

# Food Legislation Amendment Act 2004

As at 5 April 2004

## Long Title

An Act to repeal the *Food Production (Safety) Act 1998*, to amend the *Food Act 2003* to establish the NSW Food Authority and to include provision for the regulation of certain matters relating to primary food production, to amend various Acts and regulations consequentially, and for other purposes.

## 1 Name of Act

This Act is the *Food Legislation Amendment Act 2004*.

## 2 Commencement

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

## 3 Amendment of Food Act 2003 No 43

The *Food Act 2003* is amended as set out in Schedule 1.

## 4 Amendment of other Acts and regulations

Each Act and regulation specified in Schedule 2 is amended as set out in that Schedule.

## 5 Repeal of Food Production (Safety) Act 1998 No 128

(1) The *Food Production (Safety) Act 1998* is repealed.

(2) Different days may be appointed under section 2 for the commencement of subsection

(1) for the purpose of repealing different provisions of the *Food Production (Safety) Act 1998* on different days.

## Schedule 1 Amendment of Food Act 2003

(Section 3)

### [1] The whole Act

Omit "regulatory authority" wherever occurring. Insert instead "Food Authority".

### [2] Section 4 Definitions

Omit the definitions of **food safety auditor** and **regulatory authority** from section 4 (1).

### [3] Section 4 (1)

Insert in alphabetical order:

**Director-General** means the person holding office as the Director-General of the NSW Food Authority under Part 2.2 of the *Public Sector Employment and Management Act 2002*.

**Food Authority** means the NSW Food Authority constituted under Part 9.

**food safety auditor** means a member of staff of the Food Authority authorised under Division 1 of Part 7, or another person approved under that Division, to be a food safety auditor.

**food safety scheme** means a food safety scheme prescribed by the regulations in accordance with Part 8.

**New South Wales Dairy Industry Conference** means the New South Wales Dairy Industry Conference constituted by the *Dairy Industry Act 2000* .

**private corporation** means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

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

**[4] Section 6 Meaning of "food business"**

Omit "(other than a business, enterprise or activity that is primary food production)".

**[5] Section 10 Application of Act to primary food production**

Omit the section.

**[6] Section 21 Compliance with Food Standards Code**

Insert after section 21 (4) (and before the penalty provision for the section):

(5) This section does not require compliance with a provision of the Food Standards Code in relation to the conduct of a food business that is primary food production unless a food safety scheme provides that the provision applies to the food business or to a class of food businesses that includes the food business concerned.

**[7] Section 24 Defence relating to publication of advertisements**

Omit "relevant authority" from section 24 (2) (b). Insert instead "Food Authority".

**[8] Section 57 Unclean or unfit premises, vehicles or equipment**

Insert "with which the food business is required to comply" after "Standards" in section 57 (b).

**[9] Section 57 (d)**

Omit the paragraph. Insert instead:

(d) any provision of the Food Standards Code with which a food business is required to comply is being contravened in relation to the handling of food intended for sale on any premises, or in any food transport vehicle, used by the food business in connection with the handling of food intended for sale,

**[10] Section 60 Prohibition order**

Omit "If a" from section 60 (1). Insert instead "If the".

**[11] Section 60 (4)**

Omit "regulatory authority's". Insert instead "Food Authority's".

**[12] Section 66A**

Insert before section 67:

66A Application of Division This Division applies only to the taking of samples by an authorised officer in the exercise of powers under Part 4.

**[13] Section 73 Compliance with Food Standards Code**

Omit "A person". Insert instead "Except as provided by the regulations, a person".

**[14] Section 87 Approval of food safety auditors**

Omit "approve a natural person" from section 87 (1). Insert instead "authorise a person who is a member of staff of the Food Authority, or approve any other natural person,".

**[15] Section 92 Food safety programs and auditing requirements**

Omit the section.

**[16] Part 8, heading**

Omit the heading. Insert instead:

Part 8Â Regulation of food businesses

Regulation of food businesses

**[17] Section 100 Notification of conduct of food businesses**

Omit "1,200 penalty units". Insert instead "2,500 penalty units".

**[18] Section 100 (2)**

Insert at the end of section 100:

(2) Subsection (1) does not require the giving of a notice in relation to the conduct of a food business that is primary food production unless a food safety scheme provides that subsection (1) applies to the food business or to a class of food businesses that includes the food business concerned.

**[19] Section 101 Exemption in relation to notification of information**

Omit "registered" from section 101 (b). Insert instead "the subject of a licence or some other form of authorisation".

**[20] Sections 102-106**

Omit sections 102-107. Insert instead:

102 Regulations relating to establishment of food safety schemes

(1) The regulations may prescribe food safety schemes in relation to a type, class or description of food, food business or activity carried out in respect of food.

(2) In particular, the regulations prescribing a food safety scheme may make provision for or with respect to the following:

- (a) regulating the handling or sale of food,
- (b) prohibiting activities in relation to the handling or sale of food,
- (c) without limiting the generality of paragraphs (a) and (b), regulating the temperatures at which food must be kept,
- (d) the classification, marking or other identification of food,
- (e) requiring the licensing of activities in relation to the handling or sale of food,
- (f) requiring the licensing of any person, business, premises, vehicle or equipment in relation to the handling or sale of food,
- (g) the imposition of conditions on licences,
- (h) the suspension or cancellation of licences,
- (i) appeals from, or reviews of, decisions made under the regulations in relation to licences or applications for the granting of licences,
- (j) requiring the preparation, implementation, maintenance and monitoring of food safety programs for food businesses to ensure that the provisions of this Act and the regulations are complied with,
- (k) the certification and auditing of programs referred to in paragraph (j),
- (l) the manner of taking samples for the purposes of a food safety scheme,
- (m) the methods of analysis to be observed when carrying out analyses for the purposes of a food safety scheme,
- (n) establishing committees or other bodies with specified functions relating to the monitoring of a food safety scheme at a local level and the making of recommendations on the operation of a food safety scheme at that local level,

- (o) providing for the funding of those committees or bodies by the Food Authority and the accounting by those committees or bodies of any money received from the Food Authority,
- (p) the assessment of risks associated with the handling or sale of different types, classes or descriptions of food or the carrying out of different activities relating to food as part of the same business operation,
- (q) requiring the preparation of plans in the event of the need for a recall of any food,
- (r) requiring persons involved in the handling or sale of food to possess specified qualifications, skills, knowledge or expertise,
- (s) designating the persons who are to be responsible for compliance with the obligations imposed by the regulations,
- (t) requiring the giving of information, returns or notices to an enforcement agency,
- (u) requiring the collection of licence fees and charges on behalf of an enforcement agency and the remission of any such fees or charges to the enforcement agency,
- (v) the deduction of licence fees and other charges owed to an enforcement agency from amounts otherwise payable to the person liable for the fees or charges,
- (w) the liability of persons with respect to amounts for licence fees or other charges collected on behalf of an enforcement agency,
- (x) authorising the imposition of a levy under section 117C and providing for the amount of the levy, or the basis on which it is to be calculated, and for its recovery,
- (y) establishing a method of consultation with the relevant industry or sector of industry for the purposes of the ongoing review of the operation of the food safety scheme,
- (z) establishing consultative bodies for the purposes of paragraph (y) and providing for the membership and procedure of those bodies (including providing, where appropriate, for consumer representation on those bodies),
- (aa) enabling an enforcement agency to undertake functions relating to the education and training of persons in safe food practices in respect of the type, class or description of food, food business or activity to which the food safety scheme relates,
- (ab) without limiting paragraph (d), requiring the branding of sheep meat to identify whether it is lamb or hogget, regardless of whether the purpose of the requirement relates to the safety of meat for human consumption.

(3) Without limiting subsection (2) (g), the regulations may permit the imposition of conditions of the following kinds on licences issued under a food safety scheme:

- (a) a condition prohibiting the passing on of costs related to licences, or other fees charged under this Act, to another person subject to licence or other fees under this Act,
- (b) a condition requiring a person licensed under this Act to collect, on behalf of the relevant enforcement agency, licence fees or other charges payable by another person under this Act and to remit those fees or charges to the enforcement agency.

(4) For the purpose of preventing risks to the safety of food for human consumption, the regulations establishing a food safety scheme may extend to anything that is intended as food for animal consumption, or the carrying on of a

business or any activity involving the handling or sale of anything that is intended as food for animal consumption.

(5) It is to be presumed, in the absence of evidence to the contrary, that a regulation relating to anything that is intended as food for animal consumption was made for the purpose referred to in subsection (4).

(6) The regulations may provide for an application to be made to the Administrative Decisions Tribunal by a person for a review of a decision made under the regulations in relation to a licence or an application for the granting of a licence.

(7) A regulation referred to in subsection (6) may be made only with the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

(8) A regulation establishing a food safety scheme in relation to a type, class or description of food, food business or activity carried out in respect of food does not take effect unless:

(a) the last day for giving notice of motion for a resolution to disallow the regulation in either House of Parliament has passed and no notice has been given in either House, or

(b) if notice of motion for a resolution to disallow the regulation has been given in either House of Parliament, the notice has lapsed or has been withdrawn or the motion has lapsed, been withdrawn or been defeated.

(9) If the circumstances described in subsection (8) (a) or (b) apply to a regulation referred to in that subsection, the day on which the regulation takes effect is:

(a) the day after the day referred to in subsection (8) (a) or the day after the lapsing, withdrawal or defeat referred to in subsection (8) (b), as the case requires, or

(b) if a later day is specified in the regulation for that purpose, the later day so specified.

(10) Sections 39 (1) (b) and (2A) and 41 (2), (4), (5) and (7) of the *Interpretation Act 1987* do not apply to a regulation referred to in subsection (8).

### 103 Consultation to be undertaken on regulations establishing food safety schemes

(1) The Minister is to ensure that consultation with the relevant industry or sector of industry is undertaken before the making of any regulation that establishes a food safety scheme.

(2) The provisions of section 5 (Regulatory impact statements) of the *Subordinate Legislation Act 1989* apply to a regulation that establishes a food safety scheme in the same way as they apply to a principal statutory rule (within the meaning of that Act).

(3) In addition to any matters that are required to be included in a regulatory impact statement under the *Subordinate Legislation Act 1989*, the following matters are to be included in such a statement prepared in relation to a proposed regulation establishing a food safety scheme:

(a) an assessment of food safety risks in the industry or sector of industry to which the food safety scheme relates in accordance with national and international standards for risk assessment,

(b) a statement of whether the food safety scheme is based on national standards or supplements national standards, and for those standards imposed by the food safety scheme that are not national standards, an explanation of why those standards are required,

(c) an explanation as to whether the food safety scheme is performance-based or prescriptive, or a combination of both, and the rationale for the approach adopted taking into account the assessed food safety risks in the

relevant industry or sector of industry and the capacity of the people involved in that industry or sector of industry to deal adequately with those risks,

(d) an explanation of the scope of the food safety scheme, including the persons who have responsibilities under the scheme,

(e) an explanation of any agreements involving the Food Authority and other government agencies as to the regulation of the food, food business or activity carried out in respect of food to which the food safety scheme relates,

(f) if a food safety scheme includes a licensing scheme, an explanation of why the licensing scheme is necessary to ensure the safety of food,

(g) an assessment of any quality assurance scheme operating in the industry or sector of industry to which the food safety scheme relates, including an assessment of the extent to which the scheme satisfies the requirements of any relevant national standard.

(4) Consultation is taken to have been undertaken on a food safety scheme for the purposes of subsection (1) if notice of the proposed regulation establishing the food safety scheme has been published in accordance with section 5 (2) (a) of the *Subordinate Legislation Act 1989*, consultation on the regulation has taken place in accordance with section 5 (2) (b) of that Act and comments and submissions received have been appropriately considered in accordance with section 5 (2) (c) of that Act.

#### 104 Offences relating to food safety schemes

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

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

(2) A person who carries on any food business or activity for which a licence is required by the regulations is guilty of an offence unless the person is the holder of such a licence.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

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

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

(4) The proprietor of a food business must ensure that any requirement imposed by a food safety scheme in relation to the preparation, implementation, maintenance, monitoring, certification or auditing of a food safety program for the food business is complied with.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

(5) The proprietor of a food business must ensure that any food safety program required to be prepared by a food safety scheme in relation to the food business is audited at least as frequently as is determined under section 93 (1), or as redetermined under section 96, in relation to the food business.

Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.

#### 105 Industry consultation

(1) The Food Authority is to ensure that consultation on the following matters is undertaken with the relevant industry or sector of industry to which a food safety scheme relates and that such consultation is undertaken in accordance with the provisions of the food safety scheme:

- (a) the continuing operation of a food safety scheme,
  - (b) any proposed amendment of a food safety scheme.
- (2) The Minister may confer additional functions on any consultative body established by a food safety scheme relating to any or all of the following:
- (a) the provision of advice to the Minister on matters relating to the relevant sector of industry the subject of the scheme,
  - (b) assisting in achieving industry support for the implementation of the scheme,
  - (c) assisting in promoting the safe handling of the types of food covered by the scheme.

106 List of food businesses to be maintained

- (1) Each enforcement agency is to prepare and maintain a list of:
- (a) each food business notified to it under section 100, and
  - (b) each food business the subject of a licence granted by it under a food safety scheme.
- (2) The list is to be revised at least annually.
- (3) The list is to be made available for public inspection at an office of the relevant enforcement agency during ordinary business hours (whether in document or electronic form) or on the Internet.
- (4) The Food Authority may charge a fee, determined by the Authority on a cost-recovery basis, for any such inspection of the list (other than inspection on the Internet).
- (5) The Food Authority is to make copies of, or extracts from, the list available on request on payment of a reasonable copying fee determined by the Authority.

**[21] Part 9, Division 1**

Omit the Division. Insert instead:

**Division 1 - NSW Food Authority**

107 Constitution of NSW Food Authority

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

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

108 Functions of Food Authority

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

- (e) to undertake or facilitate the education and training of persons to enable them to meet the requirements of the Food Standards Code and food safety schemes,
- (f) to provide advice, information, community education and assistance in relation to matters connected with food safety or other interests of consumers in food,
- (g) to carry out such research as is necessary in order to perform its other functions.

109 Ministerial control of Food Authority The Food Authority is, in the exercise of its functions, subject to the control and direction of the Minister, except in relation to the following:

- (a) the contents of any advice, report or recommendation given to the Minister,
- (b) decisions whether to grant, suspend or cancel a licence held by a particular person under the regulations,
- (c) decisions whether to institute criminal proceedings in a particular case.

109A Staff of Food Authority

- (1) Such staff as may be necessary to enable the Food Authority to exercise its functions are to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Food Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department or public or local authority.
- (3) For the purposes of this Act, a person employed under subsection (1) or whose services are made use of under this section is a member of staff of the Food Authority.

109B Use of consultants and contractors The Food Authority may engage such consultants and contractors as may be necessary or convenient to exercise any of the functions of the Food Authority.

109C Private corporations

- (1) The Food Authority may, subject to subsection (2):
  - (a) form, or participate in the formation of, private corporations, and
  - (b) acquire interests in private corporations, and
  - (c) sell or otherwise dispose of interests in private corporations,whether or not the activities or proposed activities of any such private corporation are related to food safety.
- (2) The Food Authority must not, without the approval of the Minister:
  - (a) form, or participate in the formation of, a private subsidiary corporation, or
  - (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation, or
  - (c) sell or otherwise dispose of any interest in a private subsidiary corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.
- (3) The New South Wales Dairy Industry Conference also has the functions conferred on the Food Authority by this section. Those functions may be exercised jointly with the Food Authority.
- (4) A private subsidiary corporation is not, and does not represent, the Crown.

109D Funding of private subsidiary corporations

- (1) The Food Authority may, out of its funds:
  - (a) pay for the formation of a private corporation, or for other costs incurred, under section 109C, and
  - (b) with the approval of the Minister, make grants of money to a private

subsidiary corporation for use in the exercise of its functions.

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

#### 109E Delegation

(1) The Food Authority may delegate to:

(a) a member of staff of the Food Authority, or

(b) an authorised officer, or

(c) a private subsidiary corporation, or

(d) the holder of an office prescribed by the regulations,

any function of the Food Authority under this Act that is not specified in subsection (2).

(2) The following functions of the Food Authority cannot be delegated:

(a) the power of delegation conferred by this section,

(b) any function under Part 3 (Emergency powers),

(c) any function under section 111 (Conditions on exercise of functions by enforcement agencies).

(3) A delegate may sub-delegate to a person referred to in subsection (1) any function delegated by the Food Authority if the delegate is authorised in writing to do so by the Food Authority.

(4) A function must not be delegated under this section to an enforcement agency without the consent in writing of the enforcement agency.

### [22] Part 9, Division 5

Insert after Division 4:

## Division 5 - Finance

#### 117A Food Authority Fund

(1) There is to be established in the Special Deposits Account a Food Authority Fund (the **Fund**) into which is to be paid:

(a) all money advanced to the Food Authority by the Treasurer or appropriated by Parliament for the purposes of the Food Authority, and

(b) all money directed or authorised to be paid into the Fund by or under this or any other Act, and

(c) the proceeds of the investment of money in the Fund, and

(d) all money received by the Food Authority under this Act from any other source.

(2) The Fund is to be applied for the purpose of enabling the Food Authority to exercise its functions under this Act.

(3) All expenditure incurred by the Food Authority under this Act is to be paid from the Fund.

(4) A separate account is to be maintained in the Fund in relation to each levy under section 117C imposed in respect of a particular industry or sector of industry.

#### 117B Investment The Food Authority may invest money held by it:

(a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or

(b) if that Act does not confer power on the Food Authority to invest the money, in any other manner approved by the Minister with the concurrence of the Treasurer.

#### 117C Industry levies

(1) The Food Authority may levy a contribution towards the cost of the administration of this Act on any person, or member of a class of persons, who is subject to the requirements of a food safety scheme, but only if authorised to do

so by the provisions of a food safety scheme.

(2) A levy under this section is to be of an amount, or calculated on a basis, specified in the relevant food safety scheme.

(3) The Food Authority is to ensure, as far as is reasonably practicable, that money received from levies imposed under this section in relation to an industry or sector of industry that is subject to a food safety scheme is not used to cross-subsidise the expenses of the Food Authority in carrying out its functions in relation to any other industry or sector of industry that is subject to a food safety scheme.

(4) Nothing in this section prevents a cost of a kind referred to in this section from being covered by a licence fee charged under a food safety scheme.

**[23] Section 134 Protection from personal liability**

Insert after section 134 (2) (f):

(g) any member of a body that is consulted for the purposes of section 103 or 105.

**[24] Section 136A**

Insert after section 136:

136A Certain information may be provided to and by Food Authority Despite any Act or law:

(a) information may be provided by the Food Authority to a member of staff of the Department of Health or of a public health organisation (within the meaning of the *Health Services Act 1997*) if the Food Authority considers the provision of the information is necessary to enable the member of staff to exercise functions under the *Public Health Act 1991*, and

(b) information may be provided by a member of staff of the Department of Health or of a public health organisation (within the meaning of the *Health Services Act 1997*) to the Food Authority if the member of staff considers the provision of the information is necessary to enable the Food Authority to exercise its functions under this Act.

**[25] Section 139 Regulations**

Omit section 139 (1) (a) and (b). Insert instead:

(a) fees or charges for the purposes of a food safety scheme, including (but not limited to) licence fees and fees or charges for the provision of services in relation to the food safety scheme,

(b) fees or charges for the purposes of this Act, including (but not limited to) fees or charges for the provision of information, or for the carrying out of any inspection or analysis for the purposes of this Act or any audit of a program relating to food safety implemented in accordance with a food safety scheme (whether or not the inspection, analysis or audit is requested or agreed to), or in connection with the notification of the conduct of a food business,

**[26] Section 139 (2A) and (2B)**

Insert after section 139 (2):

(2A) A regulation for or with respect to licence fees or other fees or charges charged for the purposes of a food safety scheme may enable the Food Authority to determine a licence fee or other fee or charge or the basis on which a licence fee or other fee or charge is to be determined.

(2B) Without limiting subsections (1) (a) and (b) and (2A), a fee or charge for the purposes of a food safety scheme may cover the following matters:

(a) the costs of the Food Authority in administering the food safety scheme and other related provisions of this Act,

(b) the costs of the processing of applications for licences and for the grant or renewal of licences,

(c) other costs of providing services in relation to the food safety scheme (whether

or not the provision of the service is requested or agreed to).

**[27] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Food Legislation Amendment Act 2004*

**[28] Schedule 2, Part 3**

Insert after Part 2:

## **Part 3 - Provisions consequent on enactment of Food Legislation Amendment Act 2004**

6 Definitions In this Part, **former Act** means the *Food Production (Safety) Act 1998* .

7 Food Authority The Food Authority is a continuation of, and the same legal entity as, Safe Food Production NSW constituted under section 8 of the former Act.

8 Safe Food Production Fund The Fund established under section 55 of the former Act is taken to be the Fund required to be established under section 117A of this Act.

9 Safe Food Production Advisory Committee

(1) The Safe Food Production Advisory Committee established under the former Act is dissolved.

(2) The members of the Safe Food Production Advisory Committee holding office immediately before the commencement of this clause:

(a) cease to hold office as such on that commencement, and

(b) are not entitled to any compensation for ceasing to hold office because of the operation of this clause.

10 Chief Executive Officer of Safe Food The person holding office as the Chief Executive Officer of Safe Food Production NSW immediately before the commencement of this clause:

(a) ceases to hold that office on that commencement, and

(b) is not entitled to any compensation for ceasing to hold that office because of the operation of this clause, and

(c) is taken to have been appointed to the office of the Director-General of the NSW Food Authority on the same terms and conditions specified in the person's contract of employment as Chief Executive Officer of Safe Food Production NSW and for the remainder of the person's term of office as Chief Executive Officer, and

(d) despite paragraph (c), may be removed from office in accordance with the *Public Sector Employment and Management Act 2002* .

11 Transfer of certain staff of Department of Health

(1) The Minister may direct, by order in writing, that any specified members of staff of the Department of Health be transferred to the Food Authority.

(2) An order may be made under subclause (1) only with the concurrence of the Minister for Health.

(3) Each person transferred under subclause (1) becomes a member of staff of the Food Authority and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to the person as a member of staff of the Department of Health.

(4) An order may only be made under this clause within the period of 2 years after the commencement of this clause.

12 Transfer of certain staff of area health services

(1) The Minister may direct, by one or more orders in writing, that any specified members of staff of an area health service (within the meaning of the *Health Services Act 1997* ) be transferred to the Food Authority.

(2) An order may be made under subclause (1) only with the concurrence of the Minister for Health.

(3) Each person transferred under subclause (1) becomes a member of staff of the Food Authority and continues (until other provision is duly made) to be employed in accordance with arrangements:

(a) agreed to by the Department of Health, the Public Employment Office, the Public Service Association and the Health Services Union, and

(b) set out in the order made under subclause (1) transferring the person.

(4) An order may only be made under this clause within the period of 2 years after the commencement of this clause.

13 **Authorised officers** Despite clause 3 of this Schedule, a person taken to be appointed as an authorised officer by operation of that clause because the person was appointed as an inspector under the *Food Act 1989* by the Director-General of the Department of Health, ceases to hold the office of authorised officer on the commencement of this clause.

14 **Orders and improvement notices** An order made under Division 3 of Part 5 of the former Act, or an improvement notice or prohibition order made under Division 4 of that Part, and in force immediately before the commencement of this clause continues to have effect, and may be enforced, as if those provisions of that Act had not been repealed.

15 **Regulations**

(1) A regulation under the former Act that was in force immediately before the repeal of a provision of the former Act under which the regulation was made is taken to have been made under this Act and may be amended or repealed accordingly.

(2) For the purposes of the *Subordinate Legislation Act 1989*, a regulation referred to in subclause (1) is taken to have been made on the commencement of this subclause.

(3) Until the commencement of sections 93 and 96, a food safety scheme may make provision in relation to the preparation, implementation, maintenance, monitoring, certification and auditing of food safety programs that is inconsistent with those sections.

16 **Orders of Minister in relation to assets of former authority**

(1) The Minister may give the Food Authority a direction, in writing, that specified assets of a former authority transferred to the Food Authority by the operation of clause 4 of Schedule 5 to the former Act are to be used for specified purposes only.

(2) Before giving a direction under subclause (1), the Minister must consult with:

(a) the New South Wales Dairy Industry Conference, if the former authority was the New South Wales Dairy Corporation, or

(b) the consultative body established under section 102 (2) (z) for the meat industry, if the former authority was the New South Wales Meat Industry Authority.

(3) In this clause, **former authority** means:

(a) the New South Wales Dairy Corporation dissolved under clause 3 (1) of Schedule 5 to the former Act, and

(b) the New South Wales Meat Industry Authority dissolved under clause 3 (2) of Schedule 5 to the former Act.

17 **Private and subsidiary corporations**

(1) A private corporation established, or an interest in a private corporation acquired, under section 15A of the former Act is taken to have been established or acquired by the Food Authority under section 109C of this Act.

(2) An approval given under section 15B (2) of the former Act, and in force

immediately before the repeal of that provision, is taken to have been given to the Food Authority under section 109D (2) of this Act.

(3) A delegation in force under section 15C of the former Act immediately before the repeal of that provision is taken to have been given by the Food Authority under section 109E of this Act and continues to have effect as if it had been given under this Act.

(4) Subclause (3) applies only to the extent to which a delegation relates to a function that is of the same kind as a function that the Food Authority has under the *Dairy Industry Act 2000* .

## **Schedule 2 Amendment of other Acts and regulations**

(Section 4)

### **2.1 - Agricultural Tenancies Act 1990 No 64**

#### **Schedule 1 Improvements that a tenant may make as of right**

Omit " *Food Production (Safety) Act 1998* " from item 10. Insert instead " *Food Act 2003* ".

### **2.2 - Dairy Industry Act 2000 No 54**

#### **[1] Long title**

Omit "Safe Food Production NSW". Insert instead "the NSW Food Authority".

#### **[2] Section 3 Definitions**

Omit the definitions of **dairy product** , **milk** and **Safe Food** .

#### **[3] Section 3**

Insert in alphabetical order:

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

(a) milk is used, or

(b) any substance produced from milk is used.

**Food Authority** means the NSW Food Authority constituted by the *Food Act 2003* .

**milk** means the mammary secretion of a milking animal obtained from one or more milkings and intended for human consumption as a liquid or for further processing, but does not include colostrum.

#### **[4] Sections 5 (2), 6 (2), 7 (1) (d) and (2), 11 (2), 12 (5), 13 (1) and (4), 14 (5), 16, 17, 20 (1) and (3), 21, 22 and 23 (2) (b)**

Omit "Safe Food" wherever occurring. Insert instead "the Food Authority".

#### **[5] Sections 5 (2) (c) and 14 (5)**

Omit " *Food Production (Safety) Act 1998* " wherever occurring. Insert instead " *Food Act 2003* ".

#### **[6] Section 6 (2) (b)**

Omit "pursuant to section 10 of the *Food Production (Safety) Act 1998* ". Insert instead "in accordance with section 109 of the *Food Act 2003* ".

#### **[7] Sections 10 (1), 11 (1), 12 (1) and (2)**

Omit "Safe Food" wherever occurring. Insert instead "The Food Authority".

**[8] Part 3, heading**

Omit "Safe Food". Insert instead "Food Authority".

**[9] Sections 12 (4) and 15**

Omit "Safe Food" wherever firstly occurring. Insert instead "The Food Authority".

**[10] Sections 12 (4) and 15**

Omit "Safe Food" wherever secondly occurring. Insert instead "the Food Authority".

**[11] Section 15 Funding of operations of Food Authority**

Omit " *Food Production (Safety) Act 1998* " where secondly occurring. Insert instead " *Food Act 2003* ".

**[12] Sections 20 (1) and 21**

Omit "Chief Executive Officer" wherever occurring. Insert instead "Director-General of the Authority".

**[13] Section 20 (3)**

Omit "Chief Executive Officer" wherever occurring. Insert instead "Director-General".

**[14] Section 22**

Omit "Chief Executive Officer". Insert instead "Director-General of the Food Authority".

**[15] Schedule 2 Savings and transitional provisions**

Omit clauses 11 and 12.

## **2.3 - Fines Act 1996 No 99**

**Schedule 1 Statutory provisions under which penalty notices issued**

Omit " *Food Production (Safety) Act 1998* , section 62". Insert instead " *Food Act 2003* , section 120".

## **2.4 - Fisheries Management (General) Regulation 2002**

**Clauses 286 (e), 287 (2) (g) and 288 (e)**

Omit "the *Food Production (Safety) Act 1998* )" wherever occurring. Insert instead "that Act".

## **2.5 - Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**[1] Schedule 2 Search warrants under other Acts**

Omit " *Food Production (Safety) Act 1998* , section 25".

**[2] Schedule 4 Amendment of other Acts and instrument**

Omit Schedule 4.39.

## **2.6 - Marketing of Primary Products Act 1983 No 176**

**Section 135 Functions of boards etc not affected**

Omit section 135 (2).

## **2.7 - Meat Industry Act 1978 No 54**

### **[1] Section 3**

Insert after section 2:

3 Definition In this Act, the **Food Authority** means the NSW Food Authority constituted by the *Food Act 2003* .

### **[2] Sections 4-7**

Omit the sections.

### **[3] Part 4, heading**

Omit the heading.

### **[4] Part 5 Meat Industry Consultative Council**

Omit the Part.

### **[5] Sections 59A (1), (3), (4) and (5), 59C (1), (3), (4), (5) and (6), 59D (1) and (2), 59E (1), 59F (1), (3) and (8), 59H (2), 59I (1) and (3), 59J (2) (b), 59K (1) and (2), 59L (1) and (3), 59N and 66**

Omit "Safe Food" wherever occurring. Insert instead "the Food Authority".

### **[6] Sections 59J (1), 59L (2), 63 and 67**

Omit "Safe Food" wherever firstly occurring. Insert instead "The Food Authority".

### **[7] Sections 59J (1), 59L (2) and 67**

Omit "Safe Food" wherever secondly occurring. Insert instead "the Food Authority".

### **[8] Section 67 Funding of operations of Food Authority**

Omit "*Food Production (Safety) Act 1998*". Insert instead "*Food Act 2003*".

### **[9] Section 80 Repeals**

Omit the section.

### **[10] Schedule 1 Repeals**

Omit the Schedule.

### **[11] Schedule 2 Constitution and procedure of Meat Industry Consultative Council**

Omit the Schedule.

### **[12] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1A (1):

*Food Legislation Amendment Act 2004*

### **[13] Schedule 6, clauses 1-8**

Omit the clauses.

## **2.8 - National Parks and Wildlife Act 1974 No 80**

### **[1] Section 5 Definitions**

Insert in alphabetical order in section 5 (1):

**game animal** means any of the following animals that is not husbanded in the manner of a farmed animal and is killed in the field:

- (a) any goat, kid, swine, deer, rabbit, hare, camel, donkey, horse or bird,
- (b) any fauna permitted to be harmed for the purposes of sale in accordance with a licence under this Act.

**[2] Sections 104 (1A) and 154 (d1)**

Omit "(within the meaning of the *Meat Industry Act 1978* )" wherever occurring.

## **2.9 - Public Finance and Audit Act 1983 No 152**

**[1] Schedule 2 Statutory bodies**

Insert "NSW Food Authority" in alphabetical order.

**[2] Schedule 2**

Omit "Safe Food Production NSW".

## **2.10 - Public Sector Employment and Management Act 2002 No 43**

**Schedule 1 Departments**

Omit:

Food Production NSW                      Executive Officer of Safe Food Production NSW

Insert in appropriate order:

Food Authority                      Director-General of the Authority

## **2.11 - Search Warrants Act 1985 No 37**

**Section 10 Definitions**

Omit "section 25 of the *Food Production (Safety) Act 1998* ," from the definition of **search warrant** .

## **2.12 - Stock Diseases (General) Regulation 1997**

**[1] Clause 10 Notification of suspected tuberculosis**

Omit clause 10 (2) (a). Insert instead:

- (a) a person engaged in inspecting any stock or carcass for the purposes of the *Food Act 2003* , and

**[2] Clauses 16G (4) and 19 (5)**

Omit "an inspector under the *Meat Industry Act 1978* " wherever occurring. Insert instead "an authorised officer under the *Food Act 2003* ".

**Historical notes**

Table of Acts *Food Legislation Amendment Act 2004 No 16* . Second reading speech made: Legislative Assembly, 27.2.2004; Legislative Council, 10.3.2004. Assented to 24.3.2004. Date of commencement, 5.4.2004, sec 2 and GG No 69 of 2.4.2004, p 1795.