



New South Wales

# Food Amendment (Public Information on Offences) Bill 2008

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Food Act 2003* (*the Principal Act*), as follows:

- (a) to extend the powers of the Food Authority to publish information about offences under the Principal Act relating to the handling and sale of food, including by:
    - (i) permitting the Food Authority to keep a public register of offences committed under the Principal Act relating to the handling and sale of food, and
    - (ii) permitting the Food Authority to name in that register any person found guilty by a court of such an offence or whose employee or agent is found guilty of such an offence (whether or not a conviction is entered following the guilty finding),
  - (b) to give the Food Authority power to publish information about penalty notices issued for alleged offences under the Principal Act relating to the handling and sale of food, including by:
    - (i) permitting the Food Authority to keep a public register of penalty notices served for such offences, and
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- (ii) permitting the Food Authority, subject to certain limitations, to name in that register persons served with such penalty notices,
- (c) to permit the disclosure of personal information by various public sector agencies for the purpose of enabling the Food Authority to exercise its new functions,
- (d) to confer protection from liability, including liability in defamation, in respect of the disclosure of such information,
- (e) to provide for the payment of fines and penalties recovered by the Food Authority into the Food Authority Fund.

The Bill also makes other minor and consequential amendments, including to another Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Food Act 2003* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the consequential amendment to the *Fines Act 1996* set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendment of Food Act 2003

### Disclosure of information about offences and alleged offences

Currently, section 137 of the Principal Act enables the Food Authority to publish information about persons convicted of offences under that Act or the regulations.

**Schedule 1 [4]** inserts proposed Part 10A (proposed sections 133–133H) into the Principal Act to make new provision with respect to the disclosure of information about offences and penalty notices issued for alleged offences under that Act through the keeping of a register of offences and a register of penalty notices. **Schedule 1 [6]** therefore repeals section 137.

### Register of offences

Proposed section 133 enables the Food Authority to keep a public register of information about offences under the Principal Act or the regulations relating to the handling or sale of food (the *register of offences*). The register may also include information in relation to offences where a court has made a finding of guilt but not

recorded a conviction under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. The information that may be published on the register of offences includes the name of the convicted person and his or her employer or principal, the name and address of the place of business where the offence occurred, a description of the nature and circumstances of the offence, the decision of the court and the penalty imposed. This information may not be published until after a final order has been made in respect of any appeal for the offence. The register may be kept in such form as the Food Authority considers appropriate.

### **Register of penalty notices**

Proposed section 133A enables the Food Authority to keep a public register of information about penalty notices issued for alleged offences under the Principal Act or the regulations relating to the handling or sale of food (the *register of penalty notices*). The information that may be published on the register of penalty notices includes the name of the person served with the penalty notice, the name and address of the place of business where the alleged offence occurred, a description of the nature and circumstances of the alleged offence, certain penalty notice information, the enforcement agency or other body responsible for issuing the penalty notice and the status of the penalty notice.

Information must not be published on the register of penalty notices unless:

- (a) the amount payable under the penalty notice has been fully or partly paid, or
- (b) a penalty notice enforcement order has been issued in respect of the penalty notice, or
- (c) at least 70 days has elapsed since the penalty notice was served and the penalty notice is unresolved (the circumstances in which a penalty notice ceases to be unresolved include where the person served makes an election to have the matter dealt with by a court).

The register may be kept in such form as the Food Authority considers appropriate.

### **Other provisions relating to registers**

Proposed section 133B provides that the registers are to be made available for public inspection on an internet website of the Food Authority. Information on a register may also be made available to the public in such other manner as the Food Authority considers appropriate, including by publication in the Gazette or in a newspaper circulating in New South Wales.

Proposed section 133C provides that a register may be corrected by the Food Authority on its own initiative or on application by an interested person.

Proposed section 133D provides that information may be removed from a register by the Food Authority on its own initiative or on application by an interested person and provides for the circumstances in which the Food Authority must remove information from a register. This includes, in relation to the register of offences,

where the Food Authority is satisfied that the relevant conviction has been quashed or annulled, an appeal has been made, or a period of 2 years has elapsed since the Food Authority was first authorised to publish the information on the register.

In relation to the register of penalty notices, the Food Authority must remove information from the register if:

- (a) the penalty notice was not properly served, or
- (b) a person has elected to have the matter dealt with by a court, or
- (c) a decision has been made not to enforce the penalty notice, or
- (d) a penalty reminder notice or penalty notice enforcement order in respect of the penalty notice has been withdrawn or annulled, or
- (e) 12 months has elapsed since the Food Authority was first authorised to publish information about that penalty notice on the register.

The Food Authority may also remove information from either register if satisfied it is appropriate in the circumstances to do so.

Proposed section 133E provides for the addition of information to a register where a business named on the register is sold or otherwise disposed of after the date on which an offence is committed or a penalty notice is served in relation to the conduct of that business.

Proposed section 133F permits a person to make an application to the Food Authority requesting the Food Authority to make changes to any information on a register. Such applications may be made only by persons to whom the information relates, or if the information relates to a business or company, by persons who own or have an interest in the business or company. A decision by the Food Authority in respect of an application is reviewable by the Administrative Decisions Tribunal.

Proposed section 133G provides for protection from liability, including liability in defamation, for the State and other persons and bodies in respect of anything done, or omitted to be done, in good faith in connection with the keeping of a register or the publication of information contained on a register. Furthermore, no liability will be incurred by a person for publishing in good faith any information contained on a register or publishing a fair report or summary of such information. **Schedule 1 [5]** makes a consequential amendment.

Proposed section 133H enables the Food Authority and other public sector agencies to disclose personal information for the purpose of enabling the Food Authority to exercise its functions under new Part 10A. In particular, the proposed section:

- (a) allows the Food Authority to disclose information despite any prohibition in, or the need to comply with, the *Privacy and Personal Information Protection Act 1998*, and
- (b) allows the Food Authority and other public sector agencies to disclose information in relation to a person without the consent of that person (including allowing for disclosure by the State Debt Recovery Office or any person engaged in the administration of the *Fines Act 1996*).

### **Payment of penalties and fines into Food Authority Fund**

**Schedule 1 [3]** provides that monetary penalties or fines imposed under the Principal Act and the regulations under that Act and recovered in proceedings instituted by the Food Authority, including through the issue of penalty notices, are to be paid into the Food Authority Fund, up to a maximum amount of \$250,000. Regulations may be made (with the approval of the Treasurer) that provide for a different maximum amount. Any excess monies are to be paid into the Consolidated Fund.

### **Other amendments**

**Schedule 1 [1]** inserts new definitions of *Food Authority Fund*, *register of offences* and *register of penalty notices* consequent on the enactment of the proposed Act.

**Schedule 1 [2]** makes an amendment by way of statute law revision.

**Schedule 1 [7]** enables savings and transitional regulations to be made as a consequence of the proposed Act.

**Schedule 1 [8]** inserts savings and transitional provisions as a consequence of the enactment of the proposed Act. These include provisions to make it clear that:

- (a) payments into the Food Authority Fund under the new provisions are to be made only from monetary penalties and fines recovered on or after the commencement of those provisions (regardless of when the relevant proceedings were instituted), and
- (b) the register of offences is to include only information about offences committed on or after the commencement of the new provisions, although the Food Authority may continue to exercise its functions under section 137 (as in force before its repeal by Schedule 1 [6]) in respect of offences committed before that commencement, and
- (c) the register of penalty notices is to include only information about penalty notices served on or after the commencement of the new provisions.

### **Schedule 2 Consequential amendment of Fines Act 1996**

**Schedule 2** contains an amendment to the *Fines Act 1996* consequent on the amendments to the Principal Act that authorise the disclosure of personal information by the State Debt Recovery Office to the Food Authority.