

Mr John Saunderson. The inquiry will examine

- the possibility of restoring the Tribunal's power of prior approval
- the possibility of appropriate sanctions for breaches of the Broadcasting Act
- the undertakings currently given by broadcasters to provide an adequate and comprehensive service and promote the use of Australian resources
- the basis and conditions on which licences are granted and renewed and
- the role of the Tribunal in establishing and enforcing program and advertising standards.

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## food irradiation

He was a very valiant man who first ventured on the eating of oysters.

Thomas Fuller  
*The History of the Worthies of England*

The Australian Consumers Association report on food irradiation, which was published recently, is of particular interest because of the reference recently received by the Australian Law Reform Commission from the federal Attorney-General on Product Liability. (See [1987] *Reform* 170.)

*dangers to health.* There is evidence that food irradiation may have some detrimental effects. The National Farmer, 24 June 1987 reported

the British Medical Association has warned against the risks of leukaemia and genetic damage from food irradiation right on the eve of the process being accepted in Australia. . .

[the BMA's] findings were influenced by scientific studies on humans and rats which indicated irradiation could cause changes in blood cells which could lead to cancer.

*the report.* The ACA report was written by John McMillan of the Law Faculty, Australian National University and was commissioned by the Commonwealth Minister for Health, Dr Neal Blewitt. The terms of the Commission covered the implications of food irradiation in terms of consumer health, the environment and the cost to the consumer.

The ACA report explored possible avenues for government regulation of the industry and concluded that there should be a co-ordinated federal approach.

*current applications.* The subject is of more than academic interest. In the article quoted above the National Farmer reported that

Queensland is leading Australian interest in food irradiation, with two proposals for its use — a State Government/horticultural industry owned, Cobalt 60 powered unit in Brisbane and a plan by a Toowoomba company, Hartfield, for an electrically powered, linear accelerator unit to treat export strawberries and mangoes.

*existing regulations.* Current controls on such processes as food irradiation are an ad hoc collection of federal, State and Territory laws and regulations. The main regulations on food irradiation activities in Australia at present are:

- the Model Food Standards regulations adopted by the National Health and Medical Research Council in June 1986.

- the Victorian Health (Irradiation Safety) Regulations 1984, and
- the Commonwealth Code of Practice for the Safe Transport of Radioactive Substances pursuant to the Environment Protection (Nuclear Codes) Act 1978.

*constitutional implications.* The report concludes that "the Commonwealth could, if it was so minded, legislate directly on virtually any aspect of food irradiation". The main heads of power which would support such action by the Commonwealth in the Constitution are:

- s 51(9) — quarantine
- s 51(20) — corporations power
- s 51(29) — external affairs
- s 51(1) — trade and commerce power
- s 51(14) — insurance
- s 51(2) — taxation.

*food irradiation activities.* The report identifies the following activities as possible targets for Commonwealth legislation:

- The choice of site for the processing facility.
- The purchase or construction of the irradiation apparatus, which may be a domestic or international transaction.
- Ownership and operation of the plant which may be undertaken by the same firm, or may occur by lease between two or more firms or may be undertaken by a Commonwealth or State government instrumentality.
- Initial licensing of the plant to enable it to commence operation.

- Regular monitoring of the plant to ensure compliance with licence conditions.

- Regulation of the fuel source, including the initial purchase, the dispersal of spent fuel, and the transport of fuel to and from the plant.

- Employment and training of staff, including regulation of the conditions of employment to secure occupational health and safety objectives.

- Regulation of the process of irradiation itself, including designation of the foods that can be irradiated, monitoring of irradiation dosages, and control of irradiated goods as an ingredient in other goods.

- Identification of the source of and the market for, irradiated food — for example, food irradiated in Australia may be sold in the State in which it was irradiated, in a different State, or be exported; and equally the food on sale may have originated in the same State, in another State, or overseas.

- Packaging and labelling of food — among the variables here are that the food may be sold in the form in which it was irradiated or in a different form (for example, fruit may be irradiated in bulk, but sold as single items; or irradiated food may be used as an ingredient in some other food); the food may pass through many different hands between the irradiation and retail sale, which could thus effect the durability of any labelling. The enterprises that are variously engaged at all those stages may vary in their corporate structure,

ranging from corporations to sole traders.

*regulatory options.* The main options available in Australia for the regulation of food irradiation are Commonwealth control, State control and Co-operative Commonwealth/State schemes. McMillan points out that 'the Commonwealth would appear to have the constitutional authority to enact legislation that regulated food irradiation in a direct and comprehensive way'. In his opinion 'there is equally a large field of choice available to the Commonwealth concerning the regulatory model it will adopt. At one extreme is the creation of a separate agency; at the other is the device of conferring the relevant licensing and other functions on a minister, who can then delegate those functions to administrative officials. It is important to note in this respect that a Commonwealth function can be delegated to a State official.'

It is within the constitutional authority of each State Parliament to regulate food irradiation within the State. Whether it is preferable for the initiative to be left with the States will depend on the answers to three questions, as McMillan observes:

First, bearing in mind the existing division of responsibilities in the Australian federal system, is food irradiation a matter that is more appropriately assigned to State or to Commonwealth control? Secondly is it desirable to have national uniformity in Australia in the law on food irradiation — with the objectives, for instance, of protecting consumers, of assisting firms that produce goods for a national market, or of restraining forum shopping by firms that are anxious to reduce the impact of government regulation on their activities? Thirdly, if uniformity is desirable,

could it be achieved in the short term by unilateral State action, and would the uniformity be maintained?

The third regulatory option would be the creation of a co-operative Commonwealth/State scheme. McMillan points out that the precedent for such an approach exists in the present co-operative scheme for the regulation of companies and securities. However he concludes that

It is doubtful whether the practice of food irradiation would reach the proportion that merited creation of a co-operative scheme. If it were otherwise, the difficulties that normally beset co-operative schemes would have to be confronted — for example, would there be a protracted delay in securing initial agreement on a model law and then having it adopted by all seven parliaments; would the result be a compromise, the lowest common denominator of what was acceptable to seven governments; would subsequent reform be difficult; and would the result be acceptable to the members of parliament who would have been effectively excluded from the entire process of negotiation and design of the co-operative scheme?

*ACA recommends caution.* The ACA report acknowledges some studies which conclude that irradiation of food can have detrimental effects. It was these studies which led to the ACA making the following recommendations.

- Applications for approval to irradiate a specific item of food should be accompanied by a critical evaluation of all the research pertaining to that food use.
- Approval to irradiate individual food items should be accompanied by limitations to dose so as to minimize the risks to consumer health.

- The process itself should be carefully controlled in terms of licensing and operating of facilities.

*product liability.* The question of product liability arises. If food irradiation causes sickness or disease in any person or the process has detrimental effects on the environment, who is liable for the damages. The producer who permits food to be irradiated? The processor who irradiates the food? The vendor who sells the food? What will be the measure of damages? And who will have standing to claim compensation?

These are among the questions that will be raised in the course of the Commission's reference on Product Liability, which is to be completed by June 1989.

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### special credit laws for farmers

Ah, too fortunate farmers, if they knew their own good fortune.

Virgil, *Georgics II*, 458.

*legislation imminent.* On 18 November 1987 the Credit (Rural Contracts) Bill, 1987 was introduced into the New South Wales Legislative Council. The Bill subsequently passed through both Houses of Parliament and it would appear that proclamation of the Bill is imminent. The legislation seeks to relieve farmers from the effects of credit contracts which are unjust and where farmers have experienced temporary hardship fulfilling the terms of such contracts.

*rural credit inquiry.* The Bill was introduced following an inquiry into

rural credit commissioned by Deidre Grusovin, New South Wales Minister for Consumer Affairs. However, drafting of the Bill had been completed before the inquiry had reported.

*criticism.* The Bill has attracted criticism on the basis that it will be 'an invitation to farmers to walk away from their contracts' by excusing them from meeting their debt obligations. In short, it has been objected that such a law is too easily abused. (*SMH* 26 and 28 November 1987).

*why special laws for farmers?* It was also contended in the NSW Parliament on 23 November 1987 that if there was a case for special provisions, the existing protections in the Credit Act, 1984 (NSW) and the Contracts Review Act, 1980 (NSW) should merely be amended. Mrs Grusovin justified separate legislation on the basis that swift action on the problem should not be prevented or impeded by the current work being undertaken to simplify the Credit Act and create uniform Credit legislation for Australia. However, as pointed out in a letter dated 3 December 1987 to the *Sydney Morning Herald* by a representative of the Australian Bankers Association, AC Cullen, the Bill can be distinguished from the existing legislation dealing with private consumers in the 'size, scope and nature of farm business transactions covered'. According to two solicitors from Redfern Legal Centre who have acted for farmers against credit providers, the necessity for specific legislation directed at farmers is justified first, 'to stop certain unlawful practices presently engaged in systematically by some of the biggest lending institutions' which specifically affect farmers and secondly 'to clarify the existing rights of farmers to reschedule