

FOOD PRODUCTION (SAFETY) BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Food Production (Safety) Bill 2000*.

Objectives of the Legislation

The primary objective of the Bill is to establish Safe Food Production QLD (Safe Food), a regulatory statutory authority whose core objectives are to:

- ensure the production of primary produce is conducted in a way that renders it fit for human and animal consumption and maintains food quality; and
- develop food safety measures for the production of primary produce consistent with other State laws relating to food safety.

These objectives will be achieved by Safe Food, consistent with other State laws relating to food safety by:-

- managing and implementing food safety schemes for industry;
- accrediting the production of primary produce;
- managing the food safety auditing of primary produce production businesses; and
- accrediting auditors.

The Bill also:

- makes a consequential amendment to the *Meat Industry Act 1993* to allow a transitional period during which existing food safety standards under that Act will continue to apply. This will allow time for Safe Food to develop food safety schemes relating to meat;
- provides for the eventual repeal of the *Meat Industry Act 1993*;
- provides for the repeal of the *Dairy Industry Act 1993* once food safety schemes covering dairy products are developed under this Act and the outcomes of dairy deregulation are clear;
- extends the period for review of the *Agricultural Standards Act 1994* to allow time for Safe Food to be established and for the interaction between Food Safety Schemes and the *Agricultural Standards Act 1994* to be assessed;

Reasons for the Bill

New Food Production (Safety Bill) 2000

The Commonwealth Government is currently progressing a number of food industry reviews including the Food Regulation (Blair) Review, the Australia New Zealand Food Authority (ANZFA) Food Safety Standards (FSS), food composition standards and a uniform Food Act. The uniform Food Act and FSS aim to provide nationally consistent food safety legislation in Australia applicable to all food sectors including primary production. It is important to define Queensland food safety responsibilities before the introduction of FSS.

The proposed national FSS is one aspect of a move away from prescriptive food safety regulation towards an outcome-based approach that places responsibility on food businesses to minimise food safety risks in their production and handling processes. The FSS, to be implemented via State and Territory Food Acts, would require all food businesses (or perhaps limited to those with significant food safety risks) to:

- establish food safety programs based on a risk management methodology;
- regulate food hygiene practices, food premises and appliances.

The FSS would replace existing food hygiene regulations under State/Territory Food Acts.

Under this regime, Government will increasingly assume an “approval and audit” role for preventative food safety. State food safety regulators will ensure that food businesses establish adequate food safety programs, and that compliance with these programs is effectively audited, either by Government-employed or contracted auditors or by accredited third party auditors.

The *Meat Industry Act 1993* and *Dairy Industry Act 1993* have already incorporated similar requirements into licensing and registration regimes in the dairy and meat industries.

Under this Bill, the functions of the Queensland Livestock and Meat Authority under the *Meat Industry Act 1993* and the food safety functions of the Queensland Dairy Authority under the *Dairy Industry Act 1993* will be merged. Food safety programs for remaining high-risk sectors, in particular seafood, will also be developed.

The Health Department will be responsible, together with local government councils, for food safety not covered by this Act.

Amendment of the Agricultural Standards Act 1994

Section 74 of the *Agricultural Standards Act 1994* requires that the Act be reviewed as soon as practicable after the end of the period of 5 years after commencement of the Act (15 March 1995). That Act provides for the making of quality and safety standards for agricultural inputs, including stock foods. The *Food Production (Safety) Bill 2000* deals with the production of primary produce intended for consumption by a domestic animal or another animal if the animal, or any part or product of the animal, is intended for human consumption. Given the obvious overlap between the two pieces of legislation, it is desirable that Safe Food has been given the opportunity to establish itself and consider what food safety schemes it will make regarding animal food before the *Agricultural Standards Act 1994* is reviewed.

The statutory framework

New Food Production (Safety) Bill 2000

The Bill establishes Safe Food Production QLD (Safe Food), a statutory body headed by a chief executive officer. Safe Food will regulate the production of primary produce to ensure it is safe for human and animal consumption. This regulation will govern primary produce from the source (farm or vessel) through to the point where products enter either the manufacturing (for transformation) or retail sectors.

That regulation will be carried out through the use of food safety schemes. Food safety schemes will progressively be made to cover particular primary produce, with priority being given to the highest risk categories. Initially schemes will be made covering meat, followed by dairy produce and then seafood because these have been identified as the highest risk. Food safety schemes, which will be made by the Governor-in-Council and be subordinate legislation, will:

- set out general requirements for the handling and processing of specified primary produce to ensure its safety and wholesomeness;
- detail requirements for the accreditation of persons in relation to the production of primary produce;
- detail the requirements for auditing food safety schemes and any food safety program under the scheme
- set out associated matters such as fees.

In many cases the scheme will also require persons seeking accreditation under a scheme to devise a food safety program. The food safety program is specifically tailored to a specific business, such as an individual butcher shop. The program will identify significant food safety hazards to that particular business and state how those hazards are to be monitored and controlled. It will also detail how hygienic and safe conditions for the primary produce are to be maintained and contain details about the provision of training for staff for this purpose.

The Bill establishes a food safety advisory committee to assist Safe Food in the development of Food Safety Schemes. The Committee will comprise:

- the chief executive officer;
- the Director-Generals of the Departments of Health and Primary Industries;
- a representative of an organisation that represents the interests of each section of an industry to which a food safety scheme relates; and
- a number of expert members.

The Bill requires the food safety advisory committee to be consulted before a food safety scheme is made.

The Bill provides that, subject to any public sector policies notified by the Minister to the chief executive officer of Safe Food, any person may be accredited as an auditor provided that person meets the qualification requirements set by Safe Food. A person to be audited may select any auditor accredited by Safe Food. Market forces will dictate the charges made by those auditors for their services. Potential auditors include local government environmental health officers. Those officers may also be authorised officers that carry out enforcement activity under the Bill. Local government officers and other officers in the Primary Industry portfolio with food safety roles will be given the opportunity to be trained to undertake these audits. Safe Food, and the Department of Primary Industries, will be responsible for offering training courses to these officers over a two-year period to phase in these arrangements.

To ensure the integrity of auditing, the auditor will provide all audit reports directly to Safe Food. Where there is a serious risk to health and safety involved, the auditor must inform Safe Food immediately. In addition, Safe Food will audit auditors.

The Bill contains search and seizure provisions, and offences and penalties, modelled on those in the current *Dairy Industry Act 1993* and *Meat Industry Act 1993*, and draws extensively upon the enforcement provisions in the model Food Bill now being considered by the Commonwealth and the States. The major offences of the Bill are:-

- the sale or supply of unsafe primary produce
- the production of unsafe primary produce
- the unauthorised production of primary produce
- the sale or supply of unwholesome meat or seafood
- meat substitution.

Amendment of the Agricultural Standards Act 1994

Currently the Act requires that a review be commenced as soon as practicable after the end of the period of 5 years after commencement of the Act. This Bill will extend that five-year period to seven years.

Estimated costs for government implementation

The cost of establishing Safe Food is estimated as being \$6.8 million over four years. The cost includes:

- relocation of the staff of the former Queensland Livestock and Meat Authority;
- training of authorised officers;
- industry development and training;
- training of the livestock sector (including dairy) and feed suppliers to develop and implement food safety programs;
- provision of assistance with food safety program development to the seafood catching sector.

Consistency with fundamental legislative principles

There are two provisions in the Bill that arguably breach the fundamental legislative principle outlined in section 4(3)(e) of the Legislative Standards Act 1992, that is, legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Firstly, a condition of an accreditation to carry on a primary produce production business is deemed to be that an auditor be allowed to enter the place stated in the accreditation to conduct an audit. It should be noted that this is not for enforcement. The power is only to be used for auditing. It should be noted that the accreditation holder will have the choice to select any auditor from the register kept by Safe Food to conduct an audit on their premises. If an auditor found a suspected breach of the Act during an audit, that auditor would notify Safe Food. An authorised officer would then investigate. That authorised officer would be required to obtain a warrant unless using the emergency power discussed below. No evidence incriminating to the primary produce production business would be collected during the audit.

This Bill and food safety schemes and food safety programs under those schemes have moved away from the traditional food safety philosophy of end point inspection of a finished product. Instead they are designed to ensure food safety by focusing on preventative measures for assuring safety and hygiene along the entire production chain. Under this philosophy, it is the primary food production business itself that designs and implements a food safety program unique to the requirements of that particular business and carries the responsibility for ensuring that documented processes in the food safety program are followed.

In order to maintain public confidence in such a self-regulatory system and as an aid to the business concerned in designing and complying with a program, it is essential that each primary food production business be audited regularly. This is particularly so considering that a primary food production business that has an inadequate food safety program or is not properly following that program poses a significant risk to human health.

The Act will cover all primary produce production businesses in Queensland, to which a food safety scheme relates. Those businesses will cover primary produce from the source (farm or vessel) through to the point where products enter either the manufacturing (for transformation) or retail sectors. In those circumstances there will be many thousands of businesses covered by the Act. It would be impractical to obtain a warrant every time an auditor carried out an audit in every one of those businesses.

Secondly, the Bill provides authorised officers with emergency powers to enter premises without warrant and exercise search and seizure powers. These powers may only be exercised to avoid an imminent risk of death or serious illness of any person from the primary produce or seafood on the premises. In these circumstances such measures are justified because any delay that may be encountered in obtaining a warrant could be fatal. There are a number of food poisoning incidents in the past that demonstrate the potential seriousness of food contamination, such as Garibaldi smallgoods and Wallace Lake oysters. In addition, the Bill contains the safeguard that if the emergency power is improperly used, compensation is payable by Safe Food.

It could also be argued that generally the large maximum penalties contained in Part 7 (Serious Food Safety Offences) potentially breach the rights and liberties of individuals. However, the large maximum penalties are essential to deter individuals and corporations from selling, supplying or producing unsafe primary produce or producing primary produce without

accreditation. Such deterrence measures must be strong as if individuals or corporations commit serious food safety offences, human lives and health could be at serious risk.

In addition, the maximum penalties have been formulated to be consistent with the existing penalty provisions in the *Meat Industry Act 1993*. This consistency maintains public confidence that comparable food safety offences and penalties are being incorporated into the Bill.

Whilst the maximum penalties are high, the Magistrate hearing the offence, has discretion as to the amount of the penalty which fits the circumstances of the case.

Consultation

Government

The following Departments and agencies were consulted in the preparation of this Bill:

- the Department of the Premier and Cabinet;
- Queensland Treasury;
- the Department of State Development;
- the Department of Justice and Attorney-General;
- Queensland Health;
- the Department of Communication, Information, Local Government and Planning;
- the Queensland Livestock and Meat Authority;
- the Queensland Dairy Authority;
- the Queensland Dairy Organisation
- the Queensland Fisheries Management Authority; and
- the Commonwealth Department of Agriculture, Fisheries and Forestry.

The Office of Queensland Parliamentary Counsel prepared the Bill.

Industry

There has been consultation on the development of the Bill with:

- the Queensland Commercial Fishermen's Organisation;
- the Queensland Seafood Marketers' Association;
- the National Meat Association;
- the Retailers Association of Queensland;
- the Queensland Fruit and Vegetable Growers Association;
- AgForce;
- Queensland Farmers Federation;
- Australian Meat Council;
- Refrigerated Transport and Warehouse Association;
- Queensland Chicken Meat Council;
- Australian Game Meat Producers Association and Kangaroo Industries Association of Australia;
- Matilda Petfoods Pty Ltd;
- Local Government Association of Queensland Inc.

Results of consultation

There is agreement between government agencies and industry bodies regarding the proposals in the Bill. There was general recognition of:

- a need for improved regulatory arrangements to implement and administer primary food production standards at the State level; and
- an expectation that there would be both cost savings and administrative efficiencies in combining the food safety functions of the existing regulatory agencies into a single regulatory body.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Division 1—Introduction

Short title

Clause 1 provides that the short title of the Act will be the *Food Production (Safety) Act 2000* (The Act).

Commencement

Clause 2 provides that Parts 5 to 8 and 12, Division 1 of the Act commence on a day to be fixed by proclamation. Those Parts relate to accreditation of producers of primary produce, auditing, serious food safety offences, enforcement, investigations and offences and repeal of the *Dairy Industry Act 1993* (the Dairy Act) respectively. The remainder of the Act will commence on royal assent.

Parts 5 to 8 commence by proclamation because, at the time of commencement of the remainder of the Act, the *Meat Industry Act 1993* (the Meat Act) will continue to operate, administered by Safe Food Production QLD (Safe Food), for a period of up to eighteen months. During that initial period the accreditation, auditing and enforcement, investigation and offences under the Meat Act will continue to apply.

The Meat Act will continue to apply to allow adequate time for the chief executive and the Food Safety Advisory Committee to be appointed and for food safety schemes under the Act to be developed.

Clause 2 also provides that the repeal of the *Dairy Industry Act 1993* (the Dairy Act) commences on a day to be fixed by proclamation and that section 15DA of the *Acts Interpretation Act 1954* does not apply to this commencement. Section 15DA, in part, provides that where a “postponed law” has not commenced within 1 year of assent, it automatically commences on the next day.

Part 12 Division 1 has been written on the assumption that deregulation of the dairy industry will occur. The Dairy Act will not be repealed until the functions of the Queensland Dairy Authority other than food safety functions are repealed following that anticipated deregulation. The Queensland Government has reluctantly agreed to deregulate Queensland market milk control arrangements, but only if all other States also deregulate and payments become available to Queensland producers under the Commonwealth Adjustment Program. As this timeframe is unclear as to if and when deregulation will proceed, the operation of section 15DA of the *Acts Interpretation Act 1954* has been excluded to ensure that Part 12 Division 1 does not commence without Queensland's preconditions for deregulation being met.

Division 2—Objects and application

Main objects of the Act

Clause 3 details the main objects of the Act. Those objects are to:

- establish Safe Food Production QLD (Safe Food);
- ensure the production of primary produce is carried out in a way that makes the primary produce fit for human or animal consumption and maintains food quality; and
- provide for food safety measures for the production of primary produce consistent with other State laws relating to food safety.

Act binds all persons

Clause 4 provides that this Act will bind all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

Food Act 1981 not affected

Clause 5 provides that this Act is in addition to, and does not limit, the *Food Act 1981*.

Exemption from application of the Act

Clause 6 sets out the exemptions from application of the Act. In essence, the Act does not apply to the production of primary produce or primary produce:

- at retail premises or in retail vehicles, except for meat retail premises and meat retail vehicles as defined in the section. Examples of meat retail premises are butcher shops and the meat sections in supermarkets. The definition of meat retail premises excludes those meat retail premises where all meat is ready for immediate consumption or all meat is prepackaged, for example, corner shops only selling prepackaged meat.
- for an individual's own use except where the individual is selling or supplying the primary produce or using it for food for paying guests.

Division 3—Interpretation**Definitions**

Clause 7 provides that the dictionary in the Schedule defines particular words used in this Act.

Meaning of “dairy produce”

Clause 8 sets out the definition of ‘dairy produce’. The definition covers milk and milk products, for example, butter, cheese, yoghurt and flavoured milk. *Clause 8* also provides that a regulation will prescribe dairy products.

Meaning of “meat”

Clause 9 sets out the definition of “meat”. The definition covers raw food intended for human or animal consumption that is the whole or part of a killed animal. This includes raw meat mixed with other substances, for example, marinated meat, meat rissoles, meat sausages and stir-fry lamb mix.

Smallgoods are excluded from the definition of “meat”. Smallgoods are included in the definition of primary produce in clause 10. “Smallgoods” is defined in the dictionary in the schedule, and includes both cooked and uncooked smallgoods.

Meaning of “primary produce”

Clause 10 clarifies the meaning of primary produce. This definition sets out the foods that may be regulated under the Act. This includes:

- an animal, plant or other organism intended for human or animal consumption ;
- raw material for food taken from an animal, plant or other organism, if the raw material is in substantially the same condition as when it was taken from the animal, plant or other organism (for example, whole fruit and vegetables, milk and eggs,) or
- food made by the production of primary produce. This subclause clarifies that food produced from the processes set out in clause 11(1) remain primary produce that may be regulated under the Act. Examples of such foods are smallgoods, meat produced from meat processing, dairy produce and pasteurised milk, peeled and frozen seafood and boiled prawns.

Meaning of “production of primary produce”

Clause 11 sets out the definition of “production of primary produce”. In essence the definition covers anything grown, cultivated, picked, harvested, collected or caught from the source (farm or vessel) through to the point where products enter either the manufacturing (for “substantial change) or retail sectors. This definition sets out the production processes that may be regulated under the Act.

Meaning of “substantially changed”

Clause 12 sets out the definition of “substantially changed.” In general, once a thing is substantially changed it ceases to be “primary produce.” This is subject to the processes set out in clause 11(1) which may constitute substantial change but can still be regulated under the Act. Primary produce is substantially changed when its shelf life is markedly increased or another food is added to it.

PART 2—SAFE FOOD PRODUCTION QLD***Division 1—Establishment*****Establishment**

Clause 13 establishes Safe Food as a statutory authority with its own legal identity separate from the State.

Division 2—Functions and powers

Clause 14 lists the functions of Safe Food. The key functions are:

- managing and implementing food safety schemes for industry;
- accrediting the production of primary produce;
- managing the food safety auditing of primary produce production businesses; and
- training, accrediting and auditing auditors.

General powers

Clause 15 sets out the general powers of Safe Food. The powers are necessary for Safe Food to perform its functions.

Delegation

Clause 16 empowers Safe Food to delegate its powers to a committee or employee of Safe Food. A power may only be delegated to someone who is appropriately qualified.

Ministerial direction

Clause 17 empowers the Minister to give Safe Food a written direction. That direction may relate to the performance of Safe Food's functions, the exercise of its powers or a public sector policy. The Minister may only give the direction if satisfied that it is necessary to give it in the public interest and after consulting Safe Food. A direction must be gazetted within 21 days of being given.

Division 3—Administration**Appointment of chief executive officer**

Clause 18 provides that the Minister must appoint a chief executive officer to Safe Food for a term of no more than 5 years.

Conditions of appointment

Clause 19 provides that the chief executive of Safe Food holds office on the conditions not provided for by the Act that are decided by the Minister.

Qualifications for appointment

Clause 20 requires the Minister to appoint a person to be chief executive officer who possesses the necessary experience or expertise. The clause also sets out the grounds that render the chief executive officer ineligible to continue in that office. Those grounds are:

- bankruptcy;
- conviction of an indictable offence;
- physical or mental incapacity;

- inability to manage a corporation because of the Corporations Law, section 229. That provision excludes certain persons, for example, persons who are insolvent or have been convicted of certain offences, from managing corporations.
- the person is named in the register of disqualified company directors held by the Australian Securities and Investments Commission under the Corporations Law, section 243.

Vacation of office

Clause 21 sets out the situations in which the chief executive officer vacates that office. They are death, resignation or loss of qualifications set out in clause 20.

Division 4—Responsibilities of chief executive officer and other matters about Safe Food

Chief Executive Officer to manage Safe Food’s affairs and prepare business plans

Clause 22 requires the chief executive officer to manage the affairs of Safe Food and prepare a plan each year that covers Safe Food’s operations for three years, commencing the year the plan was prepared. The plan must detail:

- the projected costs of food safety schemes being developed;
- Safe Food’s funding arrangements for other food safety activities (for example, to administer the Meat Act);
- Safe Food’s administrative costs;
- the projected funding to be provided by the State to ensure compliance with the Act; and
- details of how Safe Food intends to ensure its food safety scheme activities are carried out on a cost-recovery basis.

Chief executive officer to give business plans to Minister

Clause 23 requires the chief executive officer to give business plans prepared under clause 22 to the Minister by 31 March in the year in which the plan is prepared. Because this Act will commence part way through a calendar year, the first business plan prepared by the chief executive officer must be given to the Minister within two months after the date of assent.

Application of other Acts

Clause 24 applies certain Acts to Safe Food to ensure financial and ethical accountability to the State.

PART 3—FOOD SAFETY ADVISORY COMMITTEE***Division 1—Establishment and functions*****Establishment**

Clause 25 establishes the Food Safety Advisory Committee (the committee).

Functions

Clause 26 sets out the functions of the committee. The committee is advisory. It can give advice or make recommendations to the chief executive officer or Minister. The advice or recommendations can be about the development of food safety schemes, any matter relating to Safe Food's functions, any matter relating to food safety or the operation of the Act that is referred to it by Safe Food or the Minister.

Division 2—Membership**Membership of committee**

Clause 27 details the membership of the committee. The members of the committee include the chief executive officer of Safe Food and the chief executives of the Departments of Primary Industries and Health. The committee will also comprise a representative of each sector of each industry to which a food safety scheme relates, or a proposed food safety scheme will relate. The Minister may also appoint other persons who have experience or expertise in one or more of the fields listed in the section. All fields listed in the section give a perspective on food safety that will assist in advising Safe Food or the Minister on food safety matters.

Term of appointment

Clause 28 provides that members of the committee are appointed for a term of no more than 3 years.

Conditions of appointment

Clause 29 provides that a member holds office on the conditions not provided for by this Act that are decided by the Minister.

Division 3—Proceedings**Conduct of business**

Clause 30 provides that the committee may conduct its business in the way it considers appropriate.

Time and place of first meeting

Clause 31 empowers the Minister to call the first meeting of the committee.

Chief executive officer to invite committee members

Clause 32 sets out the members that are to attend meetings of the committee. The membership of the committee, as outlined in clause 27, ensures that every sector of every industry covered by a food safety scheme (or proposed food safety scheme) has a member on the committee. Whilst this ensures maximum industry participation on the committee, it means that the size of the committee will be large and will be continually increasing as new items of primary produce are covered by food safety schemes.

This clause also provides that the chief executive officer must invite those industry members to a committee meeting if a food safety scheme (or proposed food safety scheme) which will affect them is to be discussed.

The chief executive officers of the Department of Primary Industries and Queensland Health will attend every meeting. The chief executive officer of Safe Food may also call such expert members as he or she considers appropriate.

Quorum

Clause 33 sets the quorum for meetings of the committee. The quorum will be half the number of members invited to the meeting plus 1 or, if half the number of members is not a whole number, the next highest whole number.

Presiding at meetings

Clause 34 provides that the chief executive officer of Safe Food will preside at all meetings at which the chief executive officer is present. If the chief executive officer is not present at the meeting, a delegate of the chief executive is to preside.

Conduct of meetings

Clause 35 details the conduct of meetings of the committee, including the quorum and the ability to hold meetings by electronic means.

Minutes

Clause 36 requires the committee to keep minutes of its proceedings.

Disclosure of interests by advisory committee members

Clause 37 requires members of the committee to disclose any conflicts of interest they may have regarding a matter to be considered by the committee. When a member discloses the interest, the member cannot be present at the meeting or take part in the decision when the matter is considered, unless the Minister or the committee otherwise directs.

Division 4—Subcommittees**Subcommittees**

Clause 38 enables the committee to establish subcommittees to assist it to perform its functions. Each subcommittee must have at least one member who is a member of the committee. The subcommittees will advise and make recommendations to the committee about matters within the scope of the committee's functions referred to it by the committee.

PART 4—FOOD SAFETY SCHEMES AND PROGRAMS***Division 1—Food Safety Schemes*****Making of food safety schemes**

Clause 39 provides that the Governor-in-Council may make food safety schemes to provide for specific food safety measures for persons carrying on the production of primary produce as defined in Clause 11. The schemes may cover particular industries or subsections of specific industries. The schemes are subordinate legislation. The schemes are regulatory in nature, and may provide for a penalty if the schemes are contravened.

The clause also sets out the types of matters that a food safety scheme can cover. These matters are not exclusive and relate to food safety issues relating to the production of primary produce.

In addition, the clause provides that the Minister and Safe Food must consult with the committee about a proposed scheme. In practice, this consultation will take place through the committee meetings provided under Part 3. The clause provides that failure to consult does not make the scheme invalid. This provision is necessary to ensure that the consultation process has finality and leads to schemes being made.

The clause also provides that food safety schemes may include offences if the scheme is contravened and prescribe a maximum penalty of 50 penalty units. The maximum penalty unit is needed, as the schemes are the primary means of ensuring compliance with the Act. Persons producing primary produce will be deterred from breaching a provision of the scheme if the penalty is sufficiently high. The objects of food safety could not be met if a lower maximum penalty unit limit was applied.

Contents of food safety schemes

Clause 40 provides for the mandatory requirements of a scheme. Such mandatory requirements set the scope of the scheme and include such information as:

- the types and aspects of primary produce regulated under the scheme;
- who must be accredited under the scheme and who must comply with the scheme (Accreditation is provided for in Part 5 of the Bill); and
- who must prepare a food safety program (if required under the scheme);
- the auditing requirements under the scheme.

Division 2—Food safety programs

Food safety programs

Clause 41 provides information that must be included in a food safety program. Generally, the food safety program documents how a primary production business will manage its significant food safety hazards. *Clause 41(3)* imposes a maximum 50 penalty unit penalty on a person designated under a food safety scheme to prepare and maintain a food safety program who fails to keep a copy of the food safety program at each place to which the food safety program relates. The penalty ensures that the designated person adequately disseminates the food safety program to the places to which it applies so that handlers of primary produce can access and hence comply with the food safety program.

PART 5—ACCREDITATION***Division 1—Preliminary*****Purpose of accreditation system**

Clause 42 sets out the purpose of the accreditation system, that is, to ensure that the production of primary produce is safe for human and animal consumption.

Authority given by accreditation

Clause 43 provides that an accreditation allows a holder of the accreditation to produce primary produce as stated in the accreditation and on conditions as stated in the accreditation.

Division 2—Obtaining accreditation**Application for grant or renewal of accreditations**

Clause 44 provides that a person may apply to Safe Food for an accreditation or renewal of accreditation and sets out the information and fees (as prescribed) that must be included in the application. Once accredited, an accreditation holder will need to apply every year to renew their accreditation, as an accreditation stays in force for one year (see clause 50)

Additional information for applications

Clause 45 provides that Safe Food may ask the applicant for further information or documents about the application or request that an authorised officer inspects the premises and vehicles intended to be used by the applicant in the primary production operation. If, without reasonable excuse, the applicant does not comply with Safe Food's request, Safe Food can refuse the application.

Deciding the applications

Clause 46 provides that Safe Food must consider the application and either grant an accreditation or refuse the application.

Temporary accreditations

Clause 47 provides that Safe Food may grant a temporary accreditation to the applicant prior to granting an accreditation under clause 46(1)(a). A temporary accreditation can only be granted for a maximum of 2 months until either the accreditation is granted or the application refused. A temporary accreditation is granted on the application for accreditation because a premises newly established for primary food production cannot be audited until it has been up and running for a period.

Grant or renewal of accreditations

Clause 48 sets out information that Safe Food must provide the applicant on granting the application including:

- where the applicant may produce primary produce; and
- appeal rights if the accreditation contains conditions.

Refusal of applications

Clause 49 provides that if Safe Food refuses the application, it must give the applicant reasons for the decision and inform the applicant of their appeal rights.

Conditions of accreditations

Clause 50 provides for mandatory conditions of the accreditation such as:

- the holder must comply with the relevant food safety scheme;
- the accreditation remains in force for one year unless sooner cancelled or suspended;
- the holder allows an auditor to enter the place stated in the accreditation to conduct an audit as required under the Act. This provision ensures that auditors will be able to enter places of accreditation to carry out audits, which is vital to ensure that primary production businesses are complying with the food safety schemes and their food safety programs on a day to day basis.

The clause also provides that Safe Food may impose other conditions on the accreditation as long as they are reasonable and relevant having regard to the holder's activities and the relevant food safety scheme.

Division 3—Amendment, suspension or cancellation of accreditations**Amendment—grounds**

Clause 51 provides that Safe Food may amend the accreditation and sets out the grounds on which Safe Food can amend the accreditation.

Suspension or cancellation of accreditations—grounds

Clause 52 provides that Safe Food may suspend or cancel the accreditation and sets out the grounds that Safe Food can suspend or cancel an accreditation.

Amendment, suspension or cancellation—procedure

Clause 53 provides the process Safe Food must follow prior to deciding to amend, suspend or cancel an accreditation. The process involves giving the holder notice of the Safe Food's proposed action and an opportunity for the holder to respond to Safe Food's proposed action prior to the action taking place. This provision ensures the holder is afforded natural justice

prior to an adverse decision by Safe Food being made. This procedure does not need to be followed if the holder agreed to the amendment of the accreditation.

Immediate suspension

Clause 54 provides that Safe Food can immediately suspend a holder's accreditation if satisfied that the holder is or has committed a serious food safety offence (as defined in Part 7). The immediate suspension is for a maximum of 60 days. This provision is warranted to stop accreditation holders who pose a real risk to food safety from continuing to carry on unsafe production practices during the show cause period.

The clause also provides the process to be followed by Safe Food prior to and after immediately suspending a holder (including the procedures set out in Clause 53.)

Notice and effect of amendment, suspension or cancellation

Clause 55 provides that if Safe Food amends, suspends or cancels an accreditation, Safe Food must give the holder written notice of the reasons for the decision and the holder's appeal rights.

The clause also provides when the suspension, amendment, or cancellation of an accreditation becomes effective.

Return of amended, suspended or cancelled accreditations

Clause 56 provides for the return of an amended, suspended or cancelled accreditation.

Division 4—Surrender

Surrender of accreditations

Clause 57 provides that a holder can surrender the accreditation to Safe Food and also provides a process for the surrender.

PART 6—AUDITING

Division 1—Preliminary

Purpose of auditing system

Clause 58 provides that the purpose of the auditing system is to ensure places and activities associated with the production of primary produce comply with the Act.

Auditors' authority

Clause 59 provides that an approval as an auditor granted by Safe Food allows an approved auditor to conduct audits under the Act.

Division 2—Obtaining approval

Applications for approval as auditor

Clause 60 provides an individual may apply to Safe Food for approval or renewal of approval as an auditor and sets out how the application is to be made to Safe Food.

Additional information for applications

Clause 61 provides that Safe Food may ask the applicant for further information or documents about the application. If, without reasonable excuse, the applicant does not comply with Safe Food's request, Safe Food can refuse the application.

Deciding the applications

Clause 62 provides that Safe Food must consider the application and either grant an accreditation or refuse the application.

The clause also provides that Safe Food may only grant the application if satisfied that the applicant has the necessary expertise or experience to carry out the functions of an auditor and complies with any public sector policies relating to the approval of auditors as directed by the Minister under Clause 17.

Grant or renewal of approvals

Clause 63 provides information that Safe Food must provide the applicant on granting the approval including appeal rights if the approval contains conditions.

Refusal of applications

Clause 64 provides that if Safe Food refuses the application it must give the applicant reasons for the decision and inform the applicant of the applicant's appeal rights.

Term of approvals

Clause 65 provides the approval remains in force for one year unless sooner cancelled or suspended.

Division 3—Amendment, suspension or cancellation of approvals

Amendment—grounds

Clause 66 provides that Safe Food may amend the approval and sets out the grounds on which Safe Food can amend the approval.

Suspension or cancellation—grounds

Clause 67 provides that Safe Food may suspend or cancel the approval and sets out the grounds that Safe Food can suspend or cancel an approval.

Amendment, suspension or cancellation—procedure

Clause 68 provides the process Safe Food must follow prior to deciding to amend, suspend or cancel an approval. The process involves giving the auditor notice of the Safe Food's proposed action and an opportunity for the auditor to respond to Safe Food's proposed action prior to the action taking place. This provision ensures that the auditor has been afforded natural justice prior to an adverse decision about the approval being made by Safe Food. This procedure does not need to be followed if the auditor agreed to the amendment of the approval.

Immediate suspension of approvals

Clause 69 provides that Safe Food can immediately suspend an auditor's approval if satisfied that the auditor is no longer competent to continue to conduct audits under the Act. The immediate suspension is for a maximum of 60 days. This provision is necessary to ensure that auditors who could constitute a real food safety risk do not continue to perform audits during the show cause period set out in Clause 68.

The clause also provides the process to be followed by Safe Food prior to and after immediately suspending an auditor (including the procedure set out in clause 68.)

Notice and effect of amendment, suspension or cancellation

Clause 70 provides that if Safe Food amends, suspends or cancels an approval, Safe Food must give the auditor written notice of the reasons for the decision and the holder's appeal rights.

The clause also provides when the suspension, amendment, or cancellation of an approval becomes effective

Return of amended, suspended or cancelled approvals

Clause 71 provides for the return of an amended, suspended or cancelled approval.

Division 4—Surrender**Surrender of approvals**

Clause 72 provides that an auditor can surrender the approval to Safe Food and also provides a process for the surrender.

Division 5—Identity cards and register**Auditor's identity card**

Clause 73 provides that Safe Food must give each auditor an identity card and sets out the information to be contained on the identity card. This provision ensures that auditors are easily recognised and identified.

Register of auditors

Clause 74 provides that Safe Food must keep a register of auditors that the public can access. This list will allow accreditation holders to choose an auditor from the register to conduct an audit as required under the Act.

Division 6—Audit reports and auditors' responsibilities**Audit reports**

Clause 75 provides that the auditor must provide a copy of the audit report to Safe Food and the person audited and provides a maximum penalty of 50 penalty units for non-compliance. This penalty is warranted to ensure that auditors provide reports in a timely manner. Failure to do so could result in increased food safety risks.

The clause also provides the mandatory information to be included in the audit report. This provision ensures that auditors prepare reports in a consistent manner and ensure that sufficient information is contained to assure Safe Food that the audits are carried out satisfactorily. The report must contain the auditor's opinion and reasons as to whether the activities audited complied or failed to comply with the relevant food safety scheme.

Responsibilities of auditors

Clause 76 provides that if the auditor reasonably believes an offence against the Act has been committed, the auditor must inform Safe Food. If the offence is a serious food safety offence as set out in Part 7, the auditor must inform Safe Food immediately unless the auditor has a reasonable excuse. Failure to report to Safe Food results in a maximum penalty against the auditor of 1300 penalty units. This penalty is warranted as Safe Food needs to be immediately notified of serious food safety offences against the Act so that it can take immediate investigative or enforcement action against the accreditation holder under Part 8. This may avoid serious illness or death of consumers as a result of an offence. A smaller penalty of 100 penalty units has been set if an auditor does not report any other offence to Safe Food within 7 days of becoming aware of it. This penalty is needed to ensure Safe Food can enforce the provisions of the Act if they have been breached.

PART 7—SERIOUS FOOD SAFETY OFFENCES**Supply of unsafe primary produce**

Clause 77 provides that a person must not supply primary produce that a person knows, or ought to reasonably know, is unsafe. The purpose of the offence is to stop people selling or supplying unsafe primary produce. “Unsafe” is defined in the Schedule’s dictionary. The maximum penalty is 3000 penalty units or 2 years imprisonment. The large penalty is warranted to deter or punish people adequately if they sell unsafe primary produce, a practice that could place human lives at risk.

Production of unsafe primary produce

Clause 78 provides that a person must not engage in the production of primary produce (as defined in Clause 11) that the person knows or reasonably ought to know will result in the produced primary produce being unsafe. The purpose of the offence is to stop people producing unsafe primary produce. “Unsafe” is defined in the Schedule’s dictionary. The maximum penalty is 3000 penalty units or 2 years imprisonment. The reasons for the large penalty are the same as set out in the clause above.

Unauthorised production of primary produce

Clause 79 provides that a person must not engage in the production of primary produce other than under an accreditation. The maximum penalty for the offence is 2000 penalty units or 2 years imprisonment. This offence is limited to persons whose activities of primary production are regulated under a food safety scheme. This offence is large to ensure that persons obtain accreditation under the Act. If people carry out unaccredited activities they pose a real food safety risk, as their activities will not be monitored through the auditing process.

Supply of unwholesome meat or seafood

Clause 80 provides that a person must not supply meat or seafood that the person knows or reasonably ought to know is unwholesome. The maximum penalty is 1000 penalty units or imprisonment for 1 year. The definition of “unwholesome” is in the clause. The offence is to deter producers from selling or supplying meat or seafood that the consumer perceives to be unfit, for example, the sale of chicken pieces containing abscesses.

Meat Substitution

Clause 81 provides that a person must not during meat processing do something to the meat with the intention of deceiving another person about the species of the animal the meat is from. The maximum penalty is 1500 penalty units. This offence is to deter meat processors from substituting meat species. The large offence will also increase consumer confidence when purchasing meat.

Supply of equipment and other things

Clause 82 provides that a person must not sell or supply equipment to a person if they know or ought to reasonably know that the equipment or thing is likely to make the primary produce unsafe. The maximum penalty is 650 penalty units. This offence is aimed at suppliers of equipment who sell equipment to primary producers which is not fit for its use in the primary production process. This offence seeks to sanction the supplier for selling the equipment to the producer.

PART 8—ENFORCEMENT, INVESTIGATIONS AND OFFENCES

Division 1—Enforcement and investigations

Subdivision 1—Authorised Officers

Appointment and qualifications of authorised officers

Clause 83 provides for Safe Food to appoint a person as an authorised officer from the list set out in the clause. The list is limited to the Local, State or Commonwealth Government employees, and employees from statutory authorities who have food safety functions. The list is wide to ensure that Safe Food has access to sufficient authorised officers to service remote areas and investigate interstate matters. However Safe Food can only appoint an authorised officer if the person has the necessary expertise or experience to be an authorised officer.

Functions and powers of authorised officers

Clause 84 specifies that an authorised officer has the function of conducting investigations and inspections to monitor and enforce compliance with this Act. It also provides that an authorised officer has powers under this Act and may have powers given under another Act. However an authorised officer's powers may be limited:

- under regulation;
- under a condition of appointment; or
- by notice of Safe Food given to the authorised officer.

Conditions of appointment of authorised officers

Clause 85 specifies that an authorised officer holds office on the conditions stated in their instrument of appointment; that if an authorised officer's appointment provides for a term of appointment, the authorised officer ceases to hold office at the end of the term; and the manner in which an authorised officer may resign the authorised officer's office.

Authorised officer's identity card

Clause 86 requires Safe Food to provide each authorised officer with an identity card, containing a recent photograph of the person and other relevant particulars. The purpose of the clause is to ensure authorised officers can be easily identified.

Failure to return identity card

Clause 87 sets out the circumstances under which an identity card issued to an authorised officer must be returned to Safe Food.

Production or display of identity card

Clause 88 requires that an authorised officer must produce or display the authorised officer's identity card before exercising any powers under the Act. However provision is also made for the authorised officer to produce the card at the first reasonable opportunity where it is not immediately practical to do so.

Subdivision 2—Power to enter places**Power to enter places**

Clause 89 sets out when an authorised officer may enter a place. Under this clause, an authorised officer may enter a place if:

- a) the occupier consents to entry;
- b) it is a public place, when the place is open to the public;
- c) the entry is authorised by warrant; or
- d) the authorised officer enters the place under the emergency powers in clause 116.

If the authorised officer intends to enter the land to ask the occupier for consent to enter under paragraph (a), the authorised officer may enter the place to the extent that it is reasonable to contact the occupier.

If the place is a public place, the authorised officer may enter part of the place that the authorised officer reasonably considers that members of the public are allowed to enter.

Subdivision 3—Procedure for entry

Entry with consent

Clause 90 outlines the procedures an authorised officer must follow when seeking consent to enter a place.

Application for warrant

Clause 91 makes provision for an authorised officer to apply to a Magistrate for a warrant to enter a place. Under this provision, a Magistrate may refuse to consider an application until an authorised officer provides the Magistrate with the information he or she has requested.

Issue of warrant

Clause 92 sets out the conditions under which a Magistrate may issue a warrant and specifies the information that must be stated in a warrant.

Special warrants

Clause 93 makes provision for and outlines the procedures by which an authorised officer can apply for a warrant by phone, fax, radio or another means of communication because of urgent or special circumstances.

Warrants—procedure before entry

Clause 94 outlines the procedures that an authorised officer must follow or attempt to follow prior to entering a place under a warrant. However, the procedures may not be complied with if immediate entry is required to ensure the effective execution of the warrant is not frustrated.

Subdivision 4—Powers after entering a place**General powers after entering places**

Clause 95 specifies power available to an authorised officer who has entered a place for the purposes of monitoring and enforcing compliance with the legislation.

Failure to help authorised officer

Clause 96 makes it an offence for a person to fail to give reasonable help to an authorised officer under clause 95(3)(f), unless the person has a reasonable excuse, for example, if complying with the request might incriminate the person.

Failure to give information

Clause 97 makes it an offence for a person to fail to comply with a requirement made by an authorised officer under clause 95(3)(g), unless the person has a reasonable excuse.

Subdivision 5—Power to seize evidence**Definition for subdivision 5**

Clause 98 defines “owner” for the purposes of this subdivision to include the person entitled to the possession of the seized thing.

Seizing evidence

Clause 99 provides that if an authorised officer enters a place which can only be entered with the consent of the owner, with a warrant or under the emergency powers in clause 116, the authorised officer may:

- a) if the authorised officer enters with the occupier’s consent, seize a thing at the place if the authorised officer reasonably believes the thing is evidence of an offence against the Act and the seizure of the thing is consistent with the purpose of entry as told to the occupier when the occupier’s consent was sought; and

- b) if the entry was authorised by a warrant, seize the evidence for which the warrant was issued.

An authorised officer may also seize the following things in the place:

- a) a thing the authorised officer reasonably believes is evidence of an offence against the Act and which the authorised officer reasonably believes may be hidden, lost or destroyed, or used to continue or repeat the offence; and
- b) a thing which the authorised officer reasonably believes has just been used in committing an offence against the Act.

Securing seized things

Clause 100 enables an authorised officer to take the following actions in relation to a thing which is seized—that is, move the thing from the place where it was seized; leave the thing at the place of seizure but restrict access to it; or make any seized equipment inoperable.

Tampering with seized things

Clause 101 makes it an offence for a person to tamper, or attempt to tamper with a seized thing or something restricting access to the thing; or equipment which the authorised officer has made inoperable without an authorised officer's approval.

Powers to support seizure

Clause 102 makes provision for an authorised officer to require the person in control of a seized thing to take it to a stated reasonable place by a stated reasonable time, and if necessary, to remain in control of it at the stated place for a reasonable time. It is an offence for a person to fail to comply with a requirement or further requirement made under this clause, unless the person has a reasonable excuse.

Receipts for seized things

Clause 103 requires an authorised officer to issue a receipt for any seized thing and give the receipt to the person from whom it was seized. However, if for some reason this proves impractical, the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Where a thing is seized under clause 99, the receipt must generally describe each thing seized and its condition. This clause does not apply to a thing if it is impractical, or would be unreasonable, to give a receipt, having regard to the thing's nature, condition and value.

Authorised officer may dispose of seized primary produce

Clause 104 enables an authorised officer, with the chief executive officer's approval, to destroy or dispose of primary produce seized under clause 99 if the authorised officer believes on reasonable grounds that the primary produce:

- poses a health risk to any person; or
- is otherwise unfit for consumption or sale.

The authorised officer may destroy or dispose of the primary produce in any way decided by the officer. The authorised officer must give a notice to the owner of the property destroyed or disposed of, describing the primary produce, the reason for its destruction or disposal, and the owner's ability to claim compensation under clause 121.

Forfeiture by authorised officer

Clause 105 sets out the circumstances under which a seized thing will be forfeited to Safe Food, for example, if the owner cannot be found, after making reasonable inquiries, or if it cannot be returned to its owner, after making reasonable efforts.

Forfeiture on conviction

Clause 106 makes provision for a Court, upon conviction of a person for an offence against this Act, to order forfeiture to Safe Food of anything owned by the person which had been seized under the legislation. The

Court may make any order it considers appropriate to enforce the forfeiture. This clause does not limit the Court's powers under the *Penalties and Sentences Act 1992*, or another Act.

Dealing with forfeited things

Clause 107 enables Safe Food to deal with a thing which has been forfeited to Safe Food, as Safe Food considers appropriate, including the destruction or disposal of the thing.

Recovering costs of destruction or disposal

Clause 108 provides that any reasonable cost or expense incurred by Safe Food in destroying or disposing of a thing under this division is a debt owing to Safe Food by the owner of the thing immediately before its seizure or forfeiture.

Return of seized things

Clause 109 sets out the circumstances under which an authorised officer must return a thing which has been seized but not forfeited to the Safe Food, or destroyed or disposed of under clause 104. For example, the thing must be returned at the end of 6 months, or where the authorised officer is satisfied that the thing does not need to be retained as evidence.

Access to seized things

Clause 110 provides for the owner of a seized thing to have access to it for inspection or copying (if a document), provided it is not impracticable or unreasonable to do so, until it is forfeited or returned.

Subdivision 6—Power to obtain information

Power to require name and address

Clause 111 provides that where the authorised officer finds a person committing, or reasonably suspects the person has just committed, an offence against this Act, the authorised officer may require the person to

state the person's name and residential address. When making such a requirement, the authorised officer must warn the person that it is an offence to fail to state their name and address, unless the person has a reasonable excuse.

If the authorised officer reasonably suspects that the name or address stated is false, the authorised officer may require the person to give evidence of the correctness of the stated name or residential address

Failure to give name or address

Clause 112 makes it an offence to fail to comply with a requirement made under clause 111, unless the person has a reasonable excuse. However, a person does not commit an offence by not complying with such a requirement, if it is not proven that the person committed the offence against this Act.

Power to require information

Clause 113 provides that an authorised officer may, by written notice, require a person to attend before the authorised officer to provide information about an offence against this Act. The authorised officer may exercise this power only if the officer reasonably believes that an offence against the Act has been committed and a person may be able to give information about the offence. It is an offence not to comply with such a requirement, unless the person has a reasonable excuse or if giving the information may tend to incriminate that person.

Power to require production of documents

Clause 114 makes provision for an authorised officer to:

- require a person to produce for inspection by the authorised officer, a document required to be kept by the person for this Act;
- keep the document to copy it;
- require a person to certify that a copy of the document, or an entry in a document is a true copy; and
- keep a document until a copy of the document or an entry in a document is certified as a true copy.

Failure to produce document

Clause 115 makes it an offence to fail to produce a document in accordance with a requirement under clause 114, unless the person has a reasonable excuse.

Subdivision 7—Emergency Powers of authorised officers**Emergency powers**

Clause 116 gives emergency powers to authorised officers. The authorised officer may enter a place without a warrant or consent of the occupier and give directions to persons on the premises. The officer may also, if the officer takes the steps outlined in the section, exercise any of the powers set out in Division 1 of Part 8 of the Bill (enforcement and investigations). The officer may also authorise another person to exercise the powers under this clause.

The emergency powers may be used only where an authorised officer is satisfied that they are necessary to avoid an imminent risk of death or serious illness of any person from the primary produce on the premises. It should also be noted that compensation will be payable under clause 121 if the emergency power is not used properly. The authorised officer may also not be protected from liability under clause 133 if the officer has acted dishonestly or negligently.

In exercising the emergency powers the authorised officer must ensure that as little inconvenience is caused to persons on the premises and as little damage as practicable to the premises.

Failure to comply with authorised person's directions in emergency

Clause 117 makes it an offence for a person on premises entered by an authorised officer under clause 116 who is given a direction under that clause not to comply with it. The maximum penalty is 300 penalty units. The penalty is warranted, as an authorised officer needs to ensure that people follow directions in an emergency as people's lives or health could be at risk.

Subdivision 8—Power to require compliance**Compliance notice**

Clause 118 enables an authorised officer to give a person a compliance notice requiring the person to stop committing an offence under the Act; to stop committing an offence under the Act and rectify the matter if reasonably able to be rectified; or to rectify a matter relating to an offence which has been committed under the Act if it is reasonably capable of being rectified.

The compliance notice must state the offence against this Act the authorised officer believes is being or has been committed, and if requiring a person to rectify the matter, the steps the person must take to comply with the notice. Failure to comply with a compliance notice, unless a person has a reasonable excuse, is an offence with a maximum penalty of 300 penalty units. The penalty is warranted to deter people from ignoring a compliance notice.

If a person contravenes a compliance notice, the authorised officer may take reasonable action to stop the contravention. The authorised officer may also recover associated costs from the person as a debt owing to Safe Food, only if the person is convicted of failing to comply with the compliance notice. However, where the person complies with a compliance notice, the person cannot be prosecuted for the offence to which the notice relates.

Division 2—Other enforcement provisions**Restraining orders**

Clause 119 enables Safe Food to bring a proceeding in the District Court for an order to restrain a person from continuing or repeating a particular activity.

The Court may make an order restraining a person from continuing or repeating a particular activity if:

- the person will commit an offence against this Act if the person continues or repeats the activity; and
- the activity may adversely affect the health of persons or animals.

It is an offence to contravene an order made under this section. The maximum penalty is 1000 penalty units. The high penalty is warranted as it applies if a person has repeatedly continued an activity that adversely affects the health of persons or animals.

Notice of damage

Clause 120 requires an authorised officer to give written notice if an authorised officer damages property when exercising or purporting to exercise a power; or a person acting under the direction or authority of an authorised officer damages property. The notice must set out particulars of the damage and be given to the person who appears to be the owner of the property. However, if for some reason this proves impractical, the authorised officer must leave the notice in a conspicuous place and in a secure way where the damage happened.

Compensation

Clause 121 enables a person to be compensated by Safe Food, where the person has incurred loss or damage because of the exercise or purported exercise of a power under this Part (Enforcement, Investigations and Offences). The clause also makes provision for compensation to be payable where the person has incurred loss or damage in complying with a requirement made of the person under this Part. The Court may only order compensation to be paid if it is just in the particular case.

Division 3—Offences

False or misleading statements

Clause 122 makes it an offence for a person to state anything to an authorised officer that the person knows is false or misleading.

False or misleading documents

Clause 123 makes it an offence to give an authorised officer a document containing information that the person knows is false or misleading, unless the person advises the authorised officer how it is false or misleading at the time.

Obstructing an authorised officer

Clause 124 makes it an offence to obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Impersonation of authorised officer

Clause 125 makes it an offence for a person to pretend to be an authorised officer.

PART 9—APPEALS**Who may appeal**

Clause 126 describes the persons who may appeal to a Magistrates Court (the Court) against relevant sections of this Act. Those persons are:

- a person whose application for an accreditation to carry on a primary produce production business has been subjected to a condition or refused;
- a person whose accreditation is amended, suspended or cancelled;
- a person whose application for approval as an auditor has been granted subject to a condition or refused;
- a person whose approval as an auditor is amended, suspended or cancelled.

All administrative decisions made by Safe Food set out in Parts 5 and 6 are appellable except for the grant of temporary accreditation. In this case the holder has the right of appeal if the final accreditation is refused or conditions placed on it.

Starting appeal

Clause 127 describes the process for starting an appeal. A written notice must be filed with the clerk of the Court within 28 days after the appellant receives notice of the decision appealed against. The clause gives the Court the discretion to extend the period for filing notice of appeal.

Stay of operation of decisions

Clause 128 gives the Court power to stay a decision of Safe Food appealed against on such conditions and for such period as the Court determines. The Court may stay the decision to secure the effectiveness of the appeal.

Hearing procedures

Clause 129 details the hearing procedures for appeals under this Act. The rules of the applicable court will apply to hearings. The appeal will be by way of rehearing the matter appealed against. The Court is not bound by the rules of evidence and must observe natural justice.

Powers of Court on appeal

Clause 130 details the powers of Court on appeal. The Court may:

- confirm the decision appealed against;
- vary the decision;
- set aside the decision and substitute another decision; or
- set aside the decision and return the matter to Safe Food with directions the Court considers appropriate.

The Court may make such order for costs as it considers appropriate.

Appeal to District Court on questions of law only

Clause 131 allows for an appeal to the District Court for any person dissatisfied by a decision of the Court. The appeal can only be on a question of law. The District Court may make such order for costs as it considers appropriate

PART 10—MISCELLANEOUS

Review of Act

Clause 132 requires the Minister to review the Act within 6 years after commencement to decide whether the provisions remain appropriate. As soon as practicable after finishing the review, the Minister must table a report about the outcome of the review in the Legislative Assembly.

Protecting authorised persons from liability

Clause 133 protects authorised officers or persons acting under the direction of an authorised officer from civil liability for an act done, or omission made under the Act. The protection will only apply where the act or omission is done honestly and without negligence.

Where a person is protected from civil liability under this clause, the liability attaches instead to Safe Food.

Summary proceedings for offences

Clause 134 provides that proceedings for an offence against this Act are to be taken in a summary way and be heard by the Magistrates Court. The clause also sets out the limitation period for offences to be prosecuted, that is the proceeding must start:

- within a year after the offence is committed; or
- within 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

Regulation-making power

Clause 135 empowers the Governor in Council to make regulations under this Act. The regulation may impose a penalty of not more than 50 penalty units for contravention of a regulation. This level of penalty is comparatively high for breach of a regulation. It has been set at this level to reflect the potentially serious effects that breaches of a food safety scheme may have on human health and safety.

PART 11—TRANSITIONAL PROVISIONS

Definition for pt 8

Clause 136 sets out definitions used in this Part.

Dissolution of Queensland Livestock and Meat Authority

Clause 137 dissolves the Queensland Livestock and Meat Authority (QLMA) on the commencement of this Act. Therefore, from that date, the *Meat Industry Act 1993* (the Meat Act) will administered by Safe Food, rather than the QLMA. Safe Food will continue to administer the Meat Act until it has developed food safety schemes under this Act.

The clause also provides that the administrator currently appointed to run the QLMA goes out of office on commencement without any compensation being payable. It would not be appropriate to pay compensation to the administrator because, under clause 136, the administrator will become the chief executive of Safe Food until 2 November 2000. 2 November 2000 is the date the administrator's two year appointment as administrator of the QLMA would have expired.

Transfer of assets and liabilities

Clause 138 transfers the assets and liabilities of the QLMA to Safe Food on the day the QLMA is dissolved.

Administrator becomes chief executive officer of Safe Food

Clause 139 provides that the administrator of the QLMA immediately before its dissolution is the chief executive officer of Safe Food until 2 November 2000. The appointment of the administrator as the chief executive officer of Safe Food is designed to ensure a smooth transition of the administration of the Meat Act. The administrator has the necessary expertise to administer the Meat Act whilst an appropriate selection process is undertaken to appoint a chief executive officer to take over from 3 November 2000.

Employees

Clause 140 provides that the employees of the dissolved QLMA become employees of Safe Food. On transfer the employment rights of the employees are preserved.

PART 12—REPEAL AND AMENDMENT OF ACTS***Division 1—Repeal of the Dairy Industry Act 1993*****Repeal**

Clause 141 provides for the repeal of the *Dairy Industry Act 1993* (The Dairy Act). This provision commences on proclamation to allow time for Safe Food and the committee to develop food safety schemes for the dairy industry. Until that time, the food safety provisions contained in the Dairy Act will continue to apply to the dairy industry. However, the Dairy Act will only be repealed if deregulation of the Dairy Industry occurs.

Division 2—Amendment Of Agricultural Standards Act 1994**Act amended in div 2**

Clause 142 provides that this Division amends the *Agricultural Standards Act 1994*.

Amendment of s 74 (Review of Act)

Clause 143 amends the review period for the *Agricultural Standards Act 1994* from 5 years from commencement of the Act to 7 years. Under the existing provision the outcomes of the review should be tabled in Parliament by the end of 2000. The extended review period allows the review to make recommendations on the interrelation between the Bill and the *Agricultural Standards Act 1994*.

Division 3—Amendment Of Meat Industry Act 1993***Act amended in div 3***

Clause 144 provides that this division amends the *Meat Industry Act 1993* (The Meat Act).

Replacement of s 3 (Objectives of Act)

Clause 145 omits the objective relating to fostering the interests of the Queensland livestock and meat industry. This objective is no longer relevant to the Meat Act. The main objective (to ensure the wholesomeness and integrity of meat is maintained) has been retained.

The clause also omits section 3(2), which provides for the establishment of the Queensland Livestock and Meat Authority (QLMA) and the Queensland Abattoir Corporation (QAC). QLMA is dissolved under clause 134 and so is redundant in the amended Meat Act. Although the QAC still exists, its role does not warrant an inclusion in the main objective provision.

Amendment of s 4 (Definitions)

Clause 146 replaces the definition of “authority” in section 4. This clause clarifies that QLMA is the authority for the purposes of the Meat Act prior to commencement and that Safe Food is the authority for the purposes of the Meat Act on and after commencement.

Omission of pt 2 (Ministerial advisory bodies)

Clause 147 omits Part 2, which provides that the Minister may establish an advisory committee under the Act. This provision is now unnecessary, as the committee established under the Bill (see Part 3) would be the forum to advise the Minister on meat food safety issues.

Omission of pt 3, div 1 (Establishment of authority)

Clause 148 omits Part 3, Division 1, which establishes the QLMA and makes it a body corporate. This Division is redundant, as the QLMA will be dissolved under the Bill (See clause 137).

Amendment of s 24 (Functions)

Clause 149 omits the QLMA's secondary functions relating to meat industry marketing and efficiency. These functions are irrelevant under the food safety focus of the amended Meat Act.

Clause 149 also inserts a subsection which allows the authority to perform other functions given to it under this Act or another Act.

Omission of pt 3 divs 3-5

Clause 150 omits Divisions 3 to 5 as the provisions contained in the divisions are redundant. Specifically:

- Division 3 provides for reserve powers of the Minister and their impact. Under the Bill, (See clause 17), the Minister can give Safe Food directions in relation to its role under the Meat Act.
- Division 4 and 5 provides for the membership of the QLMA and the proceedings of the QLMA, which are no longer needed as the QLMA is dissolved.

Amendment of pt 3 div 6 (Staff)

Clause 151 omits the division heading of "staff" and replaces it with "Chief Meat Officer".

Omission of ss 39-40

Clause 152 omits sections 39 and 40 which allow the QLMA to appoint staff and the chief executive officer as the Act gives Safe Food the powers to do these things.

Amendment of s 41 (Chief Meat Officer)

Clause 153 omits "and" from the section.

Omission of s 42

Clause 154 omits section 42, which provides for the appointment of an acting chief meat officer. These matters are dealt with under the *Acts Interpretation Act 1954*.

Omission of ss 43-45

Clause 155 omits section 43 to 45, which relate to superannuation schemes, the seal and committees as such matters will be covered under the Act.

Omission of S 47 (*Parliamentary Commissioner Act 1974* not to apply to certain decisions)

Clause 156 omits this provision as it is redundant.

Amendment of s 70 (Standards)

Clause 157 makes some consequential amendments to Part numbers as a result of amendments to the Meat Act.

Omission of s 163 (Review of Act)

Clause 158 omits the compulsory review period as the Meat Industry Review is completed.

Insertion of new pt 8A

Clause 159 inserts a new Part 8A into the Meat Act.

**PART 8A—TRANSITIONAL PROVISIONS FOR
FOOD PRODUCTION (SAFETY) ACT 2000**

New section 166A provides that Safe Food (as established under the Bill) stands in the place of the QLMA for all purposes of the Meat Act. The purpose of this clause is to allow Safe Food to take over QLMA's role (limited to food safety matters) under the Meat Act. Specifically, Safe Food

will appoint meat safety officers, grant accreditations under the Act, make standards (see Part 4) and administer enforcement matters (see Part 5). Safe Food will also stand in the place of the QLMA as the respondent in the appeal process. The Meat Industry Tribunal continues to hear administrative appeals under the Meat Act.

Administrator continues in office

New section 166B retrospectively validates the authority of the administrator appointed under Part 7A notwithstanding Part 7A's accidental expiry. The administrator's role from the expiry of the Part (5 December 1999) to commencement of this provision is essential to ensure validation of administrative matters of the QLMA prior to the transfer of its assets, liabilities and staff to Safe Food.

The section also provides that the administrator is to give a final report to the Minister on the administration of the QLMA and that report will be tabled in the Legislative Assembly.

Amendment of s 167 (Expiry of Act)

Clause 160 amends the expiry of the Meat Act from 1 January 2001 to 1 January 2002. This gives Safe Food and the Food Safety Advisory Committee sufficient time to develop meat food safety schemes prior to the expiry of the Meat Act. Until that time, the Meat Act will regulate meat safety matters.

SCHEDULE

Schedule sets out the dictionary of terms used in the Act.