

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

**Powers in relation to Food Incidents  
in Legislation of Other Jurisdictions**

**PURPOSE**

This paper summarizes the Government's powers in a food incident under the legislation of other jurisdictions, including Australia<sup>1</sup>, New Zealand<sup>2</sup>, the United Kingdom<sup>3</sup> and Canada<sup>4</sup>.

**OVERSEAS LEGISLATION**

2. There are a few points to note about the legislation quoted in this paper –

*Australia*

Food legislation in different states and territories are all modelled from food provisions under the Food Regulation Agreement signed by all states and territories in 2002. The purpose of the Agreement is to give effect to a national approach to food regulations within Australia. This paper selects the legislation in New South Wales and Victoria for illustration purpose.

*New Zealand*

This paper focuses mainly on the provisions in relation to the power to order a mandatory food recall. According to the New Zealand Food Safety Authority, the relevant clauses on the power to prohibit the sale of problematic food in the New Zealand Food Act 1981 are now being amended.

*United Kingdom and the European Union*

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<sup>1</sup> New South Wales Food Act 2003, Victoria Food Act 1984

<sup>2</sup> New Zealand Food Act 1981

<sup>3</sup> UK Food Safety Act 1990, General Food Regulations 2004, the European Union General Food Law: Regulation (EC) No. 178/2002

<sup>4</sup> Canada Food and Drug Act, Canadian Food Inspection Agency Act

The principle legislation relevant to food safety in the United Kingdom is the Food Safety Act 1990, supported by the General Food Regulations 2004. The Food Safety Act 1990 empowers the Minister of Agriculture, Fisheries and Food/the Secretary of State (in England or Wales), or the Secretary of State (in Scotland) to issue emergency control orders to prohibit the carrying out of commercial operations with respect to food which may pose imminent risk of injury to health. The General Food Regulations in conjunction with Regulation (EC) No. 178/2002 of the European Parliament stipulate the responsibility of food business operators on food safety, including the legal responsibility to recall problematic food.

### *Canada*

The main legislation relevant to food safety in Canada are the Food and Drug Act and the Canadian Food Inspection Act. The Food and Drug Act empowers the Minister of Health to issue an interim order (e.g. to prohibit the sale of food) if the Minister believes that immediate action is required to deal with a significant risk, direct or indirect, to human life, health and safety. The Canadian Food Inspection empowers the Minister of Agriculture and Agri-food to order a mandatory food recall.

## **SCOPE OF CLAUSES EXTRACTED**

3. The overseas legislation mentioned above are summarised in Annex.
4. A full set of the overseas legislation (in English version only) have been provided to the Secretariat of the Legislative Council for Members' reference.

**Food and Health Bureau**  
**December 2008**

## **Extract from Legislation in Other Jurisdictions Relating to Food Incident**

### **A. Triggers for the authorities to exercise the power**

#### Australia

##### *New South Wales Food Act 2003 - Section 30*

An order may be made under this Part by the Food Authority if the Food Authority has reasonable grounds to believe that the making of the order is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

##### *Victoria Food Act 1984 - Section 44*

An order may be made under this Part by the Secretary if the Secretary has reasonable grounds to believe that the making of the order is necessary to prevent or reduce the possibility of a serious danger to public health or to mitigate the adverse consequences of a serious danger to public health.

#### New Zealand

##### *New Zealand Food Act 1981 – Section 40(1)*

The Minister may, for the purpose of protecting the public, issue to any importer, manufacturer, or seller of food, an order directing the recall of any food or appliance, or requiring the destruction or denaturing of any food that is unsound or unfit for human consumption or is damaged or deteriorated or perished, or that is contaminated with any poisonous, deleterious, or injurious substance.

#### United Kingdom

##### *European General Food Law: Regulation (EC) No. 178/2002 – Article 19(1)*

If a food business operator considers or has reason to believe that a food which

it has imported, produced, processed, manufactured or distributed is not in compliance with the food safety requirements, it shall immediately initiate procedures to withdraw the food in question from the market where the food has left the immediate control of that initial food business operator and inform the competent authorities thereof. Where the product may have reached the consumer, the operator shall effectively and accurately inform the consumers of the reason for its withdrawal, and if necessary, recall from consumers products already supplied to them when other measures are not sufficient to achieve a high level of health protection.

*United Kingdom Food Safety Act 1990 – Section 13(1)*

If it appears to the Minister that the carrying out of commercial operations with respect to food, food sources or contact materials of any class or description involves or may involve imminent risk of injury to health, he may, by an order (in this Act referred to as an “emergency control order”), prohibit the carrying out of such operations with respect to food, food sources or contact materials of that class or description.

Canada

*Canadian Food Inspection Agency Act / Food and Drug Act – Section 19(1)*

Where the Minister believes on reasonable grounds that a product regulated under an Act or provision that the Agency enforces or administers poses a risk to public, animal or plant health, the Minister may, by notice served on any person selling, marketing or distributing the product, order that the product be recalled or sent to a place designated by the Minister.

*Canada Food and Drug Act – Section 30.1(1)*

The Minister may make an interim order that contains any provision that may be contained in a regulation made under this Act if the Minister believes that immediate action is required to deal with a significant risk, direct or indirect, to health, safety or the environment.

## **B. Compensation**

### Australia

#### *New South Wales Food Act 2003 - Section 34*

- (1) A person bound by an order under this Part who suffers loss as a result of the making of the order may apply to the Food Authority for compensation if the person considers that there were insufficient grounds for the making of the order.
- (2) If there were insufficient grounds for the making of the order, the Food Authority is to pay such compensation to the applicant as is just and reasonable.
- (3) The Food Authority is to send written notification of its determination as to the payment of compensation under this section to each applicant for the payment of such compensation.
- (4) If the Food Authority has not determined an application for compensation under this section within 28 days of receiving the application, the Food Authority is taken to have refused to pay any compensation.
- (5) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the Food Authority as to the refusal to pay compensation or as to the amount of compensation may apply to the Administrative Decisions Tribunal for a review of the determination:
  - (a) within 28 days after the day on which notification of the determination was received, or
  - (b) in a case to which subsection (4) applies, within 28 days after the expiration of the 28-day period referred to in that subsection

#### *Victoria Food Act 1984 – Section 44D*

- (1) A person bound by an order under this Part who suffers loss as a result of the making of the order may apply to the Secretary for compensation if the person considers that there were insufficient grounds for the making of the order.
- (2) If there were insufficient grounds for the making of the order, the Secretary is to pay just and reasonable compensation to the applicant.
- (3) The Secretary is to send written notification of the Secretary's determination as to the payment of compensation under this section to each applicant for

the payment of compensation.

- (4) If the Secretary has not determined an application for compensation under this section within 28 days of receiving the application, the Secretary is taken to have refused to pay any compensation.
- (5) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the Secretary as to the refusal to pay compensation or as to the amount of compensation may apply to the Magistrates' Court for a review of the determination-
  - (a) within 28 days after the day on which notification of the determination was received; or
  - (b) in a case to which subsection (4) applies, within 28 days after the 28-day period referred to in that subsection.
- (6) If the amount of compensation sought exceeds the jurisdictional limit of the Magistrates' Court, the application under subsection (5) is to be made to the Supreme Court.

#### New Zealand, United Kingdom and Canada

No provision related to compensation is found in the legislation.

### **C. Penalty level**

#### Australia

##### *New South Wales Food Act 2003 – Section 35*

A person must not, without reasonable excuse:

- (a) carry on an activity in contravention of any prohibition imposed on the person by an order under this Part, or
- (b) neglect or refuse to comply with a direction given by such an order, or
- (c) fail to comply with a condition specified in such an order.

Maximum penalty: 500 penalty units in the case of an individual or 2,500 penalty units in the case of a corporation. (1 penalty unit = AUD110)

##### *Victoria Food Act 1984 – Section 44E*

A person must not, without reasonable excuse-

- (a) carry on an activity in contravention of any prohibition imposed on

- the person by an order under this Part; or
- (b) neglect or refuse to comply with a direction given by such an order;  
or
  - (c) fail to comply with a condition specified in such an order.

Penalty: AUD40,000 in the case of an individual or AUD200,000 in the case of a corporation.

### New Zealand

#### *New Zealand Food Act 1981 – Section 28*

Every person who commits any offence against this Act for which no penalty is provided elsewhere than in this section is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding NZD2,000, and, if the offence is a continuing one, to a further fine not exceeding NZD100 for every day or part of a day during which the offence has continued.

### United Kingdom

#### *United Kingdom General Food Regulations 2004 - Regulation 4 and 5*

4. Any person who contravenes or fails to comply with any of the following provisions of Regulation (EC) No. 178/2002 shall be guilty of an offence —

...

(d) Article 19 (responsibilities for food : food business operators).

5. (1) A person guilty of an offence under regulation 4 shall be liable —

(a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both;

(b) on summary conviction, to a fine not exceeding the relevant amount or to imprisonment for a term not exceeding six months or to both.

(2) In paragraph (1) “the relevant amount” means —

...

(b) in any other case, the statutory maximum. (currently GBP5,000)

#### *United Kingdom Food Safety Act 1990 – Section 35*

(2) A person guilty of any other offence under this Act shall be liable—

- (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both;
- (b) on summary conviction, to a fine not exceeding the relevant amount or to imprisonment for a term not exceeding six months or to both.

(3) In subsection (2) above “the relevant amount” means—

...

- (b) in any other case, the statutory maximum. (currently GBP5,000)

## Canada

### *Canadian Food Inspection Agency Act - Section 19(2)*

Any person who contravenes a recall order referred to in subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding CAD50,000 or to a term of imprisonment not exceeding six months or to both.

### *Canada Food and Drugs Act – Section 31.1*

Every person who contravenes any provision of this Act or the regulations, as it relates to food, is guilty of an offence and liable

- (a) on summary conviction, to a fine not exceeding CAD50,000 or to imprisonment for a term not exceeding six months or to both; or
- (b) on conviction by indictment, to a fine not exceeding CAD250,000 or to imprisonment for a term not exceeding three years or to both.