



# ALLERGEN STANDARDS



Food Allergen Detection Workshop



# REGULATORY ENVIRONMENT

- Bill Porter
- Director, Policy
- NSW Food Authority
- 23 June 2009



# NSW Food Act 2003

- Commenced February 2004
- Administered by NSW Food Authority
- Councils also enforcement agencies
- Adoption of Model Food Provisions
- Enforcement of Food Standards Code – including labelling
- Allergen labelling in particular



# Food for sale

- Food Act applies to sale
- Sell defined in Act, & includes
  - Supply meal to employee
  - Raffles & lotteries
  - Prize or reward
  - Given away – advertisement or trade
  - And more



# Offences under the Food Act

- Broadly divided into serious offences and others
- Serious offences include mental element, offence is committed “knowingly”
- Reflected in maximum penalties, viz \$110,000 and/or 2 years for individual, \$550,000 for a corporation.



# Offences under the Act

- Serious offences relating to sale of “unsafe” food may not be relevant?
- “Unsafe” does not include adverse reactions in persons with allergies due to “inherent nature” of food.....



# Other Offences

- Misleading conduct/false description
- Not comply with purchaser's demand
- Compliance with Food Standards Code
  - Personal requirements
  - Food does not comply
  - Packaging and labelling
  - Advertising
  - Max \$55,000, corporation \$275,000



# Sanctions/Actions

- Warning
- Penalty infringement notice
- Seizure
- Prosecution
- Emergency powers
  - Publish warning
  - Prohibit sale
  - Direct recall
  - Direct destruction



# Recalls

- Mandated recalls
  - Directed by D-G
  - Serious danger to public health
  - Rare
- Voluntary recalls
  - Initiated by industry
  - Coordinated by FSANZ
  - Industry and State protocols



# Allergen Declaration

- Mandatory declaration
  - Required by Food Standards Code
- Voluntary declaration
  - Cross contamination
  - Duty of care?
  - Recall avoidance?



# Food Standards Code

- Standard 1.2.3
  - Mandatory advisory statements and declarations
  - Mandatory warning statements and declarations
  - Mandatory declaration of certain substances in food



# Standard 1.2.3

- Mandatory declaration of certain substances in food [clause 4]
  - The big eight
  - Presence must be declared
  - On label, otherwise displayed or provided on request [verbal option?]
  - Ingredient, sub-ingredient, additive, component, processing aid or component
  - Not cross contamination



# Labelling generally

- Standard 1.2.1
  - Clause 2(1) requires food for retail sale to have a label showing all information prescribed by Code
  - Subject to exemptions eg unpackaged food, food sold at fundraising event
  - Clause 2(2) can negate exemption and does so for Standard 1.2.3
  - Different for foods for catering and for wholesale



# Retail sale

- Supermarket, deli, bottle shop
- Restaurant, milk bar & McDonalds
- Clubs, pubs, hotels & motels
- Works cafeteria & school canteen
- Boarding house, Matthew Talbot hostel
- CWA stall, Harry's Café de Wheels
- Conventions, conferences, FACTA events
- QF 298 to Dubbo, the Ghan, QE III
- Ward 23 RPA, nursing homes, child care
- Long Bay & football sausage sizzle
- Meals on wheels, bed & breakfast



# Terminology

- Purpose of the Standard is to alert the consumer at risk
- Use of technical terminology may obscure that purpose.
- Caseinates not always associated with milk
- Declaration as milk/milk product would be more effective, option to qualify (in brackets)
- Additive names and numbers?



# Declaration

- Label may include allergens as
  - Part of ingredient list
  - Independent of ingredient list
  - May contain statement
  - A combination of all above
- A single stand-alone declaration may assist the target consumer



# Provided to the purchaser

- Declaration must be provided to purchaser on request
  - If not otherwise declared
- Format not prescribed
- Written or verbal
- Maximum penalty for individual \$55,000, corporation \$275,000



# Threshold levels

- Declaration is required by the Code regardless of level of ingredient, additive or processing aid
- Declaration is required even if allergenic protein is not present
- Proposal re isinglass (and others)
- Level of safety may differ between individuals
- Issue with cross contamination



# “May contain”

- No specific obligation in the Code to declare cross contamination, but...
- Food Authority may use emergency powers to prevent the possibility of a serious danger to public health
- Food businesses have duty of care
- But “may contain” could be deceptive where presence is unlikely



# Recall paradox

- Food Authority will suggest a voluntary recall if there are grounds to mandate a recall
- Serious danger to public health will be linked to threshold levels
- Should serious danger be limited to the big eight? Non-declaration of cottonseed?
- Other allergens – celery, rice, latex?



# Conclusions

- Standard needs revisiting
- May contain standardised
- Level of understanding
- Establish thresholds if possible
- Agreed analysis
- NSW Food Authority contact centre  
1300 552 406