

Food (Amendment) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 7 October 1986

(Brought in by the Honourable D. R. White)

A BILL

to amend the *Food Act* 1984 and for other purposes.

Food (Amendment) Act 1986

The Parliament of Victoria enacts as follows:

Purposes.

1. The purposes of this Act are—

- 5
- (a) to give effect to the National Food Standards Council Agreement; and
 - (b) to make various machinery amendments to the *Food Act* 1984.

Commencement.

- 10 2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act.

3. In this Act the *Food Act* 1984 is called the Principal Act.

No. 10082.
Amended by
Nos. 10262 and
16/1986.

Schedules, saving and transitional provisions.

4. (1) In section 3 (1) and (2) of the Principal Act for “the Schedule” (wherever occurring) substitute “Schedule 1”.

(2) In section 3 (5) (b) of the Principal Act for “that licence continues” substitute “an hotelkeeper’s licence in respect of those premises is”.

Interpretation.

5. In section 4 (1) of the Principal Act—

(a) for the definition of “Authorized officer” substitute—

‘ “**Authorized officer**” means—

(a) a person who is authorized by the Chief General Manager under section 20 for the purposes of this Act; or

(b) a medical officer of health, or a health surveyor, who is appointed under section 31 of the *Health Act 1958*.’

(b) after the definition of “Medical practitioner” insert—

‘ “**National Food Standards Council**” means the council that is established under clause 6 of the National Food Standards Council Agreement.

“**National Food Standards Council Agreement**” means the agreement that is reproduced in Schedule 2.

“**National Health and Medical Research Council**” means the council that is referred to in section 2 of the *Medical Research Endowment Act 1937* of the Commonwealth.’

Protection for purchasers of food.

6. In section 9 of the Principal Act insert after sub-section (2)—

“(3) A person must not to the prejudice of the purchaser sell any food that is not of the nature, substance or quality of the food that is demanded by the purchaser.

Penalty: For a first offence 10 penalty units, and for a second or subsequent offence 20 penalty units.”.

Authorized officers.

7. (1) In section 20 (2) and (5) of the Principal Act insert “medical officer of health or a” before “health surveyor”.

(2) In section 20 (6) of the Principal Act for “health surveyor or health surveyors” substitute “medical officer or officers of health, or a health surveyor or surveyors,”.

Procuring samples of food.

8. In section 22 (1) of the Principal Act for “the owner of the food” substitute “the person in whose possession the food is”.

Procedure on taking samples.

5 9. (1) In section 23 (1) of the Principal Act omit “the owner of the food comprised in the sample or, if the owner is not present or readily available, ”.

(2) In section 23 (2) (b) of the Principal Act omit “owner of the food or other” and “owner or other”.

10 (3) In section 23 (5) of the Principal Act for “the owner of the food or other ” substitute “a”.

Destruction or other disposal of seized food.

10. In section 27 (a) of the Principal Act after “food” insert “or the person in whose possession the food was at the time of seizure”.

15 Liability for costs of disposal.

11. In section 28 of the Principal Act omit “the owner of the article at the time of its seizure or, where the article is at the time of its seizure in the possession of a person who is not the owner and the identity of the owner is not known,”.

20 Analysts.

12. (1) In section 30 (6) of the Principal Act for “shall cause that list to be published in the *Government Gazette* not less than once in each year” substitute “shall make sure that a copy of the list is open for inspection by any person, and that copies of the list are available, at the principal office of the Department at all reasonable times”.

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(2) In section 30 of the Principal Act insert after sub-section (6)—

“(6A) The Chief General Manager may charge any fee prescribed by the Governor in Council for providing a copy of the list or part of it to a person for that person’s use.”.

30 New section 35A inserted.

13. After section 35 of the Principal Act insert—

Evidence of identity of proprietor.

35 “35A. (1) The proprietor of any food premises, food vehicle or premises on which there is an unregistered food vending machine must as prescribed paint or affix, and keep painted or affixed, the name of the proprietor as proprietor on the premises or vehicle.

(2) The person whose name is so painted or affixed must be taken to be the proprietor of the premises or vehicle and the seller of any food contained on or in the premises or vehicle, unless the contrary is proved.

(3) A person who sells any food from any premises or vehicle on which the name of any other person appears pursuant to sub-section (1) must be taken to have sold the food as the servant or agent of that other person, unless the contrary is proved.” 5

Certificates of registration.

14. In section 40 of the Principal Act insert after sub-section (2)— 10

“(3) This section does not apply to premises in respect of which an hotelkeeper’s licence under the *Liquor Control Act* 1968 is in force.”.

New section 41A inserted.

15. After section 41 of the Principal Act insert—

Registration fees. 15

“41A. (1) The fees for registration and renewal and transfer of registration are as prescribed, or, if the registration is made with the council, as determined by resolution of the council.

(2) Fees determined by the council—

(a) may vary according to the size and nature of the premises, vehicle or machine; and 20

(b) may not exceed the prescribed fees.”.

Proceedings for offences.

16. In section 45 (2) of the Principal Act for “section 21” substitute “this Act”. 25

New sections 45A and 45B inserted.

17. After section 45 of the Principal Act insert—

Burden of proof as to statements on packages etc.

“45A. In any prosecution under this Act the burden of proving the correctness of any statement in or on any label or advertisement with respect to the origin or composition or the therapeutic or nutritive properties or the therapeutic effects of any food is on the person charged.” 30

Prosecutions.

“45B. In any prosecution under this Act—

- 5 (a) a witness for the prosecution is not compelled to disclose the fact that the witness received any information or the name of any person from whom any information was received; and
- 10 (b) no proof is required of the use by the person purchasing any food for analysis of the exact words of the section authorizing the purchase if the court decides that the person from whom the purchase was made was substantially informed of the purchaser’s intention to have the food analysed.”.

New section 46A inserted.

18. After section 46 of the Principal Act insert—

Analysis is not necessary to conviction.

- 15 “46A. Despite any provision of any other Act, in any prosecution under this Act if it appears to the court that the offence is sufficiently proved without an analysis, proof that an analysis has been made or of the results of an analysis is not necessary to conviction for the offence.”.

Evidentiary provisions.

- 20 19. (1) In section 50 (1) (e) of the Principal Act for “section 21” substitute “this Act”.

(2) In section 50 (2) (b) of the Principal Act for “3” substitute “seven”.

- 25 (3) In section 50 (4) of the Principal Act for “seven” substitute “three”.

(4) After section 50 (5) of the Principal Act insert—

“(6) A certificate which—

- 30 (a) purports to be signed by the Secretary or a deputy secretary of the Liquor Control Commission or by a member of that Commission; and

(b) states that an hotelkeeper’s licence was or was not in force in respect of any particular premises at a particular date—

- 35 is admissible in evidence in any proceeding under this Act and, in the absence of evidence to the contrary, is proof that such a licence was or was not in force in respect of those premises at that date.”.

New section 58A inserted.

20. After section 58 of the Principal Act insert—

Delegation to council officers.

“58A. (1) A council may delegate to one or more of its officers its powers under Parts III and VI. 5

(2) The refusal by an officer to grant, renew or transfer the registration of any food premises, food vehicle or food vending machine is of no effect until it is ratified by the council.”.

Regulations.

21. (1) In section 63 (1) (x) of the Principal Act after “year;” insert “fixing days for lodging applications for renewals of registration;” 10

(2) Section 63 (3) of the Principal Act is repealed.

New section 63A inserted.

22. After section 63 of the Principal Act insert—

Incorporation of national standards. 15

“63A. (1) If a food standard is—

(a) formulated by the National Health and Medical Research Council; and

(b) approved by the National Food Standards Council; and

(c) published in the *Commonwealth of Australia Gazette*— 20

the Governor in Council may make regulations under this Act incorporating or adopting by reference the provisions of that standard, whether or not that standard itself incorporates or adopts by reference any other document.

(2) The provisions of the *Subordinate Legislation Act* 1962 which require the preparation of regulatory impact statements do not apply to regulations which are referred to in sub-section (1) and which do not make provision for or in relation to any matter other than the incorporation or adoption by reference.”. 25

National Food Standards Council Agreement. 30

23. (1) For the heading “SCHEDULE” after section 65 of the Principal Act substitute “SCHEDULE 1”.

(2) After Schedule 1 to the Principal Act insert—

‘SCHEDULE 2

Sections 4 and 63A.

NATIONAL FOOD STANDARDS COUNCIL AGREEMENT

AN AGREEMENT made the day of One thousand nine hundred and eighty-six, between—
the COMMONWEALTH OF AUSTRALIA of the first part, and

the STATE OF VICTORIA of the second part.

WHEREAS—

- (A) it is generally acknowledged to be in the interests of the public and of the food industry that uniform food standards should be fixed throughout Australia in order to provide additional protection to consumers, to promote commercial certainty and industry performance and to bring about a reduction in business costs and greater industry efficiency;
- (B) the parties are agreed that food standards recommended from time to time by the National Health and Medical Research Council should apply throughout Australia, providing those standards are first approved by a ministerial council to be established for that purpose; and
- (C) the parties have reached agreement on the measures to be taken by them in order to achieve that objective.

NOW IT IS HEREBY AGREED as follows:

PART I—INTERPRETATION

1. In this agreement, unless a contrary intention appears—
 - (a) “NFSC” means the National Food Standards Council established pursuant to clause 6;
 - (b) “party” means a party to this agreement for the time being;
 - (c) “State” means a State that is at the relevant time a party to this agreement;
 - (d) “the Commonwealth” means the Commonwealth of Australia as the party to this agreement;
 - (e) “the food laws” means—
 - (i) in relation to the Commonwealth, the laws regulating the sale and distribution of food in the Australian Capital Territory; and
 - (ii) in relation to a party other than the Commonwealth, the laws of that party regulating the sale and distribution of food;
 - (f) “the NHMRC” means the National Health and Medical Research Council;
 - (g) “the States” means all the States that are for the time being parties to this agreement;
 - (h) a reference to a State or the States shall be deemed to include a reference to the Northern Territory of Australia;
 - (i) a reference to a clause is a reference to the relevant clause of this agreement;
 - (j) a reference to a sub-clause is a reference to the relevant sub-clause of the clause in which the reference appears or of such other clause as the reference indicates;
 - (k) the singular includes the plural and vice versa.

PART II—OPERATION OF AGREEMENT

2. (1) This agreement shall come into force on 1 July 1986.
- (2) This agreement may be amended by agreement of all the parties.
3. In the event that a party withdraws from this agreement pursuant to clause 15, the agreement shall nevertheless continue in force with respect to the other parties.

PART III—ADOPTION OF FOOD STANDARDS

4. Subject to clause 5, each party shall take such legislative or other steps as are necessary to adopt or incorporate, specifically or by reference and without amendments, as food standards in force under the food laws of that party, the food standards (including amendments of those standards) that are from time to time—

- (a) formulated by the NHMRC;
- (b) approved by the NFSC; and
- (c) published in the Commonwealth Gazette—

such food standards to take effect not later than the date specified in the Gazette.

5. A party may from time to time amend food standards providing that—

- (a) any such amendment—
 - (i) provides a more or less stringent standard in a particular case or in particular cases; or
 - (ii) adds a standard, or makes special provision with respect to a standard, that is peculiar to the territory or part of the territory of that party; and
- (b) that party gives to the NFSC—
 - (i) in the case of an emergency, notice of the amendment as soon as practicable after the amendment is made; and
 - (ii) in any other case, notice of the proposed amendment together with supporting explanations, at least 90 days prior to making the amendment.

PART IV—ESTABLISHMENT OF NATIONAL FOOD STANDARDS COUNCIL

6. A Council of Commonwealth and State Ministers shall be established, to be known as the National Food Standards Council.

7. (1) The NFSC shall consist of one member representing each party who, subject to sub-clause (2), shall be the Minister of that party who is for the time being responsible for administering this agreement on behalf of that party.

(2) A member for the time being representing a party—

- (a) may appoint a delegate who is another Minister of that party to attend a meeting in place of the member; or
- (b) shall, while another Minister of that party is for the time being acting as the Minister who is a member, be the Minister who is so acting—

and reference in this agreement (other than in this clause) to a member shall include a delegate in respect of attendance at any such meeting or a Minister who is so acting.

8. (1) The functions of the NFSC shall be—

- (a) to consider and, if thought fit, to approve food standards from time to time formulated by the NHMRC; and
- (b) to exercise general oversight over the implementation and operation of uniform food standards.

(2) Those functions shall not be delegated to any Minister or to any other person or authority.

9. (1) Ordinary meetings shall be held at such times and places as the NFSC from time to time decides but at least one shall be held in each calendar year. Meetings shall, ordinarily, coincide with meetings of the Australian Health Ministers' Conference.

(2) A special meeting may be convened by any member by 14 days notice or such shorter notice as may be accepted by all members for the purpose of the meeting.

(3) An item shall not be included on the agenda for an ordinary meeting without the written consent of all members of the NFSC.

(4) A matter shall not be raised for discussion at a meeting unless—

- (a) in the case of an ordinary meeting, it was included as an item for discussion in the agenda for that meeting; and
- (b) in the case of a special meeting, it was specified in the notice convening the meeting.

10. The quorum for a meeting shall be five members.

11. The Chairman of a meeting shall be decided prior to or, if not previously decided, at the meeting.

12. A resolution will be carried by the unanimous decision of members present and voting on the resolution.

13. A resolution which, without being considered at a meeting, is referred to all members and of which all members indicate by telephone, teleprinter message or other mode of communication that they are in favour shall be as valid and effectual as if it had been passed at a meeting duly convened and held.

14. Subject to this agreement, the NFSC may determine its own procedure and for that purpose may make rules of procedure, including rules relating to notices of meetings and conduct of business at meetings and to voting by members and may from time to time alter such rules.

PART V—WITHDRAWAL

15. (1) A party may at any time by notice in writing to the NFSC withdraw from this agreement and shall cease to be a party when the notice of withdrawal takes effect.

(2) A notice of withdrawal under this clause shall take effect on a date to be specified in the notice which is not less than one year from the date on which the notice is given.

IN WITNESS WHEREOF this agreement has been respectively signed for and on behalf of the parties as at the day and year first above written.

SIGNED by the Honourable ROBERT JAMES LEE }
 HAWKE, Prime Minister of the Commonwealth of } BOB HAWKE
 Australia, in the presence of— JON NICHOLSON }

SIGNED by the Honourable BARRIE JOHN }
 UNSWORTH, Premier of the State of New South } BARRIE UNSWORTH
 Wales, in the presence of— GERALD GLEESON }

SIGNED by the Honourable JOHN CAIN, Premier }
 of the State of Victoria, in the presence of— } JOHN CAIN
 JEFF FITZGERALD }

SIGNED by the Honourable Sir JOHANNES }
 BJELKE-PETERSEN, Premier of the State of } JOH BJELKE-PETERSEN
 Queensland, in the presence of— P. J. ANEMAAT }

SIGNED by the Honourable JOHN CHARLES }
 BANNON, Premier of the State of South Australia, } J. C. BANNON
 in the presence of— JOHN NEVILLE HOLLAND }

SIGNED by the Honourable BRIAN THOMAS }
 BURKE, Premier of the State of Western Australia, } BRIAN BURKE
 in the presence of— LISA MAUMILL }

SIGNED by the Honourable ROBIN TREVOR }
 GRAY, Premier of the State of Tasmania, in the } ROBIN GRAY
 presence of— JOHN CLEARY }

SIGNED by the Honourable STEPHEN PAUL }
 HATTON, Chief Minister of the Northern Territory, } S. P. HATTON
 in the presence of— GARY ALLAN GRAY. }

