilty of an offence punishable by a fine of $500 (subclause (1)). Under subclause (2), an employer whose employee commits an offence against subclause (1) in the course of his employment is guilty of an offence punishable by a fine of $2 500.

Clause 22 provides that an authorised officer may, at any reasonable time, enter and inspect premises to which this clause applies (subclause (1)). Under subclause (2), an authorised officer may stop, detain and inspect a vehicle to which this clause applies. Under subclause (3), an authorised officer may, in the course of carrying out an inspection, ask questions of any person in the premises or vehicle, inspect any food found in the premises or vehicle, take any food that he finds in the premises or vehicle, inspect equipment found in the premises or vehicle, remove any object that may constitute evidence of the commission of an offence, and take such photographs or films as he thinks fit.

Under subclause (5), the person in charge of the premises or vehicle the subject of the inspection must provide such labour and equipment and take such steps as are necessary to facilitate the inspection. Under subclause (6), where an authorised officer takes a sample of food for the purpose of analysis he shall, if the sample has not been obtained by purchase, tender an amount representing the retail value of the sample and he shall, subject to the regulations, divide the sample into three approximately equal parts and give one part to the person from whom it was taken, retain one part for examination and analysis, and retain one part for future comparison. Under subclause (7), an object removed by an authorised officer shall, when no longer required for investigation or proceedings in respect of an offence, be returned to the owner.

Subclause (8) provides that a person, who hinders an authorised person in the exercise of his powers under the clause or who, having been asked a question by an authorised officer, does not answer the question to the best of his knowledge, information and belief, or who fails to provide assistance as required under this clause, shall be guilty of an offence punishable by a fine of $5 000. Subclause (9) provides that for the purposes of the clause, 'premises to which this section applies' means premises used for the manufactureorstorage of food for sale or the sale of food, and 'vehicle to which this section applies' means a vehicle used for the transportation of food for sale.

Clause 23 provides that where the Commission is of the opinion that food is not fit for human consumption it may, by order, prohibit the sale of the food, prohibit or restrict the movement or disposal of the food, or require the destruction of the food (subclause (1)). Under subclause (2) where the Commission is of the opinion that food derived from a particular source may not be fit for human consumption it may, by order, prohibit the sale of food derived from that source, prohibit or restrict the movement or disposal of food derived from that source, or require the destruction of food derived from that source.

Under subclause (3) where the Commission is of the opinion that a particular area is affected by dangerous contaminants so that it should not be used for the production of food, the Commission may, by order, prohibit the use of that area for the production of food. Under subclause (4), an order under the clause may be absolute or conditional. Under subclause (5), a person who contravenes an order under the clause is guilty of an offence punishable by a fine of $5 000. Under subclause (6), where a person fails to comply with an order under subclause (1) (c) or (2) (c) within the time specified in the order, the Commission may remove and destroy the food the subject of the order, and recover the cost of the removal and destruction from that person.

Clause 24 provides that where the Commission suspects on reasonable grounds that there is in any premises or vehicle food that is unfit for human consumption and the Commission considers that the destruction of food is necessary or desirable in the public interest, the Commission may authorise an authorised officer to destroy the food. Under subclause (2), an authorised officer, acting in pursuance of such an authorisation, may break into the premises or vehicle to which the authorisation relates, using such force as is necessary, and remove and destroy any food in the premises or vehicle that appears to be unfit for human consumption.

Clause 25 provides that where the Commission is of the opinion that there is a substantial risk that food sold to the public is unfit for human consumption, it may require a manufacturer, importer or wholesale or retail vendor of the food to publish advertisements in a manner and form determined by the Commission, warning against the risk that the food is unfit for human consumption, or it may itself publish such advertisements. A person who fails to comply with a requirement to publish an advertisement is liable to a penalty not exceeding $2 500 (subclause (2)). Under sub­clause (3) the Commission may recover all or part of the cost incurred in publishing an advertisement itself as a debt from the party to whom the advertisement relates.

Clause 26 recognises the division of responsibility for the enforcement of the provisions relating to hygiene as between the Commission and councils. Under subclause (1), it is the duty of each council to take adequate measures to ensure the observance within its area of proper standards of hygiene in relation to the sale of food and the manufacture; transportation, storage and handling of food intended for sale and to ensure that food sold within its area is fit for human consumption. Under subclause (2) it is the duty of the Commission to take adequate measures in relation to those matters within the area of a council that is not properly carrying out its duty under subclause (1), and within that part of the State that is not within a council area.

Subclause (3) provides that before exercising its duty under subclause (2) (a), the Commission must consult the council concerned with a view to establishing the reason for the council's failure to properly carry out its duty. Under subclause (4), a breach of duty under the clause does not give rise to any civil liability. Under subclause (5), in carrying out its duty under the clause a council (or a controlling authority) or the Commission may give such directions as are reasonably necessary to ensure the observance of proper standards of hygiene in relation to the sale of food or the manufacture, transportation, storage or handling of food intended for sale and that food intended for sale is fit for human consumption. Under subclause (6), such a direction may prohibit the use of an unclean or insanitary premises, vehicle or equipment for the manufacture, transportation, storage or handling of food for sale until the premises, vehicle or equipment has been cleared to the satisfaction of an authorised officer nominated in the direction. Under subclause (7) a person who contravenes such a direction is liable to a penalty of $2500. Under subclause (8), a person against whom a direction is made by a council or a controlling authority may appeal against it to the Commission. On hearing an appeal, the Commission may confirm, vary or revoke the direction (subclause (9)).

Clause 27 provides in subclause (1) that the offences constituted by the measure are summary offences. Under subclause (2), where a body corporate commits an offence, each director is guilty of an offence and liable to the penalty prescribed for the principal offence unless he could not by the exercise of reasonable diligence have prevented its commission.

Clause 28 provides a defence to prosecutions under the measure where the defendant proves that the circumstances alleged to constitute the offence arose in consequence of the act or commission of another (not being an agent or employee of the defendant) and that he could not by the exercise of reasonable diligence have prevented the occurrence of those circumstances.

Clause 29 provides in subclause (1) that in proceedings for an offence, a document apparently signed by an analyst stating that he had carried out, or caused to be carried out, an analysis of specified food and stating the results of the analysis, shall be accepted as evidence of the facts stated in the certificate. Under subclause (2), an allegation in proceedings for an offence that food is or was unfit for human consumption shall be deemed to have been conclusively proved if it is established that the food is or was contaminated by a prohibited substance or organism or contained the flesh of a warm-blooded animal that died otherwise than by slaughter.

Clause 30 provides that the court may order a person convicted of an offence against the measure to pay any costs incurred in relation to the analysis of food to which the proceedings relate. Clause 31 provides that service of a notice, order or other document under the measure may be effected personally or by post. Clause 32 provides for the making of regulations. Regulations may—

1. impose requirements relating to premises used for manufacture or storage for sale or for the sale of food and with regard to the maintenance and cleansing of such premises;
2. impose requirements relating to equipment used for the manufacture for storage for sale or for the sale of food and with regard to the maintenance and cleansing of such equipment;
3. impose requirements relating to vehicles used for manufacture or storage for sale or for the sale of food and with regard to the maintenance and cleansing of such vehicles;
4. impose requirements relating to people who handle food intended for sale;
5. prescribe standards with which food must comply;
6. impose requirements relating to packaging and labelling of food;
7. require persons selling specified food to provide specified information to purchasers;
8. regulate, restrict or prohibit the use of specified preservatives, colouring materials and other additives;
9. provide for the regular analysis, examination or testing of food by manufacturers;
10. provide for the keeping of records by importers or manufacturers of food and for inspection of such records;
11. regulate the use of specified methods of treating food;
12. regulate the form and content of advertisements for food;
13. regulate automatic food vending machines;
14. prescribe and provide for payment of fees under the measure;
15. require any specified class of persons, premises, equipment or vehicles to be licensed for specified purposes;
16. exempt persons of a specified class, or food of a specified class from the operation of specified provisions of the measure;
17. impose penalties not exceeding one thousand dollars for breach of a regulation.

Under subclause (3), a regulation may be general or limited in application and may incorporate or operate by reference to a standard or code of practice of any authority or body as in force at a particular time or as in force from time to time and with or without modification to the standard or code.

The first schedule provides for the repeal of the Bakehouses Registration Act, 1945, and the Bread Act, 1954. The second schedule contains consequential amendments to the Food and Drugs Act, 1908. The third schedule contains consequential amendments to the Health Act, 1935. The fourth schedule contains transitional provisions consequent upon the amendments to the Food and Drugs Act, 1908.

The Hon. J.C. BURDETT secured the adjournment of the debate.