

**Bills Committee on
the Public Health and Municipal Services (Amendment) Bill 2008**

**Follow-up on Matters Arising from
the Bills Committee Meeting on 22 January 2009**

Purpose

This paper sets out our response to the issues raised by Members at the Bills Committee meeting on 22 January 2009.

Definition of “Hazard” under section 78A

2. Taking into account Members’ views, the English and Chinese rendition of the definition of the term “hazard” in section 78B of the Public Health and Municipal Services (Amendment) Bill 2008 are proposed as follows –

Hazard

“Hazard” (危害) means a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect;¹

“危害” (hazard)指食物中可能對健康導致不良影響的某種生物、化學或物理因素，或可能對健康導致不良影響的某種食物狀況。¹

3. To improve accuracy and consistency, a few other terms in Chinese in the Amendment Bill are revised, including the term “danger” in section 78B(2), which will be translated as “危險”, and several terms under section 78B(2A)(e) as follows –

Section 78B(2)

The Authority may only make a section 78B order if the Authority has reasonable grounds at the time of making the order to believe that the making of the order is necessary to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health.

¹ This is in line with the definition of “hazard” set by the Codex Alimentarius Commission.

~~凡主管當局在作出第78B條命令時，有合理理由相信有需要作出該命令，以防止對公眾衛生的危害，或減少危害公眾衛生的可能性，或緩解任何對公眾衛生的危害的不良後果，該命令方可作出。造成危險，或減少對公眾衛生造成危險的可能性，或緩解任何對公眾衛生造成危險的不良後果，該命令方可作出。~~

Section 78B(2A)(e)

characteristics of any hazard in the food, the level of the hazard in the food, consumption pattern of the food and the exposure of the general public and vulnerable groups to the food;

有關食物的任何危害的特性特徵、有關食物的危害的程度水平、有關食物的進用食用模式，及一般公眾和易受影響傷害組別人士接觸有關食物的情況；

Activity in Relation to Any Food under Section 78B(1)(e)

4. In drafting the Amendment Bill, we have made reference to a number of overseas legislation including the food safety legislation of New South Wales and Victoria of Australia. The power to prohibit or permit the carrying on of an activity in relation to any food is provided in the Australian legislation which we consider useful in dealing with unforeseen food incidents. A copy of the two pieces of legislation have been provided in the Bills Committee paper CB(2)297/08-09(04) and the relevant provision is copied at the Annex.

5. Section 78B(1)(e) is a catch-all provision to cover situations other than those covered by section 78B(1)(a) to (d). It also empowers the Director of Food and Environmental Hygiene (DFEH) to impose conditions in the order. Here are some possible examples –

- (a) Section 78B(1)(b) empowers DFEH to make an order to prohibit the supply of any food. The definition of “supply” in section 78A does not cover the giving away of food for non-commercial purpose. As explained at the Bills Committee meeting, it is not our intent to cover the situation when a person gives food as a gift (or for whatever reason) to a friend, a neighbour or a colleague in office. That said, where the situation warrants, DFEH may need to make an order to prohibit a

particular activity in relation to problem food, e.g. the manufacture of a particular food, etc. Section 78B(1)(e) would be invoked in this case. As required by section 78B(3), the particulars of the food that is the subject of the order and the prohibition/action requires, as the case may be, and conditions (if any) would be clearly specified in the order.

- (b) There had been past cases of raw fish/oysters which were not intended for consumption at raw state but were supplied for the purpose of raw consumption. We may make a section 78B order under section 78B(1)(e) to prohibit the supply of raw fish/oysters unless a warning label (e.g. that the food is not intended for consumption at raw state) is properly attached to the product.
- (c) Certain common raw material of a particular brand is found to contain highly toxic matter, and a section 78B order (under section 78B(1)(e)) may be made to prohibit all local manufacturers from using that raw material in their production of food.
- (d) After a section 78B order is made to prohibit the supply of a particular food product, the Authority notices that there is an advertisement in the media (newspaper, TV, radio, etc) targeted at promoting the sales of the food product (that is the subject of a section 78B order) which has the effect of confusing or misleading the public. Under such circumstances, the Authority may consider issuing an order under section 78B(1)(e) to prohibit the continued publishing of that advertisement for a certain period of time.

Advice Sought

- 6. Members are invited to note the above.

Food and Health Bureau
February 2009

New South Wales

Food Act 2003 (Extract)

Part 3 – Emergency powers

31 Nature of order

An order under this Part may do any one or more of the following:

- (a) require the publication of warnings, in a form approved by the Food Authority, that a particular food or type of food is unsafe,
- (b) prohibit the cultivation, taking, harvesting or obtaining, from a specified area, of a particular food or type of food,
- (c) prohibit a particular food or type of food from being advertised or sold,
- (d) direct that a particular food or type of food consigned or distributed for sale or sold be recalled and specify the manner in which, and the period within which, the recall is to be conducted,
- (e) direct that a particular food or type of food be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which the impounding, isolation, destruction or disposal is to be conducted,
- (f) prohibit absolutely the carrying on of an activity in relation to a particular food or type of food, or permit the carrying on of the activity in accordance with conditions specified in the order,**
- (g) without limiting the generality of paragraph (f), impose conditions relating to the taking and analysis of samples of the food or of water or soil or any other thing that is part of the environment in which that

activity is carried on in relation to the food,

(h) specify methods of analysis (not inconsistent with any methods prescribed by the Food Standards Code) of any samples required to be taken in accordance with the order.

Victoria

Food Act 1984 (Extract)

Part VII—Emergency Powers

44A Nature of order

- (1) An order under this Part may do any one or more of the following—
 - (a) require the publication of warnings, in a form approved by the Secretary, that a particular food or type of food is unsafe;
 - (b) prohibit the cultivation, taking, harvesting or obtaining, from a specified area, of a particular food or type of food or other primary produce intended to be used for human consumption;
 - (c) prohibit a particular food or type of food from being advertised or sold;
 - (d) direct that a particular food or type of food consigned or distributed for sale or sold be recalled and specify the manner in which, and the period within which, the recall is to be conducted;
 - (e) direct that a particular food or type of food or other primary produce intended to be used for human consumption be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which the impounding, isolation, destruction or disposal is to be conducted;
 - (f) prohibit absolutely the carrying on of an activity in relation to a particular food or type of food, or permit the carrying on of the activity in accordance with conditions specified in the order;**
 - (g) without limiting the generality of paragraph (f), impose conditions for or with respect to requiring the taking and analysis of samples of the food or of water or soil or any other thing that is part of the environment in which that activity is carried on in relation to the food;

- (h) specify methods of analysis (not inconsistent with any methods prescribed by the Food Standards Code) of any samples required to be taken in accordance with the order.
- (2) An order under this Part may be varied or revoked by the Secretary in the same manner as the order was made.