

Food Bill (No 2)

EXPLANATORY NOTES

The object of this Bill is to enact in Victoria food legislation based on model food legislation drafted by a joint Commonwealth/State/Territory Working Party.

In particular, the Bill will enable Victoria to adopt model food regulations and model food hygiene regulations for the purpose of establishing complementary legislation on a nation-wide basis dealing with food standards, and the labelling and packaging of food.

CLAUSE NOTES

PART I.—PRELIMINARY

Clause 1 is the usual citation clause.

Clause 2 provides for the Act to come into operation on a day or respective days to be fixed by proclamation.

Clause 3 contains appropriate savings and transitional provisions.

Clause 4 is the interpretation clause. It also includes a provision which will have the effect of over-riding any provision of another Act or regulation to the extent that either the provision or regulation is inconsistent with the Food Act or a regulation made under the Act, as the case may be.

Clause 5 empowers the Governor in Council to declare by Order a law of a State or Territory to be a corresponding law, to declare any substance to be, or not to be, food for the purposes of the Act, and in like manner, to amend vary or revoke any such Order. It also empowers the Minister to declare any premises not to be food premises for the purpose of the Act.

Clause 6 binds the Crown.

Clause 7 enables the Governor in Council to extend by proclamation all or any provisions of the Act to a place not situated in a municipal district, and in respect of such places, authorizes the Health Commission to exercise the powers and duties of councils under the Act.

PART II.—OFFENCES IN CONNEXION WITH FOOD

Clause 8 makes it an offence to sell, prepare for sale, or pack any food which is unfit for human consumption, adulterated, damaged, deteriorated or perished, or if the food does not comply with a prescribed standard.

Clause 9 makes it an offence to sell any food that does not comply with the standard prescribed for the food demanded by the purchaser.

Clause 10 makes it an offence to sell any food that is packaged or has attached to it a name prescribed for a food for which there is a prescribed standard, or is otherwise designated or represented as being a food for which there is a prescribed standard, unless the food complies with the prescribed standard.

Clause 11 makes it an offence to pack or label any food in a manner which is false, misleading or deceptive.

Clause 12 makes it an offence to publish or cause to be published an advertisement promoting the sale of food which is false, misleading or deceptive.

Clause 13 makes it an offence to sell food, or a package of food which is not labelled in the prescribed manner.

Clause 14 makes it an offence to sell a package of food if the label setting out a statement of the ingredients present is not set out in the prescribed manner, or does not set out the ingredients in descending order of their proportion by mass, or to describe any substance sold as food for animals as being safe for human consumption unless it is sold, prepared and packed in accordance with the Act.

Clause 15 re-enacts section 307 of the *Health Act 1958* which makes it an offence to sell unbranded meat.

Clause 16 has the effect of providing that in a contract of sale of any food for resale there is an implied warranty on the part of the vendor that there has been no contravention of the Act in relation to that food.

A defendant who satisfies the court—

(a) that he sold the food in the same state as it was in at the time he purchased it; or

(b) that if the food was sold in a different state, the change in state did not cause any contravention of the Act—

is entitled to be discharged from the prosecution.

The clause also sets out the procedures to be followed if a defendant intends to utilize the warranty defence.

Clause 17 establishes a defence to a charge that food is unfit for human consumption, adulterated, damaged, deteriorated or perished or not labelled as required by the Act, to prove that the food is to be exported to another country and the sale, preparation, packing or labelling of the food complies with the laws in force in the country to which the food is to be exported.

PART III.—CLEANLINESS OF FOOD PREMISES ETC.

Clause 18 requires the proprietor of any food premises, food vehicle, food vending machine or other appliance to ensure that such is maintained in a clean and sanitary condition.

Clause 19 sets out the powers of a council and of the Health Commission and of an authorized officer where any food premises, food vehicle, food vending machine or other appliance is in an unclean or unsanitary condition, and provides for appeals by any person aggrieved by any order made under the section.

PART IV.—AUTHORIZED OFFICERS

Clause 20 empowers the Health Commission to authorize officers of the Commission or an officer of the public service to be authorized officers for the purposes of the Act.

However, health surveyors of municipal councils, who are entitled to exercise the powers and discharge the duties of an authorized officer, are not empowered to exercise such powers with respect to Crown property unless specifically authorized by the Commission.

Clause 21 sets out the powers of authorized officers.

Clause 22 empowers authorized officers to demand such samples of food as are required for the purposes of the Act on payment of the current market value, or at the rate prescribed.

Clause 23 sets out the procedure to be followed by an authorized officer in relation to the analysis of samples.

Clause 24 sets out the procedure to be followed by an authorized officer who seizes any article under the Act.

Clause 25 provides for the storage of any article seized by an authorized officer.

Clause 26 enables any person claiming any article seized under the Act to make application to a Magistrates' Court within seven days of the seizure for an order directing the authorized officer to release the seized article and empowers the court to make an order disallowing the seizure if it is satisfied that the authorized officer concerned did not have reasonable grounds for believing that the article was one in relation to which there had been a contravention of the Act or that the article was one in relation to which there had not been a contravention of the Act.

Clause 27 empowers an authorized officer to destroy any food seized under the Act if the owner consents or, if in the opinion of the authorized officer, it is decayed, deteriorated or putrefied.

Clause 28 makes the owner of any article seized under the Act where an application is not made for its release, or which is destroyed or disposed of, liable for the costs and expenses incurred in connexion with the storage, destruction or disposal of the article.

Clause 29 makes it an offence for any person to remove, alter or interfere with any article seized, or to erase, alter, open, break or remove a mark, seal or fastening placed by an authorized officer except with the authority of an authorized officer pursuant to an order of a court.

The clause goes on to create a number of other offences in relation to the exercise of the powers of an authorized officer.

PART V.—ANALYSTS

Clause 30 provides for the appointment of analysts for the purposes of the Act.

Clause 31 sets out the duties of an analyst.

Clause 32 requires municipal councils to submit at least three samples of food per thousand of its population for analysis each year and sets out the responsibilities of analysts in relation thereto.

Clause 33 empowers any person from whom anything has been purchased or obtained for the purpose of analysis to obtain a copy of the result of the analysis from the person submitting the article for analysis.

Clause 34 prohibits the use of an analyst's certificate for the purpose of trade or advertisement.

PART VI.—REGISTRATION OF FOOD PREMISES, FOOD VEHICLES AND FOOD VENDING MACHINES

Clause 35 inserts a more limited definition of "food vehicle" than that contained in clause 4 for the purpose of the registration requirements of the Act.

Clause 36 requires food premises and food vehicles not being the property of the Crown to be registered with the council and food premises and food vehicles being the property of the Crown with the Commission.

Clause 37 requires food vending machines to be registered with the council or with the Commission (as the case requires).

Clause 38 enables the Governor in Council to exempt any food vending machine or class of food vending machine from the registration requirement and empowers the council or the Commission to exempt any food premises or food vehicle from registration.

Clause 39 enables councils or the Commission to cause an inspection of any food premises food vehicle or food vending machine, and to require alterations or improvements before the premises vehicle or machine is registered with the council or its registration renewed or the registration of any food premises is transferred.

Clause 40 requires the council concerned or the Commission to issue a certificate of registration to the person in whose name the premises vehicle or machine is registered.

Clause 41 contains various miscellaneous provisions in relation to the registration of food premises food vehicles and food vending machines.

Clause 42 provides for appeals to a Magistrates' Court against any decision of a council or the Commission to refuse to grant or renew the registration of any food premises food vehicle or food vending machine, or to suspend or revoke such registration.

Clause 43 requires councils and the Commission to keep books in respect to registrations, renewals and transfers under the Act, provides for the taking of extracts therefrom, and the use of books and copies for evidentiary purposes.

PART VII.—EMERGENCY POWERS OF COMMISSION

Clause 44 vests in the Commission a power in an emergency or sudden necessity to forbid the production or sale of any food, the cultivation or harvesting of food, and to cause any food to be destroyed, disposed of or to be held in isolation, by order published in the *Government Gazette* and in a newspaper circulating generally in Victoria.

PART VIII.—LEGAL PROCEEDINGS

Clause 45 sets out procedures for dealing with complaints and informations under the Act.

Clause 46 entitles any person charged with an offence, who alleges that the contravention was due to the act or default of some other person, to have that other person brought before the court, and sets out the procedure to be followed if such an entitlement is to be exercised.

Clause 47 empowers the court to order a further analysis to be made of any sample at the request of either party if it is satisfied there are special circumstances to warrant so doing.

Clause 48 provides for the forfeiture on conviction of any article by means of, or in relation to which, the offence was committed, or any similar article in the possession of the defendant at the time of commission of the offence.

The clause also empowers a court to order the forfeiture, on the application of an authorized officer and subject to such notice being given to such person as the court directs, of any article seized by the authorized officer in relation to which there has been a contravention of the Act.

Clause 49 sets out the liability of any person convicted by a court of an offence against the Act in relation to costs.

Clause 50 contains various evidentiary provisions for the purposes of the Act.

Clause 51 deals with the situation where a body corporate is guilty of an offence. It provides that any person who takes part in the management of the body corporate is guilty of that offence and liable to the same penalty unless he can prove the offence was committed without his consent or knowledge and that he exercised due diligence to prevent the commission of the offence.

Clause 52 deals with the situation where the person guilty of an offence is an unincorporated body or partnership. It provides that a reference to a person shall be construed as a reference to each member of the committee of management of the unincorporated body, or in the case of a partnership, to each member of the partnership.

Clause 53 fixes a general penalty of 10 penalty units where no specific penalty is provided in the Act.

PART IX.—MISCELLANEOUS PROVISIONS

Clause 54 prohibits an authorized officer from disclosing any information obtained in connexion with the administration of the Act unless the person from whom the information was obtained consents, or unless the disclosure is in connexion with the administration of the Act, or for the purposes of any proceedings under the Act.

Clause 55 sets out the procedures for the service of notices under the Act.

Clause 56 protects the Commission, a council or an authorized officer or a member of the police force or assistant of an authorized officer from any claim or liability for any thing done in good faith in giving effect to the Act.

Clause 57 has the effect of requiring all penalties recovered in relation to an offence to be paid into the municipal fund where the offence has been prosecuted by the council of a municipality.

Clause 58 requires the Liquor Control Commission to be notified of any order of the Commission or a council requiring an alteration or improvement to the physical structure of an hotel and of any successful prosecution under the Act in relation to an hotel.

Clause 59 incorporates into the Food Act a number of provisions in Part XX. of the *Health Act 1958*.

PART X.—FOOD STANDARDS COMMITTEE

Clause 60 constitutes a Food Standards Committee and specifies the membership of that Committee.

Provision is made for the co-option of up to two additional members for a period not exceeding twelve months with the approval of the Minister.

Clause 61 sets out the procedures at meetings of the Committee.

Clause 62 expresses the functions of the Committee. They are to advise the Minister on any draft regulations to be made under the Act and to advise the Minister or the Commission on any matter referred to the Committee.

PART XI.—REGULATIONS

Clause 63 contains the heads of power to make regulations under the Act.

PART XII.—AMENDMENTS TO VARIOUS ACTS

Clause 64 makes a complementary amendment to the *Magistrates (Summary Proceedings) Act 1975*.

Clause 65 inserts a reference to the Food Act in section 19 (1) (b) of the *Health Commission Act 1977* which relates to delegations by the Commission.

