

# **Food Amendment Bill 2006**

## **Explanatory Notes**

### **Title of the Bill**

*Food Amendment Bill 2006*

### **Objective of the Bill**

The objective of the Bill is to protect public safety from intentional contamination of food (food tampering).

### **Achievement of the Objective**

The Bill achieves the objective by requiring food businesses to –

- report suspected food tampering;
- retain the suspected contaminated food;
- comply with directions of the chief executive about matters including handling of the food and other food and equipment that may have affected by the suspected contaminated food.

### **Alternative Ways of Achieving Policy Objectives**

The alternative way of achieving the policy objective is to rely on voluntary reporting by food businesses of suspected food tampering. However, this system is unreliable, as demonstrated by recent suspected food tampering incidents that were not properly reported.

### **Estimated Cost for Government Implementation**

There are administrative as well as operational costs (including monitoring and enforcement costs) under the Bill for the State government.

### **Consistency with Fundamental Legislative Principles**

Aspects of the Bill which raise possible fundamental legislative principles issues are outlined below.

*Reporting of suspected intentional contamination of food*

Clause 271B requires the responsible person for a food business to report if they form a reasonable suspicion that food has been intentionally tampered with. The report needs to be made to the chief executive of Queensland Health immediately unless the person has a reasonable excuse. The clause provides that it is not a reasonable excuse to not notify the chief executive on the grounds that the notification may incriminate the person. This provision may be regarded as compromising the person's protection against self-incrimination.

Intentional contamination of food could lead to serious health risks to the public. The potentially serious nature of the risk warrants removing the right to protect oneself against self-incrimination. To ensure the rights of the person notifying are protected, the clause provides that information provided by a individual (as opposed to a corporation) to the chief executive (primary evidence and derivative evidence) is not admissible in evidence against the individual in any civil or criminal proceedings.

However, under clause 271C the responsible person must ensure that the potentially contaminated food is not disposed of, and under 271D the chief executive can give directions to the person about matters including the handling of the potentially contaminated food. Clause 271B provides that if the person fails to comply with the direction under clause 271C or 271D, the information provided in the notification may be used in a proceeding against the person for an offence under the Bill. It is also important to note that the Bill provides that any direction issued by the chief executive must be reasonable in the circumstances.

These provisions find a balance between protecting the health of the community and upholding the objectives of the food safety standards, and providing natural justice to persons operating food businesses.

**Consultation**

The Queensland Hotels Association, Restaurant and Catering Association, Clubs Queensland, Local Government Association of Queensland and Brisbane City Council have been consulted as members of a working party to consider a workable model for mandatory reporting.

## Notes on Provisions

Clause 1 specifies the short title of the Bill.

Clause 2 specifies that the Bill amends the *Food Act 2006*.

Clause 3 inserts new Part 3A – Suspected intentional contamination of food.

New section 271A defines a number of terms for the new part 3A. The most significant of these is the definition of *responsible person*, which identifies the individual upon whom obligations are placed by the new part 3A.

New section 271B requires a responsible person to notify the chief executive if the person reasonably suspects food sold, or intended for sale, in the course of carrying on the food business has been intentionally contaminated. It is an offence not to comply with this requirement, unless the person has a reasonable excuse.

New subsection (3) provides that it is not a reasonable excuse to not notify the chief executive on the grounds that the notification may incriminate the person. This provision may be regarded as compromising the person's protection against self-incrimination. To ensure the rights of the notifying individual (as opposed to corporation) are protected, new subsection (4) provides that information provided to the chief executive (primary evidence and derivative evidence) is not admissible in evidence against the individual in any civil or criminal proceedings. Subsection (5) provides that this protection does not apply in relation to criminal proceedings relating to the falsity or misleading nature of the primary evidence or relating to an offence under the Act if the person fails to comply with a requirement under new section 271C(2) or a direction under 271D(2).

New section 271C provides that a responsible person who reasonably suspects food sold, or intended for sale, in the course of carrying on the food business has been intentionally contaminated, must retain any of the food which has not sold or otherwise disposed of. It is an offence not to comply with this requirement. The requirement ceases if the chief executive directs the person under section 271D(2) to dispose of the food.

New section 271D empowers the chief executive to give a responsible person a reasonable direction following notification under section 271B. The direction may include, for example, directions about handling of the potentially contaminated food or equipment, isolation of the food or testing

of the food. It is an offence not to comply with the direction unless the person has a reasonable excuse.

Clause 4 amends the dictionary in schedule 3 of the Act to reflect new terms inserted by the Bill.