# Food Standards Australia New Zealand Act 1991

**Act No. 118 of 1991 as amended**

This compilation was prepared on 12 November 2012
taking into account amendments up to Act No. 136 of 2012

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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# An Act establishing a body to be known as Food Standards Australia New Zealand with functions relating to the development of food regulatory measures, and for related purposes

## Part 1—Preliminary

### 1 Short title [*see* Note 1]

This Act may be cited as the *Food Standards Australia New Zealand Act 1991*.

### 2 Commencement [*see* Note 1]

(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

### 3 Object of Act

The object of this Act is to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals:

(a) a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand;

(b) an effective, transparent and accountable regulatory framework within which the food industry can work efficiently;

(c) the provision of adequate information relating to food to enable consumers to make informed choices;

(d) the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection.

## 4 Interpretation

(1) In this Act, unless the contrary intention appears:

***Agvet Code*** means the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth.

***appropriate government agency*** means:

(a) a Department of State of the Commonwealth, and a Commonwealth authority, that is prescribed for the purposes of this paragraph; or

(b) the CEO of the National Health and Medical Research Council; or

(ba) the Gene Technology Regulator; or

(c) the Department of State of each State and Territory that is primarily responsible for public health in that State or Territory; or

(d) a State or Territory authority that is prescribed for the purposes of this paragraph; or

(e) a Department of State of New Zealand that is nominated by the government of New Zealand; or

(f) the Department of State of New Zealand that is primarily responsible for public health; or

(g) a New Zealand authority that is prescribed for the purposes of this paragraph.

***APVMA*** means the Australian Pesticides and Veterinary Medicines Authority continued in existence by section 6 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

***Australia New Zealand Food Standards Code*** means the code published under the name ***Food Standards Code*** in the *Gazette* on 27 August 1987 together with any amendments of the standards in that code:

(a) approved by a former Council before this Act commenced and published in the *Gazette* as forming part of that code; or

(b) made under this Act.

***Australia New Zealand Joint Food Standards Agreement*** means the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards, signed at Wellington on 5 December 1995, as amended in accordance with Article 10 of that Agreement.

***Authority*** means Food Standards Australia New Zealand.

***Board*** means the Board of the Authority.

***business day*** means a day that is not:

(a) a Saturday; or

(b) a Sunday; or

(c) a public holiday in the Australian Capital Territory or in Wellington, New Zealand.

***Chief Officer*** means:

(a) in relation to a Commonwealth, State, Territory or New Zealand authority—the person who has the responsibility of Executive Officer or Chief Executive Officer of that authority (whether the person is a member of that authority or not); and

(b) in relation to any other authority or body—the person who has the responsibility for the day to day management of that authority or body.

***code of practice*** means a code of practice developed by the Authority under Part 3. However, a code of practice is not a standard.

***Commonwealth authority*** means a body, whether corporate or not, established by the Commonwealth, or by or under a law of the Commonwealth.

***confidential commercial information***, in relation to food, means:

(a) a trade secret relating to food; or

(b) any other information relating to food that has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

***Council*** means the Australia and New Zealand Food Regulation Ministerial Council that was established by the Food Regulation Agreement.

***develop***, in relation to a food regulatory measure or a variation of a food regulatory measure, includes:

(a) prepare a draft of the measure or variation; and

(b) approve a draft of the measure or variation.

***exclusive capturable commercial benefit*** has the meaning given by section 8.

***Finance Minister*** means the Minister administering the *Financial Management and Accountability Act 1997*.

***food*** has the meaning given by section 5.

***Food Regulation Agreement*** means the Food Regulation Agreement, as amended from time to time:

(a) that is between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory; and

(b) that was first made on 3 November 2000 or that was made:

(i) in substitution for that agreement; or

(ii) in substitution for a prior substituted agreement.

***Food Regulation Standing Committee*** means the Committee established under the Food Regulation Agreement.

***food regulatory measure*** means a standard or a code of practice.

***former Council*** means:

(a) the Council of Commonwealth, State and Territory Ministers that was established in 1986 by agreement between the Commonwealth, the States and the Northern Territory and is known as the National Food Standards Council; or

(b) if that Council was reconstituted but continued in existence under that name by agreement between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory, whether entered into before or after this Act commences—that Council as so reconstituted and continued in existence; or

(c) if that Council was reconstituted but continued in existence under the name Australia New Zealand Food Standards

Council by agreement between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory—that Council as so reconstituted and continued in existence.

***general procedure*** means:

(a) in relation to the consideration of an application—the procedure set out in Subdivision D of Division 1 of Part 3; and

(b) in relation to the consideration of a proposal—the procedure set out in Subdivision D of Division 2 of Part 3.

***Gene Technology Regulator*** has the same meaning as in the *Gene Technology Act 2000*.

***GMO*** has the same meaning as in the *Gene Technology Act 2000*.

***GM product*** has the same meaning as in the *Gene Technology Act 2000*.

***High Level Health Claims Committee*** means a committee established under subsection 118(1A) to give advice on applications or proposals to make a high level health claims variation.

***high level health claims variation*** means a variation, the only effect of which is to make a change to the list of high level health claims, as defined for the purposes of the Nutrition, Health and Related Claims Standard, that may be made under that standard.

***Maximum Residue Limits Standard*** means the Maximum Residue Limits Standard as in force from time to time, or any standard in force in substitution for that standard.

***member*** means a member of the Board and includes the Chairperson and the Chief Executive Officer.

***New Zealand authority*** means a body (whether corporate or not) established by New Zealand, or by or under a law of New Zealand.

***New Zealand lead Minister on the Council*** means the Minister of the government of New Zealand who is:

(a) a member of the Council; and

(b) nominated by the government of New Zealand to be the New Zealand lead Minister on the Council.

***Nutrition, Health and Related Claims Standard*** means the Nutrition, Health and Related Claims Standard as in force from time to time, or any standard in force in substitution for that standard.

***policy guideline*** means a guideline formulated by the Council for the purposes of paragraph 18(2)(e).

***prepare*** includes process, manufacture and treat.

***produce*** includes prepare.

***public notice*** has the meaning given by section 7.

***standard*** means:

(aa) a standard made under this Act after the commencement of Part 1 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 2001*; or

(a) a standard that has been adopted, or taken to have been adopted, by a former Council under this Act before the commencement of Part 1 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 2001*; or

(b) a standard that is included in the Australia New Zealand Food Standards Code.

However, neither of the following is taken to be part of a standard:

(c) text identified as an editorial note;

(d) text identified as an example.

***State or Territory authority*** means a body, whether corporate or not, established by a State or Territory, or by or under a law of a State or Territory.

***Territory*** means the Australian Capital Territory and the Northern Territory.

***trust money*** means money received or held by the Authority on trust.

(3) A reference in the definition of ***Australia New Zealand Food Standards Code*** in subsection (1) to the ***amendment of the standards in that code*** includes, and is taken always to have

included, a reference to an amendment by way of the insertion, revocation or substitution of a standard in that code.

(4) A reference in this Act to the ***variation*** of a food regulatory measure includes, and is taken always to have included, a reference to the revocation of a food regulatory measure.

## 5 Meaning of *food*

(1) ***Food*** includes:

(a) any substance or thing of a kind used, capable of being used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared); and

(b) any substance or thing of a kind used, capable of being used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a); and

(c) any substance used in preparing a substance or thing referred to in paragraph (a); and

(d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; and

(e) any substance or thing declared to be a food under a declaration in force under section 6.

(It does not matter whether the substance, thing or chewing gum is in a condition fit for human consumption.)

(2) However, ***food*** does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*.

(3) To avoid doubt, ***food*** may include live animals and plants.

## 6 Declaration of what is food

(1) After consulting the Authority, the Minister may, by legislative instrument, declare that a substance or thing is food for the purposes of this Act.

(2) The Minister must cause a copy of the declaration to be published in the New Zealand Gazette.

(3) A declaration takes effect on the day specified in the declaration. That day must not be a day before the declaration is published.

*Declaration not subject to disallowance or sunsetting*

(4) Section 42 and Part 6 of the *Legislative Instruments Act 2003* do not apply to the declaration.

## 7 How is *public notice* given?

The Authority satisfies a requirement under this Act to give ***public notice*** of a particular matter by:

(a) publishing notice of the matter on the Authority's website; and

(b) giving written notice of the matter to each appropriate government agency; and

(c) if the requirement to give notice arises in the course of considering an application to develop or vary a food regulatory measure—giving written notice of the matter to the applicant; and

(d) if the Authority has called for submissions in the course of considering an application or proposal for the development or variation of a food regulatory measure—giving written notice of the matter to each of the persons invited to make a submission who made a submission within the relevant submission period; and

(e) giving written notice to any other person or body whom the Authority considers appropriate.

## 8 When is an *exclusive capturable commercial benefit* conferred on an applicant?

An ***exclusive capturable commercial benefit*** is conferred upon a person who applies for the development of a food regulatory measure or the variation of a food regulatory measure under section 22 if:

(a) the applicant can be identified as a person or body that may derive a financial gain from the coming into effect of the draft standard or draft variation of the standard that would be prepared in relation to the application; and

(b) any other unrelated persons or bodies, including unrelated commercial entities, would require the agreement of the applicant in order to benefit financially from the approval of the application.

## 9 Operation of Act

(1) Without prejudice to its effect apart from this section, this Act has effect for any or all of the following purposes:

(a) for purposes connected with fixing:

(i) the standard of food sold by corporations; or

(ii) standards in relation to activities undertaken by corporations in respect of food before, or in connection with, its sale, where, in the case of trading corporations, those activities are undertaken for the purpose of the trading activities of the corporations;

(b) for the purpose of ensuring, to the extent that the Constitution permits, that trade and commerce in food:

(i) between Australia and places outside Australia; or

(ii) among the States;

is carried on in an efficient and profitable manner;

(c) for purposes connected with the regulation of food and food standards in the Territories;

(d) for purposes connected with controlling the standards of all food supplied to the Commonwealth, its authorities and its instrumentalities;

(e) for purposes connected with the fixing of weights and measures in respect of food.

(2) In subsection (1):

***corporation*** means any corporation to which paragraph 51(xx) of the Constitution is applicable.

***trading corporation*** means a trading corporation to which paragraph 51(xx) of the Constitution is applicable.

## 10 Act to bind Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory but nothing in this Act renders the Crown liable to be prosecuted for an offence.

## 11 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

# Part 2—The Authority

## Division 1—Establishment, functions and powers of the Authority

### 12 Establishment of Authority

(1) The body known immediately before the commencement of this subsection as the Australia New Zealand Food Authority is continued in existence as Food Standards Australia New Zealand.

Note: See also section 25B of the *Acts Interpretation Act 1901*.

(2) The Authority:

(a) is a body corporate with perpetual succession; and

(b) must have a seal; and

(c) may sue and be sued in its corporate name.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Authority. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

(3) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the Authority appearing on a document and are to presume that the document was duly sealed.

### 13 Functions

(1) The functions of the Authority are:

(a) in accordance with this Act, to develop standards and variations of standards, and to review standards and variations of standards; and

(b) in accordance with this Act, to develop codes of practice and variations of codes of practice for industry and to review codes of practice; and

(c) to develop guidelines to assist the interpretation of the Australia New Zealand Food Standards Code on its own initiative or in consultation with the States, the Territories and any other body or person that the Authority considers appropriate; and

(d) to promote consistency between standards in Australia and New Zealand with those used internationally, based on the best available scientific evidence; and

(e) in consultation with the States and Territories, or on its own initiative, to facilitate the harmonisation of State and Territory laws relating to food; and

(f) in consultation with the States and Territories, or on its own initiative, to co-ordinate the development of procedures required to implement requirements set out in standards; and

(g) in consultation with the States and Territories, to co-ordinate the monitoring, surveillance and enforcement of activities relating to food available in Australia; and

(h) in consultation with the States and Territories, or on its own initiative, to conduct research and surveys in relation to any of the matters that may be included in a standard; and

(i) in co-operation with the States and Territories, to develop food education initiatives, including the publication of information to increase public awareness of food standards and food labels; and

(ia) to provide information, on request by a member of the public, about the Australia New Zealand Food Standards Code; and

(j) in co-operation with the Department administered by the Minister administering Part 3-3 of Schedule 2 to the *Competition and Consumer Act 2010*, as that Part applies as a law of the Commonwealth, to co-ordinate the recall of food under that Part; and

(k) at the request of the States and Territories, to co-ordinate action by the States and Territories to recall food under State and Territory laws; and

(l) to develop assessment policies in relation to food imported into Australia; and

(m) to provide advice to the Minister on matters relating to food; and

(n) to participate in international, regional and bilateral negotiations on matters that may be included in standards; and

(o) to make the Authority's knowledge, expertise, equipment, facilities and intellectual property available to other persons on a commercial basis; and

(p) at the request of New Zealand, to perform functions for New Zealand similar to the functions that the Authority may perform in relation to the States and Territories; and

(q) at the request of New Zealand, to perform functions for New Zealand similar to the other functions that the Authority may perform; and

(qa) such other functions as are conferred on the Authority by this Act; and

(r) any functions incidental to any of the foregoing functions.

(2) The function conferred by paragraph (1)(o):

(a) can only be exercised:

(i) for a purpose for which the Parliament has power to make laws; or

(ii) to utilise the Authority's spare capacity; and

(b) does not authorise the Authority to do something that would impede the Authority's capacity to perform its other functions.

## 14 Powers

(1) The Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, may:

(a) enter into contracts; and

(b) acquire, hold and dispose of real or personal property; and

(c) occupy, use and control any land or building owned, or held under lease, by the Commonwealth and made available for the purposes of the Authority; and

(d) engage persons to perform services for the Authority; and

(e) provide assistance to bodies or persons to prepare submissions:

(i) relating to the development or consideration of draft food regulatory measures or draft variations of food regulatory measures; or

(ii) relating to the performance of any other function of the Authority;

if the Authority determines that such assistance will advance the development or consideration of that draft or the performance of that other function; and

(f) accept gifts, grants, bequests and advances made to the Authority (whether on trust or otherwise) and act as trustee of money or other property vested in the Authority on trust; and

(fa) form, or participate in the formation of, companies; and

(fb) subscribe for or purchase shares in, or debentures and other securities of, companies; and

(fc) participate in partnerships, trusts and unincorporated joint ventures; and

(g) do anything incidental to any of its powers.

(2) The powers of the Authority may be exercised within or outside Australia.

## 15 Minister may give directions

(1) Subject to subsection (3), the Minister may give written directions to the Authority as to the performance of its functions and the exercise of its powers and the Authority must comply with those directions.

(2) The Minister must cause:

(a) a copy of a direction given under subsection (1); and

(b) a written statement of the reasons for giving the direction;

to be laid before each House of the Parliament within 15 sitting days of that House after the direction is given.

(3) The Minister must consult with the Council before he or she gives a direction under subsection (1).

(4) This section does not affect the application of section 28 of the *Commonwealth Authorities and Companies Act 1997* in relation to the Authority.

(5) A direction given under subsection (1) is not a legislative instrument.

## Division 2—Food regulatory measures

### 16 Matters that may be included in standards and variations of standards

(1) Standards, and variations of standards, developed by the Authority may relate to any of the following:

(a) the composition of food, including:

(i) the maximum amounts of contaminants or residues that may be present in the food; and

(ia) the maximum or minimum amounts of additives that must or may be present in the food; and

(ii) its microbiological status and safety; and

(iii) the method of sampling and testing the food to determine its composition;

(b) the production of food;

(c) the handling of food;

(ca) the prohibition of the sale of food:

(i) either in all circumstances or in specified circumstances; and

(ii) either unconditionally or subject to specified conditions;

(d) any information about food including labelling, promotion and advertising;

(e) the knowledge, skill, health and hygiene requirements for people handling food;

(f) the responsibilities of businesses that are handling food relating to any hygiene requirements in force under paragraph (e) for people involved in the business who are handling food;

(g) the responsibilities of businesses that are handling food to ensure that information in connection with hygiene requirements in force under paragraph (e) that is provided by individuals involved in the business and who are handling food remains confidential except in specified circumstances;

(h) the use of devices of a particular standard to measure the temperature of food;

(i) the design, construction, maintenance and cleanliness of:
  (i) premises (including fittings and fixtures) at which food is handled; or
  (ii) equipment (including single use items) used to handle food; or
  (iii) vehicles used to transport food;
(j) the information that a business that handles food may be required to give about the business to State or Territory authorities;
(k) restrictions on the premises at which, and the persons by whom, particular food may be sold or otherwise supplied;
(l) restrictions on the publications that may contain advertisements for particular food;
(m) requirements relating to animals and pests at premises in which food is handled, or in vehicles in which food is transported;
(n) the interpretation of other standards;
(o) the application of standards;
(p) such other public health matters relating to food as are prescribed.

(2) Without limiting subsection (1), a standard may relate to:
  (a) a class of food generally; or
  (b) a particular brand of food.

(2A) To avoid doubt, subparagraphs (1)(ca)(i) and (ii) do not, by implication, limit any other paragraph of subsection (1).

(2B) The matters to which standards, and variations of standards, may relate, are taken always to have included the matter mentioned in paragraph (1)(ca).

(2C) To avoid doubt, paragraph (2)(a), as in force before the commencement of this subsection, is taken always to have had effect as if the reference in that paragraph to type were a reference to class.

(3) In this section:

***handle***, in relation to food, includes produce, collect, receive, store, serve, display, package, transport, dispose of or recall food.

Note: See also the definitions of ***produce*** and ***prepare*** in subsection 4(1).

## 17 Codes of practice

Codes of practice, and variations of codes of practice, may deal only with matters that may be included in standards.

## 18 Objectives of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures

(1) The objectives (in descending priority order) of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures are:

(a) the protection of public health and safety; and

(b) the provision of adequate information relating to food to enable consumers to make informed choices; and

(c) the prevention of misleading or deceptive conduct.

(2) In developing or reviewing food regulatory measures and variations of food regulatory measures, the Authority must also have regard to the following:

(a) the need for standards to be based on risk analysis using the best available scientific evidence;

(b) the promotion of consistency between domestic and international food standards;

(c) the desirability of an efficient and internationally competitive food industry;

(d) the promotion of fair trading in food;

(e) any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority.

(3) If any policy guidelines formulated by the Council for the purposes of paragraph (2)(e) are notified to the Authority, the Authority must publish the guidelines on the Authority's website.

(3A) Policy guidelines formulated by the Council for the purposes of paragraph (2)(e) must not be inconsistent with the objectives set out in subsection (1).

(4) Where the Authority considers that the best available scientific evidence referred to in paragraph (2)(a) is insufficient, the Authority may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent scientific information.

In such cases, the Authority must take all reasonable steps to obtain the information necessary for a more objective risk analysis and a review of the sanitary or phytosanitary measures, to be undertaken within a reasonable period of time.

(5) For the purposes of this section, a ***sanitary or phytosanitary measure*** means any measure applied:

(a) to protect animal or plant life or health from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; or

(b) to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs; or

(c) to protect human life or health from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

(d) to prevent or limit other damage from the entry, establishment or spread of pests;

and includes:

(e) any relevant law, decree, regulation, requirement or procedure, including end product criteria; and

(f) processes and production methods; and

(g) testing, inspection, certification and approval procedures; and

(h) quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; and

(i) provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and

(j) packaging and labelling requirements directly related to food safety.

(6) A policy guideline formulated by the Council for the purposes of paragraph (2)(e) is not a legislative instrument.

## 19 Notices to be given to the Gene Technology Regulator

If a provision of this Act requires the Authority to give a notice concerning an existing or proposed food regulatory measure to the Gene Technology Regulator, the Authority is only required to give the notice if the food regulatory measure relates to food that is or contains a GMO or a GM product.

## Division 3—Forward planning

### 20 Authority to develop three year plan

(1) Not later than 30 June in each year, the Authority must develop and publish a three year forward plan for applications, proposals and types of applications and proposals on which it intends to develop standards or variations to standards.

(2) In developing a three year forward plan, the Authority must consult interested persons.

(3) The Authority must review and update the plan at least every 3 months.

# Part 3—Food regulatory measures

## Division 1—Applications for the development or variation of food regulatory measures

### Subdivision A—Overview

#### 21 Steps in the consideration of an application

The following is a simplified outline of the procedure for considering an application for the development of a food regulatory measure, or the variation of a food regulatory measure, other than a high level health claims variation.

| | |
|---|---|
| Step 1. | An application is made. |
| Step 2. | The Authority decides whether to accept or reject the application. If the application is accepted, the Authority proceeds to step 3. |
| Step 3. | The Authority notifies the applicant of acceptance. |
| Step 4. | The Authority gives public notice of the application, indicating when the Authority proposes to undertake key steps in considering it. |
| Step 5. | The Authority assesses the application.<br><br>The Authority may, after assessing the application, either reject it or proceed to the next step.<br><br>If the application is for a new food regulatory measure or a major variation of a food regulatory measure, the next step is step 6.<br><br>In any other case, it is step 7. |
| Step 6. | The Authority calls for public submissions. |

| | |
|---|---|
| Step 7. | The Authority prepares a draft food regulatory measure or a draft variation of a food regulatory measure, as the case requires. If the Authority has called for submissions under step 6, the Authority must have regard to the submissions in doing so. |
| Step 8. | If the application is for a minor variation, the Authority calls for submissions from the applicant and appropriate government agencies.<br><br>In any other case, the Authority calls for public submissions. |
| Step 9. | If the draft is a draft standard or a draft variation of a standard, the Authority must decide whether to approve or reject it and prepare a report, having regard to any submissions made. If approved, the Authority notifies the Council and the public of the approval and proceeds to step 10.<br><br>If the draft is a draft code of practice or a draft variation of a code of practice, the Authority must revoke or vary any existing code or practice and give public notice of its decision. No further steps are taken in relation to measures of this kind. |
| Step 10. | The standard or variation comes into effect after it has been considered by the Council and published. |

## Subdivision B—Applications

### 22 Applications

(1) A body or person may apply to the Authority for the development of a food regulatory measure or the variation of a food regulatory measure.

(2) The application must:
   (a) be in writing; and

(b) if the form in which the application is to be made is specified in guidelines made under section 23—be in the form specified; and

(c) include all of the information that, under guidelines made under section 23, is to be included with the application; and

(d) include each thing that, under guidelines made under section 23, is to be included with the application; and

(e) identify the procedure that, in the applicant's view, applies to the consideration of the application.

## 23 Application guidelines

*Authority may make guidelines*

(1) The Authority may, by legislative instrument, make guidelines:

(a) specifying the form in which applications for the development of a food regulatory measure, or the variation of a food regulatory measure, are to be made; and

(b) specifying the information, or the kinds of information, to be included with such applications; and

(c) specifying any thing, or kind of thing, to be included with such applications.

(2) The Authority may only specify information, or kinds of information, under paragraph (1)(b) in relation to an application if the inclusion of that information, or information of those kinds:

(a) would enable the Authority to assess the application and develop the relevant food regulatory measure, or the relevant variation of a food regulatory measure; or

(b) would enable the Authority to determine whether a charge fixed under section 146 is payable to the Authority in relation to the application.

(3) The Authority may only specify a thing, or a kind of thing, under paragraph (1)(c) in relation to an application, if the inclusion of that thing, or things of those kinds, would enable the Authority to assess the application and develop the relevant food regulatory measure, or the relevant variation of a food regulatory measure.

*Guidelines not subject to disallowance or sunsetting*

(4) Section 42 and Part 6 of the *Legislative Instruments Act 2003* do not apply to guidelines made under subsection (1).

### 24 Withdrawal of applications

(1) An applicant may withdraw the applicant's application by giving written notice of the withdrawal to the Authority at any time after the Authority has accepted the application under paragraph 26(1)(a) or 47(1)(a), but before:

(a) the Authority approves a draft food regulatory measure, or a draft variation of a food regulatory measure, as a result of the application; or

(b) the Authority notifies the applicant that the Authority has rejected the application.

(2) If the Authority receives notice of the withdrawal of an application after the applicant pays a charge fixed under section 146, the Authority must refund to the applicant so much of the charge as is equivalent to the sum paid by the applicant but not expended from the charge, calculated in accordance with the regulations.

(3) If the Authority receives notice of the withdrawal of an application after public notice of the application has been given under section 28 or 51, the Authority must give public notice that the application has been withdrawn.

## Subdivision C—Procedures for considering applications

### 25 Which procedure is appropriate?

(1) The Authority must adopt the general procedure in considering an application for the development of a food regulatory measure or the variation of a food regulatory measure, unless:

(a) the application is one to which Subdivision E applies (application for a minor variation of a food regulatory measure); or

(b) the application is one to which Subdivision F applies (application for the development of a new food regulatory measure or a major variation of a food regulatory measure); or

(c) the application is one to which Subdivision G applies (application for a high level health claims variation); or

(d) the application is declared to be an urgent application for the purposes of this Part under section 95.

*Where an application for a high level health claims variation is included in an application for a variation of another kind*

(2) If a person applies for a high level health claims variation and a variation of another kind in a single application, then, for the purposes of this Act, the person is taken to have made an application for a high level health claims variation and a separate application for the other kind of variation.

## Subdivision D—General procedure

### 26 Accepting an application

(1) The Authority must, within 15 business days after an application is given to the Authority:

(a) accept the application; or

(b) reject the application.

(2) In determining whether to accept or reject the application, the Authority must have regard to the following matters:

(a) whether the application complies with subsection 22(2);

(b) whether the application relates to a matter that may be developed as a food regulatory measure, or that warrants the variation of a food regulatory measure;

(c) whether the application is so similar to a previous application or proposal for the development or variation of a food regulatory measure that it ought to be rejected;

(d) any other relevant matter.

(3) If an application is rejected because it does not comply with subsection 22(2), the application must be disregarded for the purposes of determining whether a later application or proposal for the development or variation of a food regulatory measure is so similar to a previous application that the later application or proposal ought to be rejected.

## 27 Notice of acceptance

If the Authority accepts an application, the Authority must notify the applicant immediately in writing:

(a) that the application has been accepted; and

(b) of the procedure the Authority will adopt in considering the application; and

(c) in the case of an applicant who has applied for the development or variation of a standard and on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application:

(i) that the applicant must pay the charge fixed under subparagraph 146(6)(b)(i) or, if the charge is payable in instalments, the first instalment of the charge, within 20 business days after the notification is given; and

(ii) that the application will be rejected if the charge, or the first instalment of the charge, is not paid within that period; and

(d) in any other case—that the applicant may, if the applicant elects to have the consideration of the application expedited, pay the charge fixed under subparagraph 146(6)(b)(ii) or, if the charge is payable in instalments, the first instalment of the charge.

## 28 Public notice of the application

(1) If the Authority accepts an application, the Authority must also give public notice of the matters mentioned in subsection (2).

*Content of notice*

(2) The notice must:

(a) state that the Authority has received an application for the development of a food regulatory measure or the variation of a food regulatory measure, as the case requires; and

(b) state the date on which the application was received by the Authority; and

(c) state the name of the applicant; and

(d) give a summary of the application; and

(e) state that the Authority has accepted the application; and

(f) identify the procedure that the Authority will adopt in considering the application; and

(g) indicate when the Authority proposes to undertake the key steps in that procedure; and

(h) state how to obtain further information about the application.

*Period within which notice must be given*

(3) The notice must be given:

(a) if the applicant pays a charge, or the first instalment of a charge, mentioned in subparagraph 27(c)(i) within the period mentioned in that paragraph—within 5 business days after that payment; or

(b) if the applicant pays a charge, or the first instalment of a charge, mentioned in paragraph 27(d) within 20 business days after notice is given to the applicant under section 27 (the ***early payment period***)—within 5 business days after that payment; or

(c) in any other case—within 25 business days after notice is given to the applicant under section 27.

*Exclusive capturable commercial benefit—fee not paid*

(4) If an applicant:

(a) who applies for the development or variation of a standard; and

(b) on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application;

does not pay the charge, or the first instalment of the charge, mentioned in subparagraph 27(c)(i) within the period mentioned in that subparagraph:

(c) the Authority must reject the application; and

(d) the Authority need not give notice under this section.

*Fee to expedite consideration paid after early payment period*

(5) If an applicant pays a charge, or the first instalment of a charge, mentioned in paragraph 27(d) after the end of the early payment period, the Authority must, within 5 business days after that payment, again give public notice of the matters mentioned in

subsection (2), including an update on when the Authority now proposes to undertake the key steps in the procedure.

## 29 Assessing the application

(1) If the Authority accepts an application, the Authority must assess the application.

(2) In assessing the application, the Authority must have regard to the following matters:

(a) whether costs that would arise from a food regulatory measure developed or varied as a result of the application outweigh the direct and indirect benefits to the community, Government or industry that would arise from the development or variation of the food regulatory measure;

(b) whether other measures (available to the Authority or not) would be more cost-effective than a food regulatory measure developed or varied as a result of the application;

(c) any relevant New Zealand standards;

(d) any other relevant matters.

Note: See also section 18, which sets out the objectives of the Authority in developing food regulatory measures and variations of those measures.

## 30 Preparing a draft variation

(1) After assessing an application, the Authority must:

(a) prepare in writing a draft food regulatory measure or a draft variation of a food regulatory measure; or

(b) reject the application.

(2) If:

(a) the Authority prepares a draft food regulatory measure or a draft variation of a food regulatory measure as a result of an application; and

(b) the draft measure or draft variation differs from that sought in the application, or was not sought in the application at all;

the Authority must give the applicant notice in writing of that fact and state in the notice that the Authority will call for submissions for the purpose of assessing the draft measure or draft variation.

(3) The Authority must not give public notice under section 31 within 10 business days immediately after notice is given to the applicant under subsection (2) of this section.

## 31 Calling for submissions

(1) After preparing a draft food regulatory measure or a draft variation of a food regulatory measure as a result of an application, the Authority must give public notice of the matters mentioned in subsection (2).

(2) The notice must:

(a) state that the Authority has prepared a draft food regulatory measure or a draft variation of a food regulatory measure, as the case requires; and

(b) include:

(i) a copy of the draft food regulatory measure or draft variation; and

(ii) a summary of the results of the Authority's assessment of the application;

or state how a copy of those documents can be obtained; and

(c) call for written submissions, for the purpose of the Authority's consideration of the draft measure or draft variation, to be given to the Authority within the period specified in the notice (the ***submission period***).

## 32 Alternative steps to be followed

(1) If an application results in the development or variation of a standard, the Authority must follow the steps set out in sections 33 and 34.

(2) However, if an application results in the development or variation of a code of practice, the Authority must follow the steps set out in section 35.

## 33 Approving the draft standard or draft variation

(1) After the submission period, the Authority must:

(a) do one of the following:

(i) approve the draft standard or draft variation;

(ii) approve the draft standard or draft variation subject to such amendments as the Authority considers necessary;

(iii) reject the draft standard or draft variation; and

(b) prepare a report under this section.

Note 1: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.

Note 2: The draft does not take effect except in accordance with a notice under section 92—see section 93.

(2) The Authority must have regard to all submissions made during the submission period in making a decision under subsection (1).

(3) The report must include each of the following:

(a) the reasons for initially accepting the application;

(b) a summary of the results of the Authority's assessment of the application;

(c) a summary of the submissions received by the Authority in relation to the draft standard or draft variation;

(d) the Authority's response to the issues raised in those submissions;

(e) whether the draft standard or draft variation was amended after submissions were made and, if so, the reasons for those amendments;

(f) the Authority's reasons for approving or rejecting the draft standard or draft variation;

(g) a copy of the draft standard or draft variation on which submissions were received;

(h) if the draft standard or draft variation was amended after submissions were made—a copy of the draft standard or draft variation as amended;

(i) a Regulation Impact Statement.

## 34 Notifying the Council

(1) If the Authority approves a draft standard or a draft variation of a standard, the Authority must, within 10 business days after the approval:

(a) give the Council:

(i) a written notification of the approval; and

(ii) a copy of the report prepared by the Authority under section 33; and

(b) give public notice of the approval, together with information about where further information about the draft standard or draft variation may be obtained; and

(c) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a notice:

(i) stating that the draft standard or draft variation has been approved; and

(ii) stating that the Council has been notified that the draft standard or draft variation has been approved; and

(iii) stating that the Council may request the Authority to review the draft standard or draft variation under Division 3; and

(iv) stating where further information about the draft standard or draft variation may be obtained.

(2) If the Authority has notified the Council under subsection (1), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

Note: The process followed by the Council after receiving notification under this section is set out in Division 3.

## 35 Alternative to steps set out in sections 33 and 34—approving the draft code of practice or draft variation

(1) After the submission period, the Authority must:

(a) approve the draft code of practice or draft variation; or

(b) reject the draft code of practice or draft variation.

Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.

(2) If another code of practice would be superseded, in whole or in part, by the Authority's decision under subsection (1), the Authority must:

(a) revoke the other code of practice (if it would be wholly superseded); or

(b) vary the other code of practice (if it would be partly superseded).

(3) The Authority must give public notice of its decision.

(4) The notice must:
  (a) specify the date of effect of the decision; and
  (b) state how to obtain further information about the decision and the reasons for it.

(5) The Authority must also give written notice of its decision to the Council.

## Subdivision E—Modification of general procedure for minor variations

### 36 Application of Subdivision

This Subdivision applies to an application for the variation of a food regulatory measure that, if made, would not directly or indirectly:
  (a) impose, vary or remove an obligation on any person; or
  (b) create, vary or remove a right of any person; or
  (c) otherwise alter the legal effect of the measure.

Note: For example, a variation would fall within this class if its only effect would be:
  (a) to correct a typographical error; or
  (b) to update a reference to another document; or
  (c) to change a cross-reference within a food regulatory measure; or
  (d) to omit provisions of a food regulatory measure that have ceased to have effect.

### 37 Adopt the general procedure with the modifications set out in this Subdivision

The Authority must adopt the general procedure in considering the application, with the modifications set out in this Subdivision.

### 38 Modification of step set out in section 29

Paragraphs 29(2)(a) and (b) do not apply.

Note: Paragraphs 29(2)(a) and (b) require the Authority to do a cost benefit analysis. This is unnecessary given the minor nature of the variation.

## 39 Modification of step set out in section 30

Subsections 30(2) and (3) do not apply.

Note: Subsections 30(2) and (3) deal with the case where the draft variation differs from that sought in the application, or was not sought at all.

## 40 Modification of step set out in section 31

(1) Section 31 does not apply.

(2) However, after preparing a draft variation of the food regulatory measure as a result of an application, the Authority must give written notice to the applicant and appropriate government agencies:

(a) stating that the Authority has prepared a draft variation of a food regulatory measure; and

(b) including:

(i) a copy of the draft variation; and

(ii) a summary of the results of the Authority's assessment of the application;

or stating how a copy of those documents can be obtained; and

(c) calling for written submissions, for the purpose of the Authority's consideration of the draft variation, to be made to the Authority within the period specified in the notice (the ***submission period***).

## 41 Modification of steps set out in sections 32, 33, 34 and 35

(1) Sections 32, 33, 34 and 35 do not apply.

(2) However, after the submission period, the Authority must:

(a) do one of the following:

(i) approve the draft variation;

(ii) approve the draft variation subject to such amendments as the Authority considers necessary;

(iii) reject the draft variation; and

(b) prepare a report under this section.

Note: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.

(3) The report must include each of the following:
  (a) the reasons for initially accepting the application;
  (b) a summary of the results of the Authority's assessment of the application;
  (c) the Authority's reasons for approving or rejecting the draft variation;
  (d) a copy of the draft variation.

(4) If the draft variation is of a standard and the Authority approves the draft variation, the Authority must, within 10 business days after the approval:
  (a) give the Council:
    (i) a written notification of the approval; and
    (ii) a copy of the report prepared by the Authority under this section; and
  (b) give public notice of the approval, together with information about where further information about the draft variation may be obtained; and
  (c) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a notice:
    (i) stating that the draft variation has been approved; and
    (ii) stating that the Council has been notified that the draft variation has been approved; and
    (iii) stating that the Council may request the Authority to review the draft variation under Division 3; and
    (iv) stating where further information about the draft variation may be obtained.

(5) If the Authority has notified the Council under subsection (4), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

Note: The process followed by the Council after receiving notification under this section is set out in Division 3.

## Subdivision F—Modification of general procedure for developing new food regulatory measures and major variations

### 42 Application of Subdivision

This Subdivision applies to:

(a) an application for the development of a new food regulatory measure; and

(b) an application for the variation of a food regulatory measure that:

(i) involves such scientific or technical complexity that it is necessary to adopt this procedure in considering it; or

(ii) involves such a significant change to the scope of the food regulatory measure that it is necessary to adopt this procedure in considering it.

### 43 Adopt the general procedure with the modifications set out in this Subdivision

The Authority must adopt the general procedure in considering the application, with the modifications set out in this Subdivision.

### 44 Additional step after step set out in section 29

(1) The Authority must, after assessing the application under section 29 but before undertaking the step set out in section 30, give public notice of the matters set out in subsection (2).

(2) The notice must:

(a) state that the Authority has assessed the application; and

(b) include a summary of the results of the Authority's assessment of the application, or state how a copy of the summary can be obtained; and

(c) call for written submissions on matters relevant to the application to be given to the Authority within the period specified in the notice (the ***submission period***).

### 45 Matters to which Authority must have regard in making a decision under section 30

The Authority must have regard to all submissions made during the submission period in making a decision under section 30.

Note: This does not limit the other matters to which the Authority must have regard in making a decision under section 30.

## Subdivision G—Procedure for certain variations of the Nutrition, Health and Related Claims Standard

### 46 Application of Subdivision

This Subdivision applies to an application if:

(a) the application is made for the variation of the Nutrition, Health and Related Claims Standard; and

(b) the variation sought is a high level health claims variation.

Note: If an application to vary the Nutrition, Health and Related Claims Standard would not involve a change to the list of high level health claims that may be made under the Standard, the general procedure applies—see Subdivisions D, E and F.

### 47 Accepting the application

(1) The Authority must, within 15 business days after the application is given to the Authority:

(a) accept the application; or

(b) reject the application.

(2) In determining whether to accept or reject the application, the Authority must have regard to the following matters:

(a) whether the application complies with subsection 22(2);

(b) whether the application is so similar to a previous application or proposal for a high level health claims variation that it ought to be rejected;

(c) any other relevant matter.

(3) If an application is rejected because it does not comply with subsection 22(2), the application must be disregarded for the purposes of determining whether a later application or proposal for the variation of the standard is so similar to a previous application or proposal that the later application ought to be rejected.

## 48 Notice of acceptance

(1) If the Authority accepts the application, the Authority must notify the applicant immediately in writing:

(a) that the application has been accepted; and

(b) in the case of an applicant who has applied for the variation of a standard and on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application:

(i) that the applicant must pay the charge fixed under subparagraph 146(6)(b)(i) or, if the charge is payable in instalments, the first instalment of the charge, within 20 business days after the notification is given; and

(ii) that the application will be rejected if the charge, or the first instalment of the charge, is not paid within that period; and

(c) in any other case—that the applicant may, if the applicant elects to have the consideration of the application expedited, pay the charge fixed under subparagraph 146(6)(b)(ii) or, if the charge is payable in instalments, the first instalment of the charge.

(2) The Authority must give notice in writing to the applicant:

(a) identifying the procedure that the Authority will adopt in considering the application; and

(b) indicating when the Authority proposes to undertake the key steps in the procedure;

within:

(c) if the applicant pays a charge, or the first instalment of a charge, mentioned in paragraph (1)(b) within the period mentioned in that paragraph—5 business days after that payment; or

(d) if the applicant pays a charge, or the first instalment of a charge, mentioned in paragraph (1)(c), within 20 business days after notice is given to the applicant under subsection (1) (the ***early payment period***)—5 business days after that payment; or

(e) in any other case—within 25 business days after notice is given to the applicant under subsection (1).

(3) If the applicant pays a charge, or the first instalment of a charge, mentioned in paragraph (1)(c) after the end of the early payment period, the Authority must, within 5 business days after that payment, again give the applicant notice of the matters mentioned in subsection (2), including an update on when the Authority now proposes to undertake the key steps in the procedure.

## 49 Notice of the application to expert committee and Food Regulation Standing Committee

(1) If the Authority accepts the application, the Authority must also give notice of the matters mentioned in subsection (2) to:

(a) the High Level Health Claims Committee established for the purpose of making recommendations on the application, or applications of that kind; and

(b) the Food Regulation Standing Committee.

*Content of notice*

(2) The notice must:

(a) state that the Authority has received an application for a high level health claims variation; and

(b) state the date on which the application was received by the Authority; and

(c) state the name of the applicant; and

(d) give a summary of the application; and

(e) state that the Authority has accepted the application; and

(f) identify the procedure that the Authority will adopt in considering the application; and

(g) indicate when the Authority proposes to undertake the key steps in that procedure.

*Period within which notice must be given*

(3) The notice must be given:

(a) if the applicant pays a charge, or the first instalment of a charge, mentioned in subparagraph 48(1)(b)(i) within the period mentioned in that subparagraph—within 5 business days after that payment; or

(b) if the applicant pays a charge mentioned in paragraph 48(1)(c) within 20 business days after notice is given to the

applicant under section 48 (the ***early payment period***)—within 5 business days after that payment; or

(c) in any other case—within 25 business days after notice is given to the applicant under section 48.

*Exclusive capturable commercial benefit—fee not paid*

(4) If an applicant:

(a) who applies for a high level health claims variation; and

(b) on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application;

does not pay the charge, or the first instalment of the charge, mentioned in subparagraph 48(1)(b)(i) within the period mentioned in that subparagraph:

(c) the Authority must reject the application; and

(d) the Authority need not give notice under this section.

*Fee to expedite consideration paid after early payment period*

(5) If an applicant pays a charge, or the first instalment of a charge, mentioned in paragraph 48(1)(c) after the end of the early payment period, the Authority must, within 5 business days after that payment, again give public notice of the matters mentioned in subsection (2), including an update on when the Authority now proposes to undertake the key steps in the procedure.

## 50 Considering the application

(1) The Authority must consider whether to approve a draft high level health claims variation.

(2) Before approving such a draft variation, the Authority must:

(a) be satisfied that the approval of the draft variation will meet the following objectives:

(i) the protection of public health and safety;

(ii) the provision of adequate information relating to food to enable consumers to make informed choices;

(iii) the prevention of misleading or deceptive conduct; and

(b) assess the draft variation against the criteria set out in the Nutrition, Health and Related Claims Standard in relation to

high level health claims, taking into account any recommendations made by the High Level Health Claims Committee in relation to the draft variation or the application that resulted in the draft variation; and

(c) take into account any submission made on behalf of a jurisdiction represented on the Food Regulation Standing Committee in relation to the draft variation or the application that resulted in the draft variation; and

(d) if the applicant has elected that the Authority give public notice under section 51 calling for submissions, consider all submissions made during the submission period.

(3) If:

(a) the Authority prepares a draft high level health claims variation; and

(b) the draft variation differs from that sought in the application as a result of which it was prepared, or was not sought in the application at all;

the Authority must give the applicant notice in writing of that fact and, if the applicant has elected that the Authority give public notice calling for submissions under section 51, state in the notice that the Authority will call for submissions for the purpose of assessing the draft variation.

(4) The Authority must not give public notice calling for submissions under section 51 within 10 business days immediately after notice is given under subsection (3) of this section.

## 51 Calling for submissions

(1) When applying for a high level health claims variation, the applicant may elect to have the Authority give public notice under this section calling for submissions.

(2) If the applicant has made an election under subsection (1), the Authority must give public notice of the matters mentioned in subsection (3).

(3) The notice must:

(a) state that the Authority has prepared a draft high level health claims variation; and

(b) include a copy of the draft variation, or state how a copy of the draft variation can be obtained; and

(c) call for written submissions, for the purpose of the Authority's consideration of the draft variation, to be given to the Authority within the period specified in the notice (the ***submission period***).

## 52 Approving the draft variation in relation to high level health claims

(1) After considering whether to approve a draft high level health claims variation and, if notice calling for submissions is given under section 51, after the submission period, the Authority must:

(a) do one of the following:

(i) approve the draft high level health claims variation;

(ii) reject the draft high level health claims variation; and

(b) prepare a report under this section.

Note: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.

(2) The report must include each of the following:

(a) the reasons for initially accepting the application;

(b) a summary of the recommendations (if any) of the High Level Health Claims Committee in relation to the application and each draft variation that resulted from the application;

(c) a summary of the submissions (if any) made by members of the Food Regulation Standing Committee in relation to the application and each draft variation that resulted from the application;

(d) a summary of the submissions (if any) received by the Authority within the submission period in response to a notice under section 51, if such notice was given;

(e) the Authority's response to the issues raised in those submissions;

(f) the Authority's reasons for approving the draft variation or rejecting the application.

## 53 Notifying the Council

(1) If the Authority approves a draft high level health claims variation, the Authority must, within 10 business days after the approval:

(a) give the Council:

(i) a written notification of the approval; and

(ii) a copy of the report prepared by the Authority under section 52; and

(b) if submissions were called for under section 51—give public notice of the decision.

(2) If the Authority has notified the Council under subsection (1), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

Note: The process followed by the Council after receiving notification under this section is set out in Division 3.

# Division 2—Proposals for the development or variation of food regulatory measures

## Subdivision A—Overview

### 54 Steps in the consideration of a proposal

The following is a simplified outline of the procedure for considering a proposal for the development of a food regulatory measure, or the variation of a food regulatory measure, other than a high level health claims variation.

| | |
|---|---|
| Step 1. | A proposal is prepared. |
| Step 2. | As the Authority prepares the proposal, there is no equivalent to step 2 of the applications procedure in which the application is accepted or rejected. |
| Step 3. | As the Authority prepares the proposal, there is no equivalent to step 3 of the applications procedure in which the Authority notifies the applicant of acceptance. |
| Step 4. | The Authority gives public notice of the proposal, indicating when the Authority proposes to undertake key steps in considering it. |
| Step 5. | The Authority assesses the proposal.<br><br>The Authority may, after assessing the proposal, either abandon it or proceed to the next step.<br><br>If the proposal is for a new food regulatory measure or a major variation of a food regulatory measure, the next step is step 6.<br><br>In any other case, it is step 7. |
| Step 6. | The Authority calls for public submissions. |

| | |
|---|---|
| Step 7. | The Authority prepares a draft food regulatory measure or a draft variation of a food regulatory measure, as the case requires. If the Authority has called for submissions under step 6, the Authority must have regard to the submissions in doing so. |
| Step 8. | If the proposal is for a minor variation, the Authority calls for submissions from the applicant and appropriate government agencies.<br><br>In any other case, the Authority calls for public submissions. |
| Step 9. | If the draft is a draft standard or a draft variation of a standard, the Authority must decide whether to approve or reject it and prepare a report, having regard to any submissions made. If approved, the Authority notifies the Council and the public of the approval and proceeds to step 10.<br><br>If the draft is a draft code of practice or a draft variation of a code of practice, the Authority must revoke or vary any existing code of practice and give public notice of its decision. No further steps are taken in relation to measures of this kind. |
| Step 10. | The standard or variation comes into effect after it has been considered by the Council and published. |

Note: Division 2A deals with variations by the APVMA of the Maximum Residue Limits Standard.

## Subdivision B—Proposals

### 55 Proposals

(1) The Authority may, on its own initiative, prepare a proposal for the development or variation of a food regulatory measure.

(2) The proposal must be in writing.

### 56 Abandonment of proposals

(1) The Authority may abandon a proposal at any time.

(2) However, if the Authority abandons a proposal after public notice has been given under section 58 or 77, the Authority must give public notice of the matters mentioned in subsection (3).

(3) The notice must:

(a) state that the Authority has decided to abandon the proposal; and

(b) state how to obtain further information about the decision and the reasons for it.

## Subdivision C—Procedures for considering proposals

### 57 Which procedure is appropriate?

The Authority must adopt the general procedure in considering a proposal for the development of a food regulatory measure or the variation of a food regulatory measure, unless:

(a) the proposal is one to which Subdivision E applies (proposal for a minor variation of a food regulatory measure); or

(b) the proposal is one to which Subdivision F applies (proposal for the development of a new food regulatory measure, or a major variation of a food regulatory measure); or

(c) the proposal is one to which Subdivision G applies (proposal for a high level health claims variation); or

(e) the proposal is declared to be an urgent proposal for the purposes of this Part under section 95.

## Subdivision D—General procedure

### 58 Public notice of a proposal

(1) If the Authority prepares a proposal, the Authority must give public notice of the matters mentioned in subsection (2).

(2) The notice must:

(a) state that the Authority has prepared a proposal for the development or variation of a food regulatory measure, as the case requires; and

(b) state the date on which the proposal was made; and
(c) give a summary of the proposal; and
(d) identify the procedure that the Authority will adopt in considering the proposal; and
(e) indicate when the Authority proposes to undertake the key steps in that procedure; and
(f) state how to obtain further information about the proposal.

## 59 Assessing a proposal

(1) If the Authority prepares a proposal, the Authority must assess the proposal.

(2) In assessing the proposal, the Authority must have regard to the following matters:
(a) whether costs that would arise from a food regulatory measure developed or varied as a result of the proposal outweigh the direct and indirect benefits to the community, Government or industry that would arise from the development or variation of the food regulatory measure;
(b) whether other measures (available to the Authority or not) would be more cost-effective than a food regulatory measure developed or varied as a result of the proposal;
(c) any relevant New Zealand standards;
(d) any other relevant matters.

Note: See also section 18, which sets out the objectives of the Authority in developing food regulatory measures and variations of those measures.

## 60 Preparing a draft food regulatory measure or draft variation

After assessing a proposal, the Authority must:
(a) prepare in writing a draft food regulatory measure or a draft variation of a food regulatory measure; or
(b) abandon the proposal.

## 61 Calling for submissions

(1) After preparing a draft food regulatory measure or a draft variation of a food regulatory measure as a result of a proposal, the

Authority must give public notice of the matters mentioned in subsection (2).

(2) The notice must:

(a) state that the Authority has prepared a draft food regulatory measure or a draft variation of a food regulatory measure, as the case requires; and

(b) include:

(i) a copy of the draft food regulatory measure or draft variation; and

(ii) a summary of the results of the Authority's assessment of the proposal;

or state how a copy of those documents can be obtained; and

(c) call for written submissions, for the purpose of the Authority's consideration of the draft measure or draft variation, to be given to the Authority within the period specified in the notice (the ***submission period***).

## 62 Alternative steps to be followed

(1) If a proposal results in the development or variation of a standard, the Authority must follow the steps set out in sections 63 and 64.

(2) However, if a proposal results in the development or variation of a code of practice, the Authority must follow the step set out in section 65.

## 63 Approving the draft standard or draft variation

(1) After the submission period, the Authority must:

(a) do one of the following:

(i) approve the draft standard or draft variation;

(ii) approve the draft standard or draft variation subject to such amendments as the Authority considers necessary;

(iii) reject the draft standard or draft variation; and

(b) prepare a report under this section.

Note 1: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.

Note 2: The draft does not take effect except in accordance with a notice under section 93.

(2) The Authority must have regard to all submissions made during the submission period in making a decision under subsection (1).

(3) The report must include each of the following:
  (a) the reasons for initially preparing the proposal;
  (b) a summary of the results of the Authority's assessment of the proposal;
  (c) a summary of the submissions received by the Authority in relation to the draft standard or draft variation;
  (d) the Authority's response to the issues raised in those submissions;
  (e) whether the draft standard or draft variation was amended after submissions were made and, if so, the reasons for those amendments;
  (f) the Authority's reasons for approving or rejecting the draft standard or draft variation;
  (g) a copy of the draft standard or draft variation on which submissions were received;
  (h) if the draft standard or draft variation was amended after submissions were made—a copy of the draft standard or draft variation as amended;
  (i) a Regulation Impact Statement.

## 64 Notifying the Council

(1) If the Authority approves a draft standard or a draft variation of a standard, the Authority must, within 10 business days after the approval:
  (a) give the Council:
    (i) a written notification of the approval; and
    (ii) a copy of the report prepared by the Authority under section 63; and
  (b) give public notice of the approval, together with information about where further information about the draft standard or draft variation may be obtained; and
  (c) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a notice:
    (i) stating that the draft standard or draft variation has been approved; and

(ii) stating that the Council has been notified that the draft standard or draft variation has been approved; and

(iii) stating that the Council may request the Authority to review the draft standard or draft variation under Division 3; and

(iv) stating where further information about the draft standard or draft variation may be obtained.

(2) If the Authority has notified the Council under subsection (1), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

Note: The process followed by the Council after receiving notification under this section is set out in Division 3.

## 65 Alternative to steps set out in sections 63 and 64—approving the draft code of practice or draft variation

(1) After the submission period, the Authority must:

(a) approve the draft code of practice or draft variation; or

(b) reject the draft code of practice or draft variation.

Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.

(2) If another code of practice would be superseded, in whole or in part, by the Authority's decision under subsection (1), the Authority must:

(a) revoke the other code of practice (if it would be wholly superseded); or

(b) vary the other code of practice (if it would be partly superseded).

(3) The Authority must give public notice of its decision.

(4) The notice must:

(a) specify the date of effect of the decision; and

(b) state how to obtain further information about the decision and the reasons for it.

(5) The Authority must also give written notice of its decision to the Council.

## Subdivision E—Modification of general procedure for minor variations

### 66 Application of Subdivision

This Subdivision applies to a proposal for the variation of a food regulatory measure that, if made, would not directly or indirectly:

(a) impose, vary or remove an obligation on any person; or

(b) create, vary or remove a right of any person; or

(c) otherwise alter the legal effect of the measure.

Note: For example, a variation would fall within this class if its only effect would be:

(a) to correct a typographical error; or

(b) to update a reference to another document; or

(c) to change a cross-reference within a food regulatory measure; or

(d) to omit provisions of a food regulatory measure that have ceased to have effect.

### 67 Adopt the general procedure with the modifications set out in this Subdivision

The Authority must adopt the general procedure in considering the proposal, with the modifications set out in this Subdivision.

### 68 Modification of step set out in section 61

(1) Section 61 does not apply.

(2) However, after preparing a draft variation of the food regulatory measure as a result of a proposal, the Authority must give written notice to appropriate government agencies:

(a) stating that the Authority has prepared a draft variation of a food regulatory measure; and

(b) including:

(i) a copy of the draft variation; and

(ii) a summary of the results of the Authority's assessment of the proposal;

or stating how a copy of those documents can be obtained; and

(c) calling for written submissions, for the purpose of the Authority's consideration of the draft variation, to be made to

the Authority within the period specified in the notice (the ***submission period***).

## 69 Modification of steps set out in sections 62, 63, 64 and 65

(1) Sections 62, 63, 64 and 65 do not apply.

(2) However, after the submission period, the Authority must:

(a) do one of the following:

(i) approve the draft variation;

(ii) approve the draft variation subject to such amendments as the Authority considers necessary;

(iii) reject the draft variation; and

(b) prepare a report under this section.

Note: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.

(3) The report must include each of the following:

(a) the reasons for initially preparing the proposal;

(b) a summary of the results of the Authority's assessment of the proposal;

(c) the Authority's reasons for approving or rejecting the draft variation;

(d) a copy of the draft variation.

(4) If the draft variation is of a standard and the Authority approves the draft variation, the Authority must, within 10 business days after the approval:

(a) give the Council:

(i) a written notification of the approval; and

(ii) a copy of the report prepared by the Authority under this section; and

(b) give public notice of the approval, together with information about where further information about the draft variation may be obtained; and

(c) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a notice:

(i) stating that the draft variation has been approved; and

(ii) stating that the Council has been notified that the draft variation has been approved; and

(iii) stating that the Council may request the Authority to review the draft variation under Division 3; and

(iv) stating where further information about the draft variation may be obtained.

(5) If the Authority has notified the Council under subsection (4), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

Note: The process followed by the Council after receiving notification under this section is set out in Division 3.

## Subdivision F—Modification of general procedure for developing new food regulatory measures and major variations

### 70 Application of Subdivision

This Subdivision applies to:

(a) a proposal for the development of a new food regulatory measure; and

(b) a proposal for the variation of a food regulatory measure that:

(i) involves such scientific or technical complexity that it is necessary to adopt this procedure in considering it; or

(ii) involves such a significant change to the scope of the food regulatory measure that it is necessary to adopt this procedure in considering it.

### 71 Adopt the general procedure with the modifications set out in this Subdivision

The Authority must adopt the general procedure in considering the proposal, with the modifications set out in this Subdivision.

### 72 Additional step after step set out in section 59

(1) The Authority must, after assessing the proposal under section 59 but before undertaking the step set out in section 60, give public notice of the matters set out in subsection (2).

(2) The notice must:

(a) state that the Authority has assessed the proposal; and

(b) include a summary of the results of the Authority's assessment of the proposal, or state how a copy of the summary can be obtained; and

(c) call for written submissions on matters relevant to the proposal to be given to the Authority within the period specified in the notice (the ***submission period***).

### 73 Matters to which Authority must have regard in making a decision under section 60

The Authority must have regard to all submissions made during the submission period in making a decision under section 60.

Note: This does not limit the other matters to which the Authority must have regard in making a decision under section 60.

## Subdivision G—Procedure for certain variations of the Nutrition, Health and Related Claims Standard

### 74 Application of Subdivision

This Subdivision applies to a proposal if:

(a) the proposal is for the variation of the Nutrition, Health and Related Claims Standard; and

(b) the variation proposed is a high level health claims variation.

Note: If a proposal to vary the Nutrition, Health and Related Claims Standard would not involve a change to the list of high level health claims that may be made under the Standard, the general procedure applies—see Subdivisions D, E and F.

### 75 Notice of the proposal

(1) The Authority must give public notice of the matters mentioned in subsection (3).

(2) The Authority must also give notice of the matters mentioned in subsection (3) to:

(a) the High Level Health Claims Committee established for the purpose of making recommendations on the proposal, or proposals of that kind; and

(b) the Food Regulation Standing Committee.

(3) The notice must:

(a) state that the Authority proposes to make a high level health claims variation; and

(b) give a summary of the proposal; and

(c) identify the procedure that the Authority will adopt in considering the proposal; and

(d) indicate when the Authority proposes to undertake the key steps in that procedure.

## 76 Considering the proposal

(1) The Authority must consider whether to approve a draft high level health claims variation.

(2) Before approving such a draft variation, the Authority must:

(a) be satisfied that the approval of the draft variation will meet the following objectives:

(i) the protection of public health and safety;

(ii) the provision of adequate information relating to food to enable consumers to make informed choices;

(iii) the prevention of misleading or deceptive conduct; and

(b) assess the draft variation against the criteria set out in the Nutrition, Health and Related Claims Standard in relation to high level health claims, taking into account any recommendations made by the High Level Health Claims Committee in relation to the draft variation or the proposal that resulted in the draft variation; and

(c) take into account any submission made on behalf of a jurisdiction represented on the Food Regulation Standing Committee in relation to the draft variation or the proposal that resulted in the draft variation; and

(d) all submissions made during the submission period.

## 77 Calling for submissions

(1) The Authority must give public notice of the matters mentioned in subsection (3) before a high level health claims variation is approved as a result of a proposal.

(2) The Authority must also give notice of the matters mentioned in subsection (3) to the Food Regulation Standing Committee before a high level health claims variation is approved.

(3) The notice must:

(a) state that the Authority has prepared a draft high level health claims variation; and

(b) include a copy of the draft variation, or state how a copy of the draft variation can be obtained; and

(c) call for written submissions, for the purpose of the Authority's consideration of the draft variation, to be given to the Authority within the period specified in the notice (the ***submission period***).

## 78 Approving the draft variation in relation to high level health claims

(1) After the submission period, the Authority must:

(a) do one of the following:

(i) approve a draft high level health claims variation;

(ii) abandon the proposal to vary the list; and

(b) prepare a report under this section.

Note: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.

(2) The report must include each of the following:

(a) the reasons for initially preparing the proposal;

(b) a summary of the recommendations (if any) of the High Level Health Claims Committee in relation to the proposal and each draft variation that resulted from the proposal;

(c) a summary of the submissions (if any) made by members of the Food Regulation Standing Committee in relation to the proposal and each draft variation that resulted from the proposal;

(d) a summary of the submissions (if any) received by the Authority within the submission period in response to a notice under section 77;

(e) the Authority's response to the issues raised in those recommendations and submissions;

(f) the Authority's reasons for approving the draft variation or abandoning the proposal.

## 79 Notifying the Council

(1) If the Authority approves a draft high level health claims variation, the Authority must, within 10 business days after the approval:

(a) give the Council:

(i) a written notification of the approval; and

(ii) a copy of the report prepared by the Authority under section 78; and

(b) if submissions were called for under section 77—give public notice of the decision.

(2) If the Authority has notified the Council under subsection (1), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

Note: The process followed by the Council after receiving notification under this section is set out in Division 3.

## Division 2A—Variations by APVMA of the Maximum Residue Limits Standard

### 80 Application of Division

This Division applies if the APVMA notifies the Authority under section 13A of the Agvet Code of an application or variation in relation to a chemical product.

### 81 Authority to give notice of APVMA notification

(1) The Authority must give public notice of the following matters:
  (a) that the Authority has been notified under section 13A of the Agvet Code of an application or variation;
  (b) the particulars referred to in subparagraph 13A(2)(b)(i) of the Agvet Code that were set out in the notice under section 13A of the Agvet Code;
  (c) any other matters that the Authority thinks appropriate.

(2) The Authority must give the notice as soon as practicable after the notification under section 13A of the Agvet Code.

### 82 APVMA may vary the Maximum Residue Limits Standard

(1) The APVMA may vary the Maximum Residue Limits Standard to include or change a permitted maximum residue limit to cover the chemical product.

*Variation is a legislative instrument*

(2) A variation made under subsection (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the variation.

*Proposed variation*

(3) Before making a variation under subsection (1), the APVMA must notify the Authority of a proposed variation.

*Dietary exposure assessment*

(4) The Authority must:

(a) prepare a dietary exposure assessment of the proposed variation and give a copy of the assessment to the APVMA and the Council; or

(b) if, with the Authority's agreement, a dietary exposure assessment of the proposed variation is prepared by another person or body:

(i) review the assessment and prepare comments on the assessment (including comments relating to the dietary exposure risk of the proposed variation); and

(ii) give a copy of the assessment to the Council and, if the assessment is not prepared by the APVMA, give a copy of the assessment to the APVMA; and

(iii) give a copy of the comments on the assessment to the APVMA and the Council.

(5) Before making a variation under subsection (1), the APVMA must:

(a) if paragraph (4)(a) applies—consider the assessment; or

(b) if paragraph (4)(b) applies—consider the assessment and the comments on the assessment referred to in that paragraph.

*APVMA to give the Authority a copy of the variation*

(6) The APVMA must give a copy of a variation made under subsection (1) to the Authority.

*Gazettal*

(7) In addition to the requirement under the *Legislative Instruments Act 2003* for a variation made under subsection (1) to be registered, the APVMA must cause a copy of the variation to be published in the *Gazette*.

*When variation takes effect*

(8) A variation made under subsection (1) takes effect on the day a copy of the variation is published as mentioned in subsection (7), despite subsections 12(1) and (2) of the *Legislative Instruments Act 2003*.

## 83 No limit on the Authority's power to vary the Maximum Residue Limits Standard

This Division does not limit the Authority's power to vary the Maximum Residue Limits Standard.

## Division 3—Council review of draft standards and draft variations of standards

### 84 Council may request a review

(1) If the Authority notifies the Council under section 34, 41, 64 or 69 that the Authority has approved a draft standard or draft variation (with or without amendments), the Council must, within 60 days after the notification:

(a) request the Authority to review the draft; or

(b) inform the Authority that the Council does not intend to request the Authority to review the draft.

(2) In exercising its powers under this section in relation to a draft standard or variation, the Council must comply with:

(a) the Food Regulation Agreement; and

(b) the Australia New Zealand Joint Food Standards Agreement.

### 85 Review not requested

If the Council informs the Authority under paragraph 84(1)(b) that the Council does not intend to request the Authority to review a draft standard or draft variation then, as soon as practicable, the Authority must comply with the publication requirements set out in section 92.

### 86 Review requested

(1) If the Council requests the Authority to review a draft standard or draft variation, the Council must inform the Authority of the Council's concerns with the draft.

(2) The Council may give to the Authority such directions as it thinks fit in relation to the conduct of a review of a draft standard or draft variation.

(3) A direction under subsection (2) is not a legislative instrument.

## 87 Authority to respond to request

(1) If the Council requests the Authority to review a draft standard or draft variation:

(a) a review is to be conducted, subject to any directions given under subsection 86(2), in such manner as the Authority considers appropriate; and

(b) the Authority must complete the review, and make a decision under subsection (2):

(i) within 3 months after the request was made; or

(ii) if the Council allows a longer period—within that longer period.

(2) After completing a review under this section of a draft standard or draft variation, the Authority must:

(a) decide to re-affirm its approval of the draft; or

(b) decide to re-affirm its approval of the draft, subject to such amendments as the Authority considers necessary; or

(c) decide to withdraw its approval of the draft.

Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.

(3) The Authority must give to the Council, within 10 business days of making its decision:

(a) written notice of the terms of the Authority's decision; and

(b) the Authority's reasons for making that decision.

## 88 Council may amend or reject draft after review

(1) If the Authority notifies the Council of a decision made under paragraph 87(2)(a) or (b), the Council must, within 60 days after the notification:

(a) inform the Authority that the Council does not intend to amend or reject the draft; or

(b) by written instrument, amend the draft; or

(c) reject the draft.

(2) An instrument made under paragraph (1)(b) is not a legislative instrument.

## 89 Council does not intend to amend or reject the draft

If the Council informs the Authority under paragraph 88(1)(a) that it does not intend to amend or reject a draft standard or draft variation then, as soon as practicable, the Authority must comply with the publication requirements set out in section 92.

## 90 Council amends the draft

(1) Before amending a draft standard or draft variation under paragraph 88(1)(b), the Council must give the Authority an opportunity to submit to the Council a draft of the text of the amendment.

(2) As soon as practicable after the Council decides to amend a draft standard or draft variation, the Council must inform the Authority that the Council has amended the draft, and give the Authority a copy of the amended draft.

(3) The Authority must, as soon as practicable after being informed of the amendment, comply with the publication requirements set out in section 92.

## 91 Council rejects the draft

If the Council decides to reject a draft standard or draft variation under paragraph 88(1)(c), the Council must:

(a) prepare a notice setting out that decision and reasons for that decision; and

(b) give the Authority a copy of the notice; and

(c) publish a copy of the notice:

(i) on the internet; and

(ii) in a generally circulating newspaper, in each State or Territory and in New Zealand.

## 92 Publication requirements

The ***publication requirements*** for the purposes of sections 85 and 89 and subsection 90(3) are as follows:

(a) the Authority must prepare a notice stating that the draft or amended draft, as the case requires, is to come into effect on a day specified in the notice;

(b) the Authority must cause a copy of the notice to be published:
  (i) in the *Gazette*; and
  (ii) in the New Zealand Gazette; and
  (iii) in a generally circulating newspaper, in each State or Territory and in New Zealand;
  together with information about where a copy of the draft or amended draft may be obtained or inspected;
(c) the Authority must make a copy of:
  (i) the notice; and
  (ii) the text of the draft or the amended draft;
  available for inspection by the public;
(d) the Authority must publish on the Authority's website a copy of:
  (i) the notice; and
  (ii) the text of the draft or the amended draft.

### 93 When a standard or variation takes effect

A standard, or variation of a standard, takes effect on the day specified in the notice given under section 92.

### 94 Standards are legislative instruments, but not subject to disallowance or sunsetting

A standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but section 42 and Part 6 of the *Legislative Instruments Act 2003* do not apply to the standard or variation.

# Division 4—Urgent applications and proposals

## Subdivision A—Urgent consideration of applications and proposals

### 95 Declaration of urgency

(1) The Authority may:

(a) declare in writing that a specified application made under section 22 is an urgent application for the purposes of this Part; or

(b) declare in writing that a specified proposal prepared under section 55 is an urgent proposal for the purposes of this Part;

if:

(c) the application or proposal relates to the development or variation of a standard; and

(d) the Authority considers that it is appropriate to do so in order to protect public health and safety.

(2) The Authority may:

(a) declare in writing that a specified application made under section 22 is an urgent application for the purposes of this Part; or

(b) declare in writing that a specified proposal prepared under section 55 is an urgent proposal for the purposes of this Part;

if:

(c) the application or proposal relates to the variation of a standard; and

(d) the standard has had or, if not varied in the manner sought in the application or proposal, will have, a negative impact on trade that was not envisaged when the standard was made; and

(e) the Authority considers that the variation of the standard will meet the following objectives:

(i) the protection of public health and safety;

(ii) the provision of adequate information relating to food to enable consumers to make informed choices;

(iii) the prevention of misleading or deceptive conduct.

(3) The Authority must:

(a) give public notice of a declaration under subsection (1) or (2), and include a copy of the declaration in the notice; and

(b) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a copy of the declaration.

(4) The Authority must take all reasonable steps to distribute copies of the declaration to the print and electronic media in Australia and New Zealand for the purpose of seeking media publicity about the urgent application or proposal.

(5) The Authority must give a copy of a declaration under subsection (1) or (2) to:

(a) each appropriate government agency; and

(b) the Council; and

(c) if the declaration relates to an application—the applicant.

(6) The following do not apply to an urgent application or urgent proposal:

(a) Subdivisions C to G of Division 1 of this Part;

(b) Subdivisions C to G of Division 2 of this Part;

(c) Division 3 of this Part.

(7) No charge fixed under section 146 is payable in relation to an urgent application.

## 96 Preparation of draft standard or variation

(1) After considering an urgent application, the Authority must:

(a) prepare in writing a draft standard or a draft variation of a standard; or

(b) reject the application.

Note: See also section 18, which sets out the objectives of the Authority in developing food regulatory measures and variations of those measures.

(2) After considering an urgent proposal, the Authority must:

(a) prepare in writing a draft standard or a draft variation of a standard; or

(b) abandon the proposal.

Note: See also section 18, which sets out the objectives of the Authority in developing food regulatory measures and variations of those measures.

(3) If, under this section, the Authority prepares a draft standard, or a draft variation of a standard, the Authority must give public notice of the matters mentioned in subsection (4).

(4) The notice must:
  (a) state that the Authority has prepared a draft standard, or a draft variation of a standard, as the case requires; and
  (b) include a copy of the draft standard or draft variation; and
  (c) call for written submissions from interested persons and appropriate government agencies, for the purposes of the Authority's consideration of the draft standard, or draft variation, to be given to the Authority within the period specified in the notice (the ***submission period***).

(5) The submission period must not end later than 10 business days after the publication of the notice.

(6) As soon as practicable after complying with subsection (3), the Authority must publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a copy of the notice mentioned in subsection (3), together with information about where a copy of the draft may be obtained.

## 97 Approval and publication of standard or variation

*Approval*

(1) After considering a draft standard, or a draft variation of a standard, prepared under section 96, the Authority must:
  (a) approve the draft; or
  (b) approve the draft subject to such amendments as the Authority considers necessary; or
  (c) abandon the draft.

Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.

(2) In doing so, the Authority must have regard to all submissions made by interested persons and appropriate government agencies during the submission period.

(3) To avoid doubt, the draft does not take effect except in accordance with a notice under subsection (4).

*Publication*

(4) If the Authority approves a draft standard or a draft variation of a standard under this section (with or without amendments), the Authority must:

(a) give public notice of the approval, together with information about where further information about the draft standard or draft variation may be obtained; and

(b) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a notice stating that the draft standard or draft variation has been approved and stating where further information about the draft standard or draft variation may be obtained.

*When a standard or variation takes effect*

(5) The standard, or the variation of the standard, takes effect on the day specified in the notice given under subsection (4).

*Standards are legislative instruments, but not subject to disallowance or sunsetting*

(6) The standard, or the variation of the standard, in relation to which notice is published under subsection (4), is a legislative instrument, but section 42 and Part 6 of the *Legislative Instruments Act 2003* do not apply to the standard or variation.

## Subdivision B—Assessing the resulting standard or variation

### 98 Application

This Subdivision applies if the Authority approves a draft standard or a draft variation of a standard under section 97 (with or without amendments).

### 99 Assessing the standard or variation

(1) The Authority must assess the standard or variation.

(2) In assessing the standard or variation, the Authority must have regard to the following matters:

(a) whether costs that have arisen, or will arise, from the standard or variation outweigh the direct and indirect benefits to the community, Government or industry that have arisen, or will arise, from the standard or variation;

(b) whether other measures (available to the Authority or not) would be more cost-effective than the standard or variation;

(c) all relevant New Zealand standards;

(d) any other relevant matters.

Note: See also section 18, which sets out the objectives of the Authority in developing food regulatory measures and variations of those measures.

## 100 Calling for submissions

(1) After assessing the standard or variation, the Authority must call for submissions by giving public notice of the matters mentioned in subsection (2).

(2) The notice must:

(a) identify the standard or variation; and

(b) include a copy of the standard or variation, or state how a copy of the standard or variation can be obtained; and

(c) call for written submissions, for the purpose of making a decision under subsection 101(1), to be given to the Authority within the period specified in the notice (the ***submission period***).

## 101 Re-affirm the standard or variation or propose changes

(1) After the submission period, and in any event within 12 months after the standard or variation takes effect, the Authority must:

(a) re-affirm its decision to approve the standard or variation; or

(b) prepare a proposal under section 55 for the development of:

(i) the variation, or further variation, of the relevant standard; or

(ii) a replacement standard.

Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.

(2) In making a decision under subsection (1), the Authority must take into account all submissions made during the submission period.

(3) Within 10 business days after making a decision under subsection (1), the Authority must give the Council written notice of its decision, and include with that notice a report prepared in accordance with subsection (4).

(4) The report must include each of the following:

(a) the reasons for initially declaring the application or proposal that resulted in the standard or variation to be urgent;

(b) a copy of the declaration under section 95;

(c) a copy of the standard or variation approved as a result of the application or proposal;

(d) a summary of the submissions received by the Authority in relation to the standard or variation approved as a result of the urgent application or proposal;

(e) the Authority's responses to the issues raised in those submissions;

(f) the Authority's reasons for its decision under subsection (1);

(g) a Regulation Impact Statement in relation to the standard or variation.

(5) If the Authority notifies the Council that the Authority has re-affirmed a standard or variation of a standard, the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the standard or variation under section 102.

## 102 Council may request Authority to review

(1) If the Authority notifies the Council under section 101 that the Authority has re-affirmed its approval of the standard or variation, the Council must, within 60 days after the notification:

(a) request the Authority to review the standard or variation; or

(b) inform the Authority that the Council does not intend to request the Authority to review the standard or variation.

(2) In exercising its powers under this section in relation to the standard or variation, the Council must comply with:

(a) the Food Regulation Agreement; and

(b) the Australia New Zealand Joint Food Standards Agreement.

### 103 Review requested

(1) If the Council requests the Authority to review the standard or variation, the Council must inform the Authority of the Council's concerns with the standard or variation.

(2) The Council may give to the Authority such directions as it thinks fit in relation to the conduct of a review of a standard or variation under this Subdivision.

(3) A direction under subsection (2) is not a legislative instrument.

### 104 Authority to respond to request

(1) If the Council requests the Authority to review the standard or variation:

(a) the review is to be conducted, subject to any directions given under subsection 103(2), in such manner as the Authority considers appropriate; and

(b) the Authority must complete the review, and make a decision under subsection (2):

(i) within 3 months after the request was made; or

(ii) if the Council allows a longer period—within that longer period.

(2) After completing a review under this section of the standard or variation, the Authority must:

(a) re-affirm its decision to approve the standard or variation; or

(b) prepare a proposal under section 55 for the development of:

(i) the variation, or further variation, of the relevant standard; or

(ii) a replacement standard.

Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.

(3) The Authority must give to the Council within 10 business days after making its decision:

(a) written notice of its decision under subsection (2); and

(b) the Authority's reasons for making that decision.

## 106 Council may revoke or amend standard or variation

(1) If the Authority notifies the Council that the Authority has decided under paragraph 104(2)(a) to re-affirm the standard or variation, the Council must, within 60 days after the notification:

(a) inform the Authority that the Council does not intend to revoke or amend the standard or variation; or

(b) by legislative instrument, revoke or amend the standard or variation with effect from a date specified in the instrument.

(2) If the Council decides to revoke or amend the standard or variation, the Council must:

(a) prepare a notice setting out the reasons for that decision; and

(b) give the Authority a copy of the notice; and

(c) publish a copy of the notice:

(i) on the internet; and

(ii) in a generally circulating newspaper, in each State or Territory and in New Zealand.

(3) Before amending the standard or variation, the Council must give the Authority an opportunity to submit to the Council a draft of the text of the amendment.

(4) As soon as practicable after the Council decides to revoke or amend the standard or variation, the Authority must:

(a) prepare a notice stating that the revocation or amendment is to come into effect on the date specified in the instrument of revocation or amendment; and

(b) cause a copy of the notice to be published:

(i) in the *Gazette*; and

(ii) in the New Zealand Gazette; and

(iii) in a generally circulating newspaper, in each State or Territory and in New Zealand;

together with information about where the text of the revocation or amendment may be obtained or inspected; and

(c) make a copy of:

(i) the notice; and

(ii) the text of the instrument of revocation or amendment;

available for inspection by the public; and

(d) publish on the Authority's website a copy of:

(i) the notice; and

(ii) the text of the instrument of revocation or amendment.

(5) If a standard or variation is the subject of a notice under subsection (4), the standard or variation is taken to have been made under this Act if and when the standard or variation comes into effect under the instrument of revocation or amendment.

*Instruments of revocation are not subject to disallowance or sunsetting*

(6) Section 42 and Part 6 of the *Legislative Instruments Act 2003* do not apply to the instrument of revocation or amendment.

# Division 5—General rules for considering applications and proposals

## 107 General conduct in considering an application or proposal

Subject to this Act, in considering an application or proposal:

(a) the Authority is not bound to act in a formal manner; and

(b) the Authority is not bound by the rules of evidence; and

(c) the Authority may inform itself on any matter in such manner as it thinks fit; and

(d) the Authority may receive written or oral information or submissions; and

(e) the Authority may consult with such persons as it thinks fit.

## 108 Authority may require further information

(1) If the Authority needs more information:

(a) to enable it to assess an application and develop the relevant food regulatory measure, or the relevant variation of a food regulatory measure; or

(b) to enable it to determine whether a charge fixed under section 146 is payable to the Authority in relation to an application;

the Authority may request the applicant to provide it with such further information as is specified in the request within such reasonable time as is specified in the request.

(2) If the applicant refuses or fails to comply with the request within the period specified in the request, without reasonable excuse, the application is taken to have been withdrawn. The Authority must give written notice of that fact to the applicant.

(3) If an application is taken to have been withdrawn under subsection (2) after public notice of the application is given under section 28 or 51, the Authority must give public notice that the application is taken to have been withdrawn under subsection (2).

## 109 Period within which consideration of applications for standards or variations must be completed

*Applications must be considered within the consideration period*

(1) If the Authority accepts an application under section 26 or 47 for the development of a standard or the variation of a standard, the Authority must complete the procedure that the Authority must, under Subdivision C of Division 1, adopt in the consideration of the application within the consideration period.

*Consideration period*

(2) The ***consideration period*** begins:

(a) if an exclusive capturable commercial benefit would be conferred on the applicant as a result of the development of the resulting standard or variation—on the day on which the charge fixed under subparagraph 146(6)(b)(i) is paid or, if the charge is payable in instalments, the first instalment is paid; and

(b) if the applicant elects to have the consideration of the application expedited—on the day on which the charge fixed under subparagraph 146(6)(b)(ii) is paid or, if the charge is payable in instalments, the first instalment is paid; and

(c) in any other case, on the day on which the Authority begins its assessment of the application under section 29.

(3) The ***consideration period*** ends 12 months after it begins or, if a shorter period is prescribed, at the end of that shorter period.

*Extension for consideration of new standard or major variation*

(4) If the application is one to which Subdivision F of Division 1 applies (an application for the development of a new standard or a major variation), the Authority may extend the consideration period, if it is not practicable for the general procedure, as modified by that Subdivision, to be completed within the period specified under subsections (2) and (3).

(5) The maximum period for which an extension may be given under subsection (4) is 6 months.

*Stopping the clock*

(6) If the Authority requests an applicant to provide it with further information under section 108, the time taken by the applicant to provide the information is not to be included in the consideration period.

(7) If an instalment of a charge fixed under section 146 is due, but not paid, the time during which it remains unpaid is not to be included in the consideration period.

(8) If an application is made to the Administrative Appeals Tribunal for the review of a decision of the Authority made in connection with the preparation of a draft standard or a draft variation of a standard, the period beginning on the day on which the application for review is made and ending on the day on which it is finalised is not to be included in the consideration period.

(9) If the Council notifies the Authority that it is formulating policy guidelines for the purposes of paragraph 18(2)(e):

(a) the Authority may, subject to subsections (9A) and (9B), suspend its consideration of any application which, in the opinion of the Authority, would be affected by the guidelines once formulated; and

(b) if the Authority suspends its consideration of an application, notify the applicant of the suspension, and the period of the suspension.

(9A) If:

(a) an applicant has applied for the development or variation of a standard; and

(b) an exclusive capturable commercial benefit would be conferred on the applicant if the standard were made or varied in the manner sought in the application; and

(c) either:

(i) the charge fixed under subparagraph 146(6)(b)(ii) in relation to the application is paid; or

(ii) in a case where the charge is payable in instalments—each instalment that is due and payable in relation to the application is paid;

the Authority must not suspend its consideration of the application unless the applicant first consents to that suspension.

(9B) If:

(a) an applicant elects to have the consideration of his or her application expedited; and

(b) either:

(i) the charge fixed under subparagraph 146(6)(b)(ii) in relation to the application is paid; or

(ii) in a case where the charge is payable in instalments—each instalment that is due and payable in relation to the application is paid;

the Authority must not suspend its consideration of the application unless the applicant first consents to that suspension.

(10) The suspension begins on the day on which the Authority is notified by the Council and ends on the day on which:

(a) the Council notifies the Authority of the policy guidelines; or

(b) the Council notifies the Authority that it has decided not to proceed with the policy guidelines; or

(c) a period of 18 months, beginning on the day on which the Authority was notified under subsection (9), has elapsed.

(11) The period during which the consideration of the application is suspended is not to be included in the consideration period.

## 110 Rejecting an application or abandoning a proposal

*Notice of rejection*

(1) If the Authority rejects:

(a) an application for the development or variation of a food regulatory measure; or

(b) a draft food regulatory measure or a draft variation of a food regulatory measure that results from such an application;

the Authority must comply with the notice requirements set out in subsection (2).

(2) The notice requirements for the purposes of subsection (1) are as follows:

(a) the Authority must give notice in writing of the rejection, and the reasons for the rejection, to the applicant;

(b) if the Authority rejects the application after public notice is given under section 28 or 51, the Authority must give public notice of the rejection, and the reasons for the rejection;

(c) if the rejection occurs after a draft food regulatory measure or a draft variation of a food regulatory measure has been prepared as a result of the application—the Authority must give notice in writing of the rejection to the Council.

*Refund on rejection*

(3) If the Authority rejects:

(a) an application for the development or variation of a food regulatory measure; or

(b) a draft food regulatory measure or a draft variation of a food regulatory measure that results from an application;

after the applicant has paid a charge fixed under section 146 in relation to the application, the Authority must refund to the applicant so much of the charge as is equivalent to the sum paid by the applicant but not expended from the charge, calculated in accordance with the regulations.

*Notice of abandonment*

(4) If the Authority abandons:

(a) a proposal for the development of a standard or the variation of a standard; or

(b) a draft food regulatory measure or a draft variation of a food regulatory measure that results from such a proposal;

the Authority must comply with the notice requirements set out in subsection (5).

(5) The notice requirements for the purposes of subsection (4) are as follows:

(a) if the Authority abandons the proposal after public notice is given under section 58 or 77, the Authority must give public notice of the abandonment, and the reasons for the abandonment;

(b) if the abandonment occurs after a draft food regulatory measure or a draft variation of a food regulatory measure has been prepared as a result of the proposal—the Authority must give notice in writing of the abandonment to the Council.

## 111 Public hearings

(1) The Authority may, at the discretion of the Authority, conduct a public hearing at any point during the consideration of an application or proposal for the development or variation of a food regulatory measure, other than an application for a high level health claims variation.

(2) If the consideration of an application or proposal includes a public hearing, the Authority, having regard to the confidential nature of any evidence or matter or for any other reason, may direct that any part of the hearing be held in private and determine who may attend.

(3) The Authority may give directions prohibiting or restricting the publication of evidence given in the course of a public hearing or the review or assessment of a draft food regulatory measure or a draft variation of a food regulatory measure, whether in public or in private, or of matters contained in documents produced in the course of a public hearing or the review or assessment of a draft food regulatory measure or a draft variation of a food regulatory measure.

(4) A direction under subsection (3) is not a legislative instrument.

## 112 Authority may rely on work or processes of other government agencies

(1) The Authority may decide, in writing, not to do something that it is required to do under this Part in relation to an application made under section 22, or a proposal prepared under section 55, if the Authority considers that doing the thing would be a duplication of work already done, or a process already gone through, by another government agency.

(2) If the decision relates to an application in relation to which public notice has been given under section 28 or 51, the Authority must give public notice of its decision.

(3) If the decision relates to an application in relation to which public notice has not, or not yet, been given under those sections, the Authority must give notice of its decision to the applicant.

(4) If the decision relates to a proposal in relation to which public notice has been given under section 58 or 77, the Authority must give public notice of its decision.

(5) The public notice must:

(a) identify the government agency referred to in subsection (1); and

(b) contain a brief statement of the work the agency has done or the process it has gone through.

(7) In this section:

***government agency*** means:

(a) a Department of State of:

(i) the Commonwealth; or

(ii) a State or Territory; or

(iii) New Zealand; or

(b) a body (whether incorporated or not) established by, or by a law of:

(i) the Commonwealth; or

(ii) a State or Territory; or

(iii) New Zealand.

## Division 6—Other matters

### 113 Review of food regulatory measures

(1) The Authority may review a food regulatory measure at the request of a body or person, or on its own initiative, in such manner as the Authority considers appropriate.

(2) If the Council requests the Authority to review a standard:
  (a) the Authority must review the standard; and
  (b) subject to any directions under subsection (3), the Authority may conduct the review in such manner as the Authority considers appropriate.

(3) The Council may give to the Authority such directions as it thinks fit in relation to the conduct of a review under subsection (2). Such a direction is not a legislative instrument.

(4) If the Council requests the Authority to review a standard under subsection (2), the Authority must complete that review:
  (a) within 3 months after the request was made; or
  (b) if the Council allows a longer period—within that longer period.

(5) After completing a review under subsection (2), the Authority must notify the Council of the result of the review.

(6) As soon as practicable after the Authority has reviewed a food regulatory measure under this section, it may prepare a proposal for the development of a food regulatory measure in substitution for the food regulatory measure that has been reviewed.

(7) If the Authority prepares a proposal under this section, this Part has effect as if the proposal were a proposal under section 55.

### 114 Confidential commercial information

(1) It is the duty of a person who is a member of the Board, a member of the staff of the Authority, a member of a committee or a person engaged as a consultant under section 136 not to disclose any confidential commercial information in respect of food that has

been acquired by the person because of being such a member or consultant.

(2) Subsection (1) does not apply to anything done in the performance of duties, or in the exercise of powers or functions, under this Act.

(3) Subsection (1) does not preclude the disclosure of confidential information in respect of food to any court in any proceeding. However, the Authority must apply to the court for an order preventing disclosure of that information to any other person otherwise than for the purpose of the proceedings, if it is within the jurisdiction of the court to make such an order.

(4) Despite subsection (1), the Chief Executive Officer may, in respect of confidential commercial information acquired in respect of food by a member of the Board, a member of the staff of the Authority, a member of a committee, or a person engaged as a consultant under section 136, because of being such a member or consultant:

(a) if the Minister certifies, by instrument, that it is necessary in the public interest that the information should be disclosed to a specified person—disclose that information to that person; or

(b) disclose that information to any prescribed authority or person; or

(c) disclose that information to a person or body who, in the opinion of the Chief Executive Officer, is expressly or impliedly authorised to obtain that information by the applicant for the development or variation of a food regulatory measure, in respect of the food concerned.

(5) The Chief Executive Officer must not disclose, under paragraph (4)(a), any confidential commercial information given by a person in respect of food unless the Chief Executive Officer:

(a) has advised the person, in writing, of the Chief Executive Officer's intention to disclose the information and of the reasons for disclosing that information; and

(b) has given the person a reasonable opportunity to communicate the person's views about the proposed disclosure of that information; and

(c) has taken into account any views so communicated.

(6) Any authority or person to whom information is disclosed under subsection (4), and any person under the control of that authority or person, is, in respect of that information, subject to the same obligations as if that authority or person were a person referred to in subsection (1) who had acquired the information in the circumstances set out in subsection (1).

(7) Despite subsection (1), the Chief Executive Officer may permit confidential commercial information in respect of food to be disclosed:

(a) to an Agency Head (within the meaning of the *Public Service Act 1999*) or the Chief Officer of a Commonwealth authority for the purpose of enabling the Agency or authority to perform any arrangements made with the Authority in accordance with paragraph 137(a); or

(b) to the Secretary of a Department of the Public Service of a State or Territory or the Chief Officer of a State or Territory authority for the purpose of enabling the Department or authority to perform any arrangements made with the Authority in accordance with paragraph 137(b); or

(ba) to the chief executive of a Department of State of New Zealand or the Chief Officer of a New Zealand authority for the purpose of enabling the Department or authority to perform any arrangements made with the Authority in accordance with paragraph 137(c); or

(c) to the Chief Officer of any other authority or body for the purpose of enabling that authority or body to perform any arrangements made with the Authority in accordance with paragraph 137(d).

(8) A person to whom information is disclosed under subsection (7) and any person under the control of the first-mentioned person to whom that information is disclosed for the purposes of an arrangement under section 137, must not, directly or indirectly, except for the purposes of that arrangement, disclose the information to any person while the person is, or after the person ceases to be, such a person.

Penalty: Imprisonment for 2 years.

(9) The powers conferred by subsection (7) are in addition to, and not in derogation of, the powers conferred by subsection (4).

(10) Nothing in subsection (4) or (7) is taken to limit the generality of subsection (3) or the operation of subsection (2).

(11) In this section:

***court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

# Part 4—The Board, the Chief Executive Officer and the Authority's staff

## Division 1—The Board

### 115 Board

(1) The affairs of the Authority are to be conducted by a Board to be known as the Board of Food Standards Australia New Zealand.

(2) All acts and things done in the name of, or on behalf of, the Authority by the Board or with the authority of the Board are taken to have been done by the Authority.

(3) To avoid doubt, a reference in subsection (2) to a ***thing done*** includes a reference to a state of mind attained or an opinion formed.

### 116 Constitution of Board

(1) The Board consists of:
- (a) a Chairperson; and
- (b) the Chief Executive Officer; and
- (c) 2 members nominated by the New Zealand lead Minister on the Council for the purposes of this paragraph; and
- (ca) one member nominated by the New Zealand lead Minister on the Council for the purposes of this paragraph; and
- (d) a member nominated by consumer organisations; and
- (e) a member nominated by the CEO of the National Health and Medical Research Council; and
- (f) 3 members nominated by organisations, or public bodies, established for purposes relating to science or public health; and
- (g) 2 members nominated by organisations, or public bodies, established for purposes relating to the food industry.

(1A) A member mentioned in paragraph (1)(a), (c), (ca), (d), (e), (f) or (g) is to be appointed by the Minister.

(1B) The Minister may appoint a person as a member mentioned in paragraph (1)(a), (d), (e), (f) or (g) only if the Council has agreed to the appointment.

(2) Before appointing a person as a member mentioned in paragraph (1)(c) or (ca), the Minister must consult with the Council.

(2A) The Chief Executive Officer is automatically a member and does not have to be appointed as a member. The following references in this Division to a member do not apply to the Chief Executive Officer:

(a) subsections (7) and (8) of this section;
(b) section 117;
(c) section 119;
(d) section 120;
(e) section 121;
(f) section 126;
(g) section 127.

Note: See Division 2 for the appointment, and terms and conditions of appointment, of the Chief Executive Officer and for other matters relating to the Chief Executive Officer.

(2B) The Minister may appoint a person as a member mentioned in paragraph (1)(a) or (c) only if the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:

(a) public health;
(b) consumer affairs;
(c) food science;
(d) food allergy;
(e) human nutrition;
(f) medical science;
(g) microbiology;
(h) food safety;
(i) biotechnology;
(j) veterinary science;
(k) the food industry;
(l) food processing or retailing;
(m) primary food production;

(n) small business;
(o) international trade;
(p) government;
(q) food regulation.

(2C) The Minister may appoint a person as a member mentioned in paragraph (1)(ca) only if the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:

(a) public health;
(b) consumer affairs;
(c) food science;
(d) food allergy;
(e) human nutrition;
(f) medical science;
(g) microbiology;
(h) food safety;
(i) biotechnology;
(j) veterinary science.

(3) The Minister may appoint a person as a member mentioned in paragraph (1)(f) only if:

(a) the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:

(i) public health;
(ii) consumer affairs;
(iii) food science;
(iv) food allergy;
(v) human nutrition;
(vi) medical science;
(vii) microbiology;
(viii) food safety;
(ix) biotechnology;
(x) veterinary science; and

(b) the Minister has sought nominations from such organisations and public bodies as are prescribed by the regulations for the purposes of:

(i) if the person is suitably qualified for appointment because of expertise in only one field mentioned in paragraph (a)—the subparagraph of paragraph (a) that is applicable to that field; or

(ii) if the person is suitably qualified for appointment because of expertise in more than one field mentioned in paragraph (a)—a subparagraph of paragraph (a) that is applicable to one of those fields; and

(c) the person has been so nominated.

(4) The Minister may appoint a person as a member mentioned in paragraph (1)(g) only if:

(a) the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:

(i) the food industry;

(ii) food processing or retailing;

(iii) primary food production;

(iv) small business;

(v) international trade;

(vi) government;

(vii) food regulation; and

(b) the Minister has sought nominations from such organisations and public bodies as are prescribed by the regulations for the purposes of:

(i) if the person is suitably qualified for appointment because of expertise in only one field mentioned in paragraph (a)—the subparagraph of paragraph (a) that is applicable to that field; or

(ii) if the person is suitably qualified for appointment because of expertise in more than one field mentioned in paragraph (a)—a subparagraph of paragraph (a) that is applicable to one of those fields; and

(c) the person has been so nominated.

(5) The Minister may only appoint a person as a member mentioned in paragraph (1)(d) if the Minister is satisfied that the person has a good knowledge of consumer rights and consumer affairs policy in Australia.

(7) The Chairperson and the other members hold office on a part-time basis.

(8) The members hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing.

(9) The performance of a function or the exercise of a power by the Board is not affected by a vacancy or vacancies in the membership of the Board.

## 117 Appointment of members

(1) Each member is to be appointed with effect from such day as the Minister specifies in the instrument of appointment of that member.

(2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.

(4) A person appointed as a member is eligible for reappointment for a second term but must not be reappointed for a third or subsequent term.

(5) If:

(a) a member holds office for a particular period (the ***original period***); and

(b) the Minister does not make a decision before the end of the original period to re-appoint, or not to re-appoint, the member;

then, subject to this Part, the member continues to hold office on the basis that the original period is extended until:

(c) the end of the period of 6 months beginning at the end of the original period; or

(d) the Minister notifies the member that the Minister has decided not to re-appoint the member; or

(e) the Minister signs an instrument re-appointing the member;

whichever first happens.

(6) As soon as practicable after subsection (5) begins to apply to a member, the Authority must cause to be published in the *Gazette* a notice describing the circumstances in which that subsection has begun to apply to the member.

(7) As soon as practicable after subsection (5) ceases to apply to a member, the Authority must cause to be published in the *Gazette* a notice describing the circumstances in which that subsection has ceased to apply to the member.

(8) The Minister must not appoint a person as the Chairperson if, at any time during the period of 2 years ending immediately before the proposed period of appointment, the person was employed by, or had a pecuniary interest in, a body corporate whose primary commercial activity relates directly to the production or manufacture of food.

(8A) For the purposes of subsection (8):

(a) a director (however described) of a body corporate is taken to be employed by the body corporate; and

(b) the secretary (however described) of a body corporate is taken to be employed by the body corporate.

(9) The Minister must not appoint a person as a Chairperson if the person has a pecuniary interest in a body corporate whose primary commercial activity relates directly to the production or manufacture of food.

## 118 Committees

(1) The Board may establish such committees as it thinks fit to assist it in carrying out its functions, and may abolish any such committee.

(1A) The Board may establish such committees as it thinks fit to make recommendations on applications or proposals for a high level health claims variation.

(1B) The Authority must not consider an application or proposal for a high level health claim variation, unless a committee is established to consider the application or proposal, or applications or proposals of that kind.

(2) A committee established under this section consists of such persons (whether members of the Board or not) as the Board from time to time appoints.

(3) The Board may give to a committee established under this section such directions as it thinks fit, including:

(a) directions as to the manner in which the committee is to carry out its functions; and

(b) directions with respect to the procedure to be followed in relation to meetings of the committee, including directions with respect to:

(i) the convening of meetings of the committee; and

(ii) the number of members of the committee to constitute a quorum; and

(iii) the appointment of a member of the committee to preside at meetings of the committee; and

(iv) the manner in which questions arising at a meeting of the committee are to be decided; and

(v) the voting rights of members of the committee; and

(vi) the disclosure of members' interests in matters being considered by the committee.

(4) In exercising its powers under subsection (1), (1A), (2) or (3), the Authority must comply with any directions given to it by the Council.

(5) The Board must keep the Council informed of:

(a) the establishment or abolition of a committee; and

(b) any directions given by the Board to a committee.

## 119 Remuneration and allowances

(1) This section applies to members of the Board and of committees.

(2) Subject to subsection (3), a person to whom this section applies is to be paid:

(a) such remuneration as is determined by the Remuneration Tribunal but, if no determination of that Tribunal is in force, such remuneration as is prescribed; and

(b) such allowances as are prescribed.

(3) If a person to whom this section applies is also:

(a) in the service or employment of, or of an authority of, the Commonwealth, a State, a Territory or New Zealand on a full-time basis; or

(b) a person who holds or performs the duties of an office or position established by or under a law of the Commonwealth, a State, a Territory or New Zealand on a full-time basis;

the person is not entitled to remuneration under this Act.

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## 120 Leave of absence of members

(1) The Minister may grant leave of absence to the Chairperson on such terms and conditions as the Minister determines.

(2) The Chairperson may grant leave of absence to any other member on such terms and conditions as the Chairperson determines.

## 121 Acting appointments

(1) The Minister may appoint a person to act as the Chairperson:

(a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(2) The Minister may appoint a person other than the Chairperson to act as a member:

(a) during a vacancy in the office of that member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when that member is absent from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## 122 Meetings

(1) The Board is to hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chairperson:
  (a) may convene a meeting at any time; and
  (b) must convene a meeting on receipt of a written request signed by not less than 3 other members.

(3) The Chairperson is to preside at all meetings at which he or she is present.

(4) If the Chairperson is not present at a meeting, the members present must appoint one of their number to preside.

(5) A majority of the members for the time being of the Board as constituted in a particular manner constitute a quorum for the Board as so constituted.

(6) Questions arising at a meeting of the Board as constituted in a particular manner are to be determined by a majority of the votes of the members of the Board as so constituted present and voting.

(7) The person presiding at a meeting of the Board has a deliberative vote and, if necessary, also has a casting vote.

## 123 Conduct of meetings

(1) The Board may, subject to this Part, regulate proceedings at its meetings as it considers appropriate.

(2) Without limiting subsection (1), the Board may permit members to participate in a particular meeting, or all meetings, by:
  (a) telephone; or
  (b) closed-circuit television; or
  (c) any other means of communication.

(3) A member who is permitted to participate in a meeting under subsection (2) is to be regarded as being present at that meeting.

## 124 Resolutions without formal meetings

Where the Board so determines, a resolution is taken to have been passed at a meeting of the Board if:

(a) without meeting, a majority of the number of members indicate agreement with the resolution in accordance with the method determined by the Board; and

(b) that majority would, if present at a meeting of the Board, have constituted a quorum under subsection 122(5).

## 125 Disclosure of interests

(4) A member who has a material personal interest, including an interest in relation to academic or research associations of the member, in a matter being considered or about to be considered by the Board in accordance with section 124 must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of that interest to the Minister.

(5) The Board must establish and maintain a system for the declaration and registration of material personal interests of its members.

(6) The entries recorded in the register of members' interests must be published by the Board on the Authority's website.

## 126 Resignation

A member may resign by instrument in writing delivered to the Minister.

## 127 Termination of appointment

(1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If:

(a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

(b) a member fails, without reasonable excuse, to comply with section 125 of this Act or section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*; or

(c) a member, being the Chairperson:

(i) engages, except with the approval of the Minister, in paid employment outside the duties of his or her office; or

(ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months; or

(d) a member, other than the Chairperson:

(i) engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions; or

(ii) is absent, except on leave of absence granted under subsection 120(2), from 3 consecutive meetings of the Board;

the Minister may terminate the appointment of the member.

## Division 2—The Chief Executive Officer

### 128 Appointment

(1) There is to be a Chief Executive Officer of the Authority.

(2) The Chief Executive Officer is to be appointed by the Board on a full-time basis.

(3) The Minister must not appoint a person as the Chief Executive Officer if, at any time during the period of 2 years ending immediately before the proposed period of appointment, the person was employed by a body corporate whose primary commercial activity relates directly to the production or manufacture of food.

(3A) For the purposes of subsection (3):

(a) a director (however described) of a body corporate is taken to be employed by the body corporate; and

(b) the secretary (however described) of a body corporate is taken to be employed by the body corporate.

(4) The Minister must not appoint a person as the Chief Executive Officer if the person has a pecuniary interest in a body corporate whose primary commercial activity relates directly to the production or manufacture of food.

### 129 Duties

(1) The Chief Executive Officer is responsible for the day-to-day administration of the Authority and the control of its operations.

(2) The Chief Executive Officer is to act in accordance with any policies determined, and any directions given, by the Board in writing.

(3) The Chief Executive Officer is not authorised to act on behalf of the Authority under:

(a) paragraph 33(1)(a); or

(b) subsection 35(1); or

(c) paragraph 41(2)(a); or

(d) paragraph 52(1)(a); or

(e) paragraph 63(1)(a); or
(f) subsection 65(1); or
(g) paragraph 69(2)(a); or
(h) paragraph 78(1)(a); or
(i) subsection 87(2); or
(j) subsection 97(1); or
(k) subsection 101(1); or
(l) subsection 104(2).

### 130 Delegation

The Chief Executive Officer may, in writing, delegate to a member of the staff of the Authority all or any of the functions or powers of the Chief Executive Officer.

### 131 Remuneration and allowances

(1) The Chief Executive Officer is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid the remuneration that is determined in writing by the Board.

(2) The Chief Executive Officer is to be paid the allowances that are determined in writing by the Board.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### 132 Resignation

The Chief Executive Officer may resign by giving the Board a written resignation.

### 133 Other terms and conditions

The Board may determine in writing the other terms and conditions on which the Chief Executive Officer holds office (including terms and conditions in relation to termination of appointment).

## 134 Acting Chief Executive Officer

The Board may appoint a person to act as the Chief Executive Officer:

(a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to that office; or

(b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## Division 3—Staff, consultants and assistance from other agencies

### 135 Staff of Authority

(1) The staff of the Authority are persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:

(a) the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and

(b) the Chief Executive Officer is the Head of that Statutory Agency.

### 136 Consultants

(1) The Chief Executive Officer, on the Authority's behalf, may engage as consultants persons having suitable qualifications and experience.

(2) The terms and conditions of engagement of consultants are such as are determined by the Chief Executive Officer.

### 137 Arrangements with Commonwealth Departments etc.

The Authority may make arrangements:

(a) with an Agency Head (within the meaning of the *Public Service Act 1999*) or the Chief Officer of any Commonwealth authority; or

(b) with the Secretary of a Department of the Public Service of a State or Territory, or the Chief Officer of a State or Territory authority; or

(c) with the chief executive of a Department of State of New Zealand or the Chief Officer of a New Zealand authority; or

(d) with the Chief Officer of any other authority or body;

for:

(e) the services of officers or employees in those Agencies, Departments, authorities or bodies to be made available to the Authority; or

(f) officers or employees in those Agencies, Departments, authorities or bodies to give advice to the Authority.

# Part 5—Finance

## 138 Money to be appropriated

(1) There is payable to the Authority such money as is from time to time appropriated by the Parliament for the purposes of the Authority.

(2) The Finance Minister may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Authority.

## 139 Money of Authority

(1) The money of the Authority consists of:

(a) money paid to the Authority under section 138; and

(ab) money paid to the Authority under section 145; and

(ac) money paid to the Authority under section 146 or 147; and

(b) any other money, other than trust money, paid to the Authority.

(2) The money of the Authority is to be applied only:

(a) in payment or discharge of the expenses, obligations and liabilities of the Authority arising under this Act; and

(b) in payment of remuneration and allowances payable under this Act; and

(c) in making any other payments required or permitted to be made by the Authority.

(3) Subsection (2) does not prevent investment of surplus money of the Authority under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

## 140 Taxation

The Authority is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

## 141 Trust money

(1) The Authority:

(a) may receive money from any body or person on trust for application towards a particular purpose consistent with the functions of the Authority; and

(b) must pay trust money into an account or accounts referred to in subsection 18(2) of the *Commonwealth Authorities and Companies Act 1997* containing no money other than trust money; and

(c) must apply or deal with trust money only in accordance with the powers and duties of the Authority as trustee; and

(d) may only invest trust money:

(i) in any manner in which the Authority is authorised to invest the money by the terms of the trust; or

(ii) in any manner in which trust money may be lawfully invested.

# Part 6—Miscellaneous

## 142 Documents and samples become Commonwealth property

(1) All documents and samples given to the Authority for any purpose of this Act or produced to assist the Authority in the consideration of an application or proposal, or in the assessment or review of a resulting food regulatory measure, become, upon being so given or produced, the property of the Commonwealth and may, subject to section 114, be dealt with or disposed of in any manner that the Authority considers appropriate.

(2) If the Authority publishes, or permits the public inspection of, any document that has become the property of the Commonwealth under subsection (1), no action or proceeding for defamation lies against the Commonwealth, a member of the Board, or a person assisting the Authority, in relation to the publication or public inspection of the document.

## 143 Review of decisions

(1) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal:

(a) by an applicant for the development or variation of a standard, for a review of:

(i) a decision by the Authority under paragraph 26(1)(b) to reject an application, other than a decision to reject the application because it does not comply with subsection 22(2); or

(ii) a decision by the Authority under paragraph 30(1)(b) to reject an application; or

(iii) a decision by the Authority under paragraph 47(1)(b) to reject an application, other than a decision to reject the application because it does not comply with subsection 22(2); or

(iv) a decision by the Authority under paragraph 96(1)(b) to reject an application; or

(b) by a person whose interests are affected by one of the following decisions, for a review of that decision:

(i) a decision by the Authority under subsection 56(1) to abandon a proposal;

(ii) a decision by the Authority under paragraph 60(b) to abandon a proposal;

(iii) a decision by the Authority under paragraph 96(2)(b); or

(c) for review of a decision under section 112 not to do something.

(2) In subsection (1), ***decision*** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

## 144 Statement accompanying notification of decisions

(1) Where:

(a) notice in writing of the making of a decision of a kind referred to in paragraph 143(1)(a) is given to an applicant; or

(b) written notice is given that a decision of a kind referred to in paragraph 143(1)(b) has been made;

that notice must include a statement to the effect that:

(c) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision:

(i) if it is a decision of a kind referred to in paragraph 143(1)(a)—by the applicant; or

(ii) if it is a decision of the kind referred to in paragraph 143(1)(b)—by a person whose interests are affected by the decision; and

(d) except where subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings of material questions of fact, referring to the evidence or other materials on which those findings were based and giving the reasons for the decision.

(2) Any failure to comply with a requirement of subsection (1) in relation to a decision does not affect the validity of the decision.

## 145 Fees for services provided to New Zealand

(1) The Authority may charge, for services provided to New Zealand, such fees as are agreed on from time to time between the Authority and the New Zealand lead Minister on the Council.

## 146 Charges relating to the Authority's costs

(1) The regulations may fix charges to be paid to the Authority by a body or person for services and facilities the Authority provides to the body or person.

(1A) The regulations may also:

(a) provide for the charge to be paid by instalments; and

(b) fix the times at which instalments are due to be paid.

(2) A charge fixed under subsection (1) must not be such as to amount to taxation.

(3) This section does not apply to services or facilities that the Authority provides under contract.

(4) Regulations made for the purposes of this section must not specify New Zealand as a person or body by whom charges are payable.

(5) Charge under this section may be recovered by the Authority as a debt due to the Authority.

(6) A charge may be fixed in relation to an application to develop or vary a standard only if:

(a) the development or variation of the standard would confer an exclusive capturable commercial benefit on the applicant; or

(b) the applicant has elected to have the consideration of the application expedited.

(7) The consideration of an application in relation to which a charge is fixed under subsection (6) must not displace the development of, or variation to, any other food regulatory measure in a three year plan.

(8) For the purposes of subsection (7), a ***three year plan*** means a three year forward plan of the Authority developed under section 20.

### 147 Charge—late payment penalty

(1) The regulations may provide that, if any charge under section 146 remains unpaid by the body or person liable after the time when it became due for payment, the body or person is liable to pay to the Authority, by way of penalty, an amount calculated at the rate of:

(a) 20% per year; or

(b) if the regulations specify a lower percentage—that lower percentage per year;

on the amount unpaid computed from that time.

(2) A penalty under this section may be recovered by the Authority as a debt due to the Authority.

### 148 Charge—discount for early payment

The regulations may make provision for and in relation to discounts for early payment of charge under section 146.

### 149 Charge and late payment penalty—remissions and refunds

(1) The regulations may make provision for and in relation to the method of working out an amount of refund of charge for the purposes of subsection 24(2).

(2) The regulations may make provision for and in relation to:

(a) the remission or refund, in whole or in part, of charge under section 146 in circumstances specified in the regulations; and

(b) the remission, in whole or in part, of late payment penalty under section 147 in circumstances specified in the regulations.

(3) Regulations made for the purposes of subsection (1) or (2) may confer powers on the Authority.

### 150 Delegation by Board

(1) The Board may, by resolution, delegate to a member of the Board, or to a senior member of the staff of the Authority, all or any of its powers under this Act, other than its powers to act on behalf of the Authority under:

(a) paragraph 33(1)(a); or

(b) subsection 35(1); or
(c) paragraph 41(2)(a); or
(d) paragraph 52(1)(a); or
(e) paragraph 63(1)(a); or
(f) subsection 65(1); or
(g) paragraph 69(2)(a); or
(h) paragraph 78(1)(a); or
(i) subsection 87(2); or
(j) subsection 97(1); or
(k) subsection 101(1); or
(l) subsection 104(2).

(2) A delegation of a power under this section:
(a) may be revoked by resolution of the Board (whether or not constituted by the persons constituting the Board at the time when the power was delegated); and
(b) continues in force notwithstanding a change in the membership of the Board.

(3) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Board were a person.

(4) A certificate signed by the Chairperson of the Board stating any matter with respect to a delegation of a power under this section is prima facie evidence of that matter.

(5) A document purporting to be a certificate mentioned in subsection (4) is, unless the contrary is established, taken to be such a certificate and to have been duly given.

(6) A delegate under this section is, in the exercise of a power delegated under this section, subject to any directions given by the Board.

(7) In this section:

***senior member of the staff of the Authority*** means:
(a) a person who holds or performs the duties of a Senior Executive Service position in the Authority; or
(b) a person who holds or performs the duties of an APS Executive Level 2 position, or an equivalent position, in the Authority.

## 151 Exemption from suit

(1) No civil or criminal proceeding, and no action or suit of any other kind, lies against any of the following:

(a) the Commonwealth;

(b) a member of the Board;

(c) a person assisting the Authority in the performance of its functions;

in relation to any loss or injury directly or indirectly sustained by a person because of the consumption of, or other dealing with, food.

(1A) No civil or criminal proceeding, and no action or suit of any other kind, lies against any of the following:

(a) the Commonwealth;

(b) a member of the Board;

(c) a person assisting the Authority in the performance of its functions;

in relation to anything done, or not done, by the Authority or the person in the performance of functions or the exercise of powers under this Act, provided that the Authority or the person (as the case requires) acts honestly and reasonably in doing, or not doing, that thing.

(2) In an action against a person in relation to any loss or injury directly or indirectly sustained because of the consumption of, or other dealing with, food, it is not a defence to that action that:

(a) a standard has come into effect; or

(b) a standard has been adopted, or taken to have been adopted, and published;

in respect of that food and that the food complies with the standard.

## 152 Annual report

(1) The members must include in each report on the Authority under section 9 of the *Commonwealth Authorities and Companies Act 1997* for a financial year (the ***current year***) particulars of:

(aa) the number of applications that were made under section 22 during the current year; and

(ab) the number of applications accepted under subsection 26(1) during the current year; and

(ac) the number of applications rejected under subsection 26(1) during the current year and the reasons for the rejections; and

(ad) the number of applications withdrawn under subsection 24(1) during the current year; and

(ae) the number of applications accepted under subsection 26(1) during the current year that the Authority had not begun to assess under section 29 during the current year; and

(af) the number of applications accepted under subsection 26(1) during a previous financial year that the Authority had not begun to assess under section 29 before the end of the current year; and

(a) the number of applications that were considered under Subdivision D of Division 1 of Part 3 during the current year; and

(b) the number of applications that were considered under Subdivision E of Division 1 of Part 3 during the current year; and

(c) the number of applications that were considered under Subdivision F of Division 1 of Part 3 during the current year; and

(d) the number of applications that were considered under Subdivision G of Division 1 of Part 3 during the current year; and

(e) for each of those Subdivisions, the number of applications considered under that Subdivision that were disposed of during the current year and the manner of their disposal; and

(f) for each of those Subdivisions, the average time taken to dispose of applications during the current year; and

(fa) the number of applications accepted under subsection 26(1) during a previous financial year that the Authority had begun to assess under section 29 before the end of the current year, but that the Authority had not disposed of before the end of the current year; and

(fb) for an application covered by paragraph (fa), the period that has elapsed since the application was accepted under subsection 26(1); and

(g) the number of applications made during the current year in relation to which a charge fixed under section 146 was payable; and

(h) the number of applications made during the current year in relation to which no charge fixed under section 146 was payable; and

(i) the average number of days that elapsed between the acceptance or rejection under section 26 of an application made during the current year in relation to which no charge fixed under section 146 was payable, and the commencement of the assessment of the application under section 29; and

(j) each occasion during the current year on which the consideration period under section 109 elapsed without the Authority completing the procedure that the Authority must, under Subdivision C of Division 1, adopt in considering the application; and

(k) each occasion during the current year on which the Authority extended the consideration period under subsection 109(4), and the reasons for that extension; and

(ka) the number of applications declared under section 95 to be urgent applications during the current year; and

(l) the number of proposals prepared by the Authority under section 55 during the current year; and

(la) the number of proposals prepared under section 55 during the current year that the Authority had not begun to assess under section 59 during that year; and

(lb) the number of proposals prepared under section 55 during a previous financial year that the Authority had not begun to assess under section 59 before the end of the current year; and

(n) the number of proposals that were disposed of during the current year and the manner of their disposal; and

(o) the average time taken to dispose of proposals under each of Subdivisions D, E, F and G of Division 2 of Part 3 during the current year; and

(p) the average number of days that have elapsed between the preparation of a proposal under section 55 to which Subdivision G of Division 1 of Part 3 does not apply and the commencement of the assessment of the proposal under section 59; and

(pa) the number of proposals prepared under section 55 during a previous financial year that the Authority had begun to assess under section 59 before the end of the current year, but that

the Authority had not disposed of before the end of the current year; and

(pb) for a proposal covered by paragraph (pa), the period that has elapsed since the proposal was prepared under section 55; and

(pc) the number of proposals declared under section 95 to be urgent proposals during the current year; and

(pd) the number of occasions during the current year when the 12 month period referred to in subsection 101(1) ended with no decision having been made under that subsection and the reasons for no decision having been made; and

(q) the number of applications made to the Administrative Appeals Tribunal during the current year for review of decisions of the Authority; and

(r) the results of the applications made to the Administrative Appeals Tribunal that were determined during the current year; and

(s) the number of standards made during the current year; and

(t) the number of draft standards and draft variations approved during the current year under each of the following:

(i) section 33;

(ii) section 41;

(iii) section 52; and

(ta) the number of variations given to the Authority under subsection 82(6) during the current year; and

(u) the number of occasions during the current year when requests were made by the Council under Division 3 of Part 3 for a review of a draft standard or draft variation; and

(v) the number of occasions during the current year when a draft standard or draft variation was rejected by the Council under Division 3 of Part 3; and

(w) the number of occasions during the current year when requests were made by the Council under Division 3 of Part 3 for a review of a standard or variation; and

(x) the number of occasions during the current year when a standard or variation was revoked or amended by the Council under Division 3 of Part 3; and

(y) a summary of policy guidelines notified to the Authority during the current year; and

(z) such other matters (if any) as are specified in the regulations.

(2) The report may include any other matters that the members consider relevant.

## 153 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

# Notes to the *Food Standards Australia New Zealand Act 1991*

## Note 1

The *Food Standards Australia New Zealand Act 1991* as shown in this compilation comprises Act No. 118, 1991 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

The *Food Standards Australia New Zealand Act 1991* was modified by the *National Food Authority Regulations 1994* (1994 No. 286 as amended). The modifications made by the Regulations are not incorporated in this compilation.

## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *National Food Authority Act 1991* | 118, 1991 | 27 June 1991 | 19 Aug 1991 (*see Gazette* 1991, No. S219) | |
| *Health and Community Services Legislation Amendment Act 1991* | 211, 1991 | 24 Dec 1991 | Ss. 10 and 11: 29 Apr 1992<br>Ss. 30 and 31: 19 Aug 1991<br>Ss. 35, 37 and 39: 1 Apr 1992<br>Remainder: Royal Assent | — |
| *National Food Authority Amendment Act 1995* | 152, 1995 | 16 Dec 1995 | Schedules 1 and 2: 1 July 1996 (*see Gazette* 1996, No. S230)<br>Remainder: Royal Assent | — |
| *Audit (Transitional and Miscellaneous) Amendment Act 1997* | 152, 1997 | 24 Oct 1997 | Schedule 2 (items 191–200): 1 Jan 1998 (*see Gazette* 1997, No. GN49) *(a)* | — |

## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *Australia New Zealand Food Authority Amendment Act (No. 2) 1997* | 201, 1997 | 16 Dec 1997 | Schedule 1 (items 1, 25, 27–40, 42, 43, 46, 48, 49): 6 Feb 1998 (*see Gazette* 1998, No. S50) Schedule 1 (item 41): *(b)* Remainder: Royal Assent | Sch. 1 (items 48, 49) S. 2(4) (am. by 81, 2001, Sch. 2) |
| **as amended by** | | | | |
| *Australia New Zealand Food Authority Amendment Act 2001* | 81, 2001 | 10 July 2001 | (*see* 81, 2001 below) | — |
| *Public Employment (Consequential and Transitional) Amendment Act 1999* | 146, 1999 | 11 Nov 1999 | Schedule 1 (items 164–169): 5 Dec 1999 (*see Gazette* 1999, No. S584) *(c)* | — |
| *Corporate Law Economic Reform Program Act 1999* | 156. 1999 | 24 Nov 1999 | Schedule 10 (item 17): 13 Mar 2000 (*see Gazette* 2000, No. S114) *(d)* | — |
| *Australia New Zealand Food Authority Amendment Act 1999* | 200, 1999 | 23 Dec 1999 | Schedule 1 (item 13): 30 July 1998 Remainder: Royal Assent | Sch. 1 (items 67–70) |
| *Gene Technology (Consequential Amendments) Act 2000* | 170, 2000 | 21 Dec 2000 | 22 June 2001 (*see* s. 2) | — |
| *Australia New Zealand Food Authority Amendment Act 2001* | 81, 2001 | 10 July 2001 | Schedule 1 (items 1–120, 121–177) and Schedule 3: 1 July 2002 (*see Gazette* 2002, No. GN30) Schedule 1 (item 178): 23 Dec 1999 *(e)* Schedule 2: 16 Dec 1997 *(e)* Remainder: Royal Assent | S. 2(6) and Sch. 1 (items 33, 120A, 124, 133, 147, 153, 155, 156,163, 168, 172–177) |
| **as amended by** | | | | |
| *Statute Law Revision Act 2002* | 63, 2002 | 3 July 2002 | Schedule 2 (item 2): *(ea)* | — |

## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001* | 111, 2001 | 17 Sept 2001 | 17 Sept 2001 | S. 4 |
| *National Health and Medical Research Council Amendment Act 2006* | 50, 2006 | 9 June 2006 | Schedule 1: 1 July 2006<br>Remainder: Royal Assent | — |
| *Statute Law Revision Act 2007* | 8, 2007 | 15 Mar 2007 | Schedule 1 (item 13): *(f)* | — |
| *Food Standards Australia New Zealand Amendment Act 2007* | 98, 2007 | 28 June 2007 | Schedule 1 (items 1–63): 1 July 2007 (*see* F2007L01822)<br>Schedule 1 (items 64–78): *(g)*<br>Schedule 2: 28 Dec 2008<br>Schedule 3 (items 1–9): 6 July 2010<br>Schedule 3 (item 10): *(g)*<br>Remainder: Royal Assent | Sch. 1 (items 77, 78) |
| *Statute Law Revision Act 2010* | 8, 2010 | 1 Mar 2010 | Schedule 5 (items 49–51, 53, 54): Royal Assent<br>Schedule 5 (item 52): *(h)*<br>Schedule 5 (item 137(a)): *(h)* | — |
| *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010* | 103, 2010 | 13 July 2010 | Schedule 6 (items 162, 163): 1 Jan 2011 | — |
| *Food Standards Australia New Zealand Amendment Act 2010* | 121, 2010 | 17 Nov 2010 | Schedule 1 (items 7–39): 1 Mar 2011 (*see* F2011L00312) | Sch. 1 (items 20, 39) |
| *Acts Interpretation Amendment Act 2011* | 46, 2011 | 27 June 2011 | Schedule 2 (items 628–633) and Schedule 3 (items 10, 11): 27 Dec 2011 | Sch. 3 (items 10, 11) |
| *Statute Law Revision Act 2012* | 136, 2012 | 22 Sept 2012 | Schedule 5 (items 1–3): 20 Oct 2012 | — |

## Act Notes

*(a)* The *Food Standards Australia New Zealand Act 1991* was amended by Schedule 2 (items 191–200) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:

> (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.

*(b)* Subsection 2(4) of the *Australia New Zealand Food Authority Amendment Act (No. 2) 1997* provides as follows:

> (4) Item 41 of Schedule 1 commences immediately after the commencement of the *Public Service Act 1999*, if that Act commences after this Act receives the Royal Assent. If that Act commences before this Act receives the Royal Assent, item 41 does not commence.

The *Public Service Act 1999* came into operation on 5 December 1999 (*see Gazette* 1999, No. S584).

*(c)* The *Food Standards Australia New Zealand Act 1991* was amended by Schedule 1 (items 164–169) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

> (1) In this Act, ***commencing time*** means the time when the *Public Service Act 1999* commences.
>
> (2) Subject to this section, this Act commences at the commencing time.

*(d)* The *Food Standards Australia New Zealand Act 1991* was amended by Schedule 10 (item 17) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:

> (2) The following provisions commence on a day or days to be fixed by Proclamation:
>
> (c) the items in Schedules 10, 11 and 12.

*(e)* Subsections 2(3) and (4) of the *Australia New Zealand Food Authority Amendment Act 2001* provide as follows:

> (2) Part 1 of Schedule 1 (other than item 120A), and Schedule 3, commence on the first day after the commencement of this section on which an amendment of the Australia New Zealand Joint Food Standards Agreement comes into force in accordance with Article 10 of that Agreement.
>
> (3) Part 2 of Schedule 1 is taken to have commenced on 23 December 1999, immediately after the commencement of item 10 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 1999*.

*(ea)* The *Australia New Zealand Food Authority Amendment Act 2001* was amended by Schedule 2 (item 2) only of the *Statute Law Revision Act 2002*, subsection 2(1) (item 31) of which provides as follows:

> (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| **Provision(s)** | **Commencement** | **Date/Details** |
| 31. Schedule 2, item 2 | Immediately after the time specified in the *Australia New Zealand Food Authority Amendment Act 2001* for the commencement of item 185 of Schedule 1 to that Act | 10 July 2001 |

## Act Notes

*(f)* Subsection 2(1) (item 10) of the *Statute Law Revision Act 2007* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Provision(s) | Commencement | Date/Details |
|---|---|---|
| 10. Schedule 1, item 13 | Immediately after the commencement of item 37 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 2001*. | 1 July 2002 |

*(g)* Subsection 2(1) (items 2–6, 8 and 9) of the *Food Standards Australia New Zealand Amendment Act 2007* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Provision(s) | Commencement | Date/Details |
|---|---|---|
| 2. Schedule 1, Parts 1 and 2 | A single day to be fixed by Proclamation.<br>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | 1 July 2007<br>(*see* F2007L01822) |
| 3. Schedule 1, items 64 to 67 | Immediately after the commencement of the provision(s) covered by table item 2. | 1 July 2007 |
| 4. Schedule 1, items 68 to 70 | Immediately after the commencement of the provisions covered by table item 3. | 1 July 2007 |
| 5. Schedule 1, item 71 | Immediately after the commencement of the provision(s) covered by table item 4. | 1 July 2007 |
| 6. Schedule 1, Parts 4 and 5 | Immediately after the commencement of the provision(s) covered by table item 5. | 1 July 2007 |
| 8. Schedule 3, Part 1 | The day on which an amendment of the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards, signed at Wellington on 5 December 1995, enters into force to reduce from two to one the number of occasions on which the Council may request the Authority to review a draft standard or a draft variation of a standard.<br>However, if no such amendment of the Agreement is made, the provision(s) do not commence at all. | 6 July 2010 |

## Act Notes

| Provision(s) | Commencement | Date/Details |
|---|---|---|
| 9. Schedule 3, Part 2 | Immediately after the commencement of Part 1 of Schedule 3.<br>However, if Part 1 of Schedule 3 does not commence before Schedule 2, the provision(s) do not commence at all. | Does not commence |

*(h)* Subsection 2(1) (items 31, 32 and 38) of the *Statute Law Revision Act 2010* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Provision(s) | Commencement | Date/Details |
|---|---|---|
| 31. Schedule 5, items 1 to 51 | The day this Act receives the Royal Assent. | 1 March 2010 |
| 32. Schedule 5, item 52 | Immediately after the commencement of item 5 of Schedule 3 to the *Food Standards Australia New Zealand Amendment Act 2007*. | 6 July 2010 |
| 38. Schedule 5, Parts 2 and 3 | Immediately after the provision(s) covered by table item 31. | 1 March 2010 |

The amendment history of the *Food Standards Australia New Zealand Act 1991* appears in the Table below. For repealed provisions up to and including Act No. 98, 2007 see the Repeal Table.

## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| Title | am. No. 152, 1995; No. 200, 1999; No. 81, 2001 |
| **Part 1** | |
| S. 1 | am. No. 152, 1995; No. 81, 2001 |
| S. 3 | ad. No. 200, 1999<br>am. No. 81, 2001 |
| S. 4 | am. No. 152, 1995; No. 201, 1997; No. 200, 1999; No. 170, 2000; No. 81, 2001; No. 50, 2006; No. 98, 2007; No. 136, 2012 |
| Ss. 5, 6 | ad. No. 200, 1999<br>am. No. 98, 2007 |
| S. 7 | ad. No. 98, 2007<br>am. No. 8, 2010 |
| S. 8 | ad. No. 98, 2007 |
| S. 11 | ad. No. 111, 2001 |
| **Part 2** | |
| Heading to Part 2 | rs. No. 81, 2001; No. 98, 2007 |
| **Division 1** | |
| Heading to Div. 1 of Part 2 | ad. No. 98, 2007 |
| S. 12 | am. No. 152, 1995; No. 81, 2001 |
| Note to s. 12(2) | ad. No. 152, 1997 |
| S. 13 | am. No. 152, 1995; No. 201, 1997; No. 200, 1999; No. 81, 2001; No. 98, 2007; No. 103, 2010; No. 136, 2012 |
| S. 14 | am. No. 201, 1997; No. 200, 1999 |
| S. 15 | am. No. 152, 1997; No. 98, 2007 |
| **Division 2** | |
| Heading to Div. 2 of Part 2 | ad. No. 98, 2007 |
| S. 16 | am. No. 200, 1999; No. 81, 2001 |
| Note to s. 16(3) | am. No. 98, 2007 |
| S. 17 | ad. No. 200, 1999 |
| Heading to s. 18 | am. No. 81, 2001 |
| S. 18 | am. No. 152, 1995<br>rs. No. 200, 1999<br>am. No. 81, 2001; Nos. 8 and 98, 2007; No. 8, 2010 |
| S. 19 | ad. No. 170, 2000 |

## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| **Division 3** | |
| Heading to Div. 3 of Part 2..... | ad. No. 98, 2007 |
| S. 20 ..... | ad. No. 200, 1999<br>am. No. 98, 2007 |
| **Part 3** | |
| Heading to Part 3 ..... | rs. No. 200, 1999 |
| **Division 1** | |
| Div. 1 of Part 3 ..... | ad. No. 81, 2001<br>rs. No. 98, 2007 |
| **Subdivision A** | |
| Heading to s. 21 ..... | am. No. 200, 1999<br>rs. No. 81, 2001; No. 98, 2007 |
| S. 21 ..... | am. No. 200, 1999<br>rs. No. 81, 2001; No. 98, 2007 |
| **Subdivision B** | |
| S. 22 ..... | am. No. 152, 1995<br>rs. No. 200, 1999; No. 81, 2001; No. 98, 2007 |
| S. 23 ..... | am. No. 200, 1999; No. 81, 2001<br>rs. No. 81, 2001; No. 98, 2007 |
| S. 24 ..... | am. No. 152, 1995<br>rs. No. 200, 1999; No. 81, 2001; No. 98, 2007<br>am. No. 98, 2007 |
| **Subdivision C** | |
| S. 25 ..... | am. No. 152, 1995; No. 201, 1997<br>rs. No. 200, 1999; No. 81, 2001; No. 98, 2007<br>am. No. 98, 2007 |
| **Subdivision D** | |
| Heading to s. 26 ..... | am. No. 200, 1999<br>rs. No. 81, 2001; No. 98, 2007 |
| S. 26 ..... | am. No. 200, 1999<br>rs. No. 81, 2001; No. 98, 2007 |
| S. 27 ..... | am. No. 152, 1995<br>rs. No. 200, 1999; No. 81, 2001; No. 98, 2007 |
| Heading to s. 28 ..... | am. No. 200, 1999<br>rs. No. 81, 2001; No. 98, 2007 |
| S. 28 ..... | am. No. 201, 1997<br>rs. No. 81, 2001; No. 98, 2007 |
| Heading to s. 29 ..... | am. No. 81, 2001<br>rs. No. 98, 2007 |
| S. 29 ..... | am. No. 81, 2001<br>rs. No. 98, 2007 |
| Heading to s. 30 ..... | am. No. 81, 2001<br>rs. No. 98, 2007 |
| S. 30 ..... | am. No. 81, 2001<br>rs. No. 98, 2007 |
| S. 31 ..... | rep. No. 81, 2001<br>ad. No. 98, 2007 |

## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| Heading to s. 32 | rs. No. 152, 1995<br>rep. No. 81, 2001<br>ad. No. 98, 2007 |
| S. 32 | am. No. 152, 1995; No. 201, 1997; No. 200, 1999<br>rep. No. 81, 2001<br>ad. No. 98, 2007 |
| Heading to s. 33 | am. No. 200, 1999<br>rs. No. 98, 2007 |
| S. 33 | am. No. 200, 1999; No. 81, 2001<br>rs. No. 98, 2007 |
| Note to s. 33(1)<br>Renumbered Note 1 | No. 98, 2007 |
| Note 2 to s. 33(1) | ad. No. 98, 2007 |
| S. 34 | am. No. 201, 1997; No. 200, 1999; No. 81, 2001<br>rs. No. 98, 2007 |
| Heading to s. 35 | am. No. 81, 2001<br>rs. No. 98, 2007 |
| S. 35 | am. No. 201, 1997; No. 200, 1999; No. 81, 2001<br>rs. No. 98, 2007 |
| **Subdivision E** | |
| S. 36 | am. No. 152, 1995; No. 201, 1997; No. 200, 1999; No. 81, 2001<br>rs. No. 98, 2007 |
| S. 37 | am. No. 200, 1999<br>rep. No. 81, 2001<br>rs. No. 98, 2007 |
| Heading to s. 38 | rs. No. 152, 1995; No. 98, 2007 |
| S. 38 | am. No. 152, 1995; No. 146, 1999<br>rs. No. 98, 2007 |
| Ss. 39–41 | ad. No. 98, 2007 |
| **Subdivision F** | |
| Ss. 42–45 | ad. No. 98, 2007 |
| **Subdivision G** | |
| Ss. 46–53 | ad. No. 98, 2007 |
| **Division 2** | |
| Heading to Div. 1 of Part 3<br>Renumbered Div. 2 | rs. No. 200, 1999<br>No. 81, 2001 |
| Heading to Div. 2 of Part 3 | rs. No. 98, 2007 |
| Div. 2 of Part 3 | rs. No. 98, 2007 |
| **Subdivision A** | |
| S. 54 | ad. No. 98, 2007 |
| Note to s. 54 | ad. No. 121, 2010 |
| **Subdivision B** | |
| S. 55 | ad. No. 98, 2007 |
| S. 56 | ad. No. 98, 2007<br>am. No. 98, 2007 |

## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| **Subdivision C** | |
| S. 57 | ad. No. 98, 2007<br>am. No. 98, 2007; No. 121, 2010 |
| **Subdivision D** | |
| Ss. 58–62 | ad. No. 98, 2007 |
| S. 63 | ad. No. 98, 2007 |
| Note to s. 63(1) Renumbered Note 1 | No. 98, 2007 |
| Note 2 to s. 63(1) | ad. No. 98, 2007 |
| Ss. 64, 65 | ad. No. 98, 2007 |
| **Subdivision E** | |
| S. 66 | ad. No. 98, 2007<br>am. No. 121, 2010 |
| Ss. 67–69 | ad. No. 98, 2007 |
| **Subdivision F** | |
| S. 70 | ad. No. 98, 2007<br>am. No. 121, 2010 |
| Ss. 71–73 | ad. No. 98, 2007 |
| **Subdivision G** | |
| Ss. 74–79 | ad. No. 98, 2007 |
| Subdiv. H of Div. 2 of Part 3 | rep. No. 121, 2010 |
| **Division 2A** | |
| Div. 2A of Part 3 | ad. No. 121, 2010 |
| Ss. 80–83 | ad. No. 98, 2007<br>rs. No. 121, 2010 |
| **Division 3** | |
| Div. 3 of Part 3 | ad. No. 81, 2001<br>rs. No. 98, 2007 |
| S. 84 | ad. No. 98, 2007<br>am. No. 98, 2007<br>rs. No. 98, 2007 |
| S. 85 | ad. No. 98, 2007<br>rs. No. 98, 2007 |
| Ss. 86, 87 | ad. No. 98, 2007<br>am. No. 8, 2010<br>rs. No. 98, 2007 |
| Ss. 88–90 | ad. No. 98, 2007 |
| Ss. 91, 92 | ad. No. 98, 2007<br>am. No. 8, 2010 |
| Ss. 93, 94 | ad. No. 98, 2007 |

## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| **Division 4** | |
| Div. 4 of Part 3 | ad. No. 81, 2001<br>rs. No. 98, 2007 |
| **Subdivision A** | |
| S. 95 | ad. No. 98, 2007<br>am. No. 98, 2007; No. 121, 2010 |
| Ss. 96, 97 | ad. No. 98, 2007 |
| **Subdivision B** | |
| Ss. 98–104 | ad. No. 98, 2007 |
| S. 105 | ad. No. 98, 2007<br>rep. No. 98, 2007 |
| S. 106 | ad. No. 98, 2007<br>am. No. 98, 2007; No. 8, 2010 |
| **Division 5** | |
| Heading to Div. 6 of Part 3 | rep. No. 98, 2007 |
| Heading to Div. 5 of Part 3 | ad. No. 98, 2007 |
| S. 107 | ad. No. 98, 2007 |
| Ss. 108–111 | ad. No. 98, 2007<br>am. No. 98, 2007 |
| S. 112 | ad. No. 98, 2007<br>am. No. 98, 2007; No. 46, 2011 |
| **Division 6** | |
| Heading to Div. 3 of Part 3 Renumbered Div. 6 | No. 81, 2001 |
| Heading to Div. 6 of Part 3 | rs. No. 98, 2007 |
| S. 113 | ad. No. 98, 2007 |
| S. 114 | am. No. 152, 1995; No. 201, 1997; Nos. 146 and 200, 1999; No. 81, 2001; No. 98, 2007 |
| **Part 4** | |
| Heading to Part 4 | rs. No. 201, 1997; No. 81, 2001 |
| **Division 1** | |
| Heading to Div. 1 of Part 4 | ad. No. 201, 1997<br>rs. No. 81, 2001 |
| S. 115 | ad. No. 81, 2001 |
| Heading to s. 116 | am. No. 81, 2001 |
| S. 116 | am. No. 152, 1995; No. 201, 1997; No. 81, 2001; No. 50, 2006; No. 98, 2007 |
| S. 117 | am. No. 81, 2001 |
| Heading to s. 118 | am. No. 81, 2001 |
| S. 118 | am. No. 81, 2001; No. 98, 2007 |
| S. 119 | am. No. 152, 1995; No. 81, 2001 |
| S. 121 | am. No. 81, 2001; No. 46, 2011 |
| Notes to s. 121(1), (2) | ad. No. 46, 2011 |
| Ss. 122, 123 | am. No. 81, 2001 |

## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| S. 124 | am. No. 81, 2001; No. 98, 2007 |
| S. 125 | am. No. 152, 1997; No. 81, 2001; No. 98, 2007; No. 8, 2010 |
| S. 127 | am. No. 152, 1997; Nos. 156 and 200, 1999; No. 81, 2001; No. 98, 2007 |
| **Division 2** | |
| Div. 2 of Part 4 | ad. No. 201, 1997 |
| S. 128 | ad. No. 201, 1997<br>am. No. 81, 2001 |
| S. 129 | ad. No. 201, 1997<br>am. No. 81, 2001; No. 98, 2007 |
| S. 130 | ad. No. 201, 1997 |
| Ss. 131–133 | ad. No. 201, 1997<br>am. No. 81, 2001 |
| S. 134 | ad. No. 201, 1997<br>am. No. 81, 2001; No. 46, 2011 |
| Note to s. 134 | ad. No. 46, 2011 |
| **Division 3** | |
| Heading to Div. 3 of Part 4 | ad. No. 201, 1997<br>rs. No. 98, 2007 |
| S. 135 | am. No. 201, 1997; No. 146, 1999 |
| S. 136 | am. No. 201, 1997 |
| S. 137 | ad. No. 98, 2007 |
| **Part 5** | |
| S. 138 | am. No. 136, 2012 |
| S. 139 | am. No. 152, 1995; No. 152, 1997; No. 200, 1999; No. 98, 2007 |
| S. 141 | am. No. 152, 1997 |
| **Part 6** | |
| S. 142 | am. No. 201, 1997; No. 81, 2001; No. 98, 2007 |
| S. 143 | am. No. 201, 1997; No. 200, 1999; No. 81, 2001; No. 98, 2007 |
| S. 144 | am. No. 152, 1995; No. 200, 1999; No. 98, 2007 |
| S. 145 | ad. No. 152, 1995<br>am. No. 201, 1997; No. 81, 2001 |
| Heading to s. 146 | rs. No. 152, 1995 |
| S. 146 | am. No. 152, 1995<br>rs. No. 200, 1999<br>am. No. 81, 2001; No. 98, 2007; No. 121, 2010 |
| Ss. 147–149 | ad. No. 200, 1999<br>am. No. 98, 2007 |
| S. 150 | rs. No. 81, 2001<br>am. No. 98, 2007 |
| S. 151 | am. No. 201, 1997; No. 200, 1999; No. 81, 2001; No. 98, 2007 |

## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| S. 152..... | am. No. 152, 1997; No. 200, 1999; No. 81, 2001<br>rs. No. 98, 2007<br>am. No. 98, 2007; No. 121, 2010 |

## Repeal Table

Certain provisions of the *Food Standards Australia New Zealand Act 1991*, as amended, were repealed either prior to renumbering by the *Food Standards Australia New Zealand Amendment Act 2007* (No. 98, 2007) or by that Act. The amendment history of the repealed provisions appears in the Table below.

## Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| S. 11A (second occurring) ..... | ad. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 11B ..... | ad. No. 81, 2001<br>rep. No. 98, 2007 |
| Heading to s. 12 ..... | am. No. 200, 1999<br>rep. No. 98, 2007 |
| S. 12 ..... | am. No. 201, 1997; No. 200, 1999; No. 81, 2001<br>rep. No. 98, 2007 |
| Note to s. 12(2) ..... | ad. No. 201, 1997<br>am. No. 200, 1999<br>rep. No. 98, 2007 |
| S. 12AA..... | ad. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 12A ..... | ad. No. 201, 1997<br>rs. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 12B ..... | ad. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| Heading to s. 13 ..... | am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 13 ..... | am. No. 201, 1997<br>rs. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| Heading to s. 13A..... | am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 13A ..... | ad. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| Heading to s. 14 ..... | am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 14 ..... | am. No. 152, 1995<br>rs. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 14A ..... | ad. No. 81, 2001<br>rep. No. 98, 2007 |

## Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| Heading to s. 15 | am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 15 | rs. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 15AA | ad. No. 81, 2001<br>rep. No. 98, 2007 |
| Heading to s. 15A | am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 15A | ad. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 15B | ad. No. 81, 2001<br>rep. No. 98, 2007 |
| Heading to s. 16 | am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 16 | am. No. 152, 1995<br>rs. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| Heading to s. 17 | am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 17 | am. No. 152, 1995; No. 201, 1997<br>rs. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 17AA | ad. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 17A | ad. No. 200, 1999<br>rep. No. 98, 2007 |
| S. 17AB | ad. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 17B | ad. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| Heading to s. 18 | am. No. 200, 1999<br>rs. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 18 | am. No. 200, 1999<br>rs. No. 81, 2001<br>rep. No. 98, 2007 |
| Heading to s. 19 | am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 19 | am. No. 152, 1995<br>rs. No. 200, 1999<br>am. No. 81, 2001 (as am. by No. 63, 2002)<br>rep. No. 98, 2007 |

## Repeal Table

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| Heading to s. 20 | am. No. 200, 1999<br>rs. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 20 | am. No. 201, 1997<br>rs. No. 81, 2001<br>rep. No. 98, 2007 |
| Div. 1A of Part 3 | ad. No. 200, 1999<br>rep. No. 81, 2001 |
| Ss. 20A–20D | ad. No. 200, 1999<br>rep. No. 81, 2001 |
| Heading to Div. 2 of Part 3 | rs. No. 200, 1999<br>rep. No. 81, 2001 |
| Div. 2 of Part 3 | rep. No. 81, 2001 |
| S. 23A | ad. No. 81, 2001<br>rep. No. 98, 2007 |
| Div. 5 of Part 3 | ad. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 25A | ad. No. 200, 1999<br>rep. No. 81, 2001 |
| Div. 2A of Part 3 | ad. No. 200, 1999<br>rep. No. 81, 2001 |
| Ss. 28A–28D | ad. No. 200, 1999<br>rs. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 30A | ad. No. 200, 1999<br>am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 30B | ad. No. 200, 1999<br>rep. No. 98, 2007 |
| S. 36A | ad. No. 201, 1997<br>am. No. 200, 1999; No. 81, 2001<br>rep. No. 98, 2007 |
| S. 42 | am. No. 152, 1995; No. 201, 1997; No. 200, 1999<br>rep. No. 81, 2001 |
| S. 56 | rep. No. 152, 1997 |
| S. 59 | rep. No. 152, 1997 |
| S. 61 | am. No. 81, 2001<br>rep. No. 98, 2007 |
| S. 65 | rep. No. 111, 2001 |
| S. 71 | am. No. 211, 1991<br>rep. No. 200, 1999 |

## Table A

### Application, saving or transitional provisions

*Australia New Zealand Food Authority Amendment Act (No. 2) 1997* (No. 201, 1997)

## Schedule 1

### 48 Application of amendment made by item 35

The amendment made by item 35 applies to the members of the Authority (including the Chairperson) who hold office on the commencement of that item and to all members appointed after then.

### 49 General transitional provisions

(1) Things done before the CEO commencement in, or in relation to, the exercise of the Chairperson's powers, or the Authority's powers, referred to in a pre-CEO provision have effect, after the CEO commencement, as if they were done in, or in relation to, the exercise of the Chief Executive Officer's powers referred to in the corresponding amended CEO provision.

(2) A member of the Food Advisory Committee who held office as such a member immediately before the CEO commencement because of an appointment under paragraph 42(4)(e) of the old Act continues to hold office after that commencement as if the appointment were under that paragraph of the amended Act.

(3) An agreement referred to in subsection 65A(1) of the old Act that was in force immediately before the CEO commencement continues to have effect after that commencement as if it were an agreement referred to in that subsection of the amended Act.

(4) For this purpose:

***amended Act*** means the *Australia New Zealand Food Authority Act 1991* as in force after the CEO commencement.

***amended CEO provision*** means any of the following provisions of the amended Act:

(a) section 39;

**Table A**

(b) section 53;
(c) section 54.

***CEO commencement*** means the commencement of item 36.

***Old Act*** means the *Australia New Zealand Food Authority Act 1991* as in force before the CEO commencement.

***pre-CEO provision*** means any of the following provisions of the old Act:
(a) section 39;
(b) section 53;
(c) section 54.

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*Australia New Zealand Food Authority Amendment Act 1999* (No. 200, 1999)

## Schedule 1

### 67 Saving—regulations under paragraph 9(f)

Despite the repeal of paragraph 9(1)(f) of the Principal Act by item 12, a regulation in force under that paragraph as in force immediately before the commencement of that item continues in force after that commencement as if it had been made under paragraph 9(1)(p) of the Principal Act as in force after that commencement.

### 68 Saving—nominations under paragraphs 42(4)(b) and (c)

Despite the amendments of paragraphs 42(4)(b) and 42(4)(c) of the Principal Act made by items 56 and 57, nominations under those paragraphs as in force immediately before the commencement of this item continue in force after that commencement as if they had been made under those paragraphs as in force after that commencement.

### 69 Transitional—application of amendments

To the extent that the amendments made by this Schedule relate to draft standards, or draft variations of standards, that may be developed under the Principal Act, the amendments apply only to:

(a) applications for the development of such standards, or variations of standards, that are made on or after the commencement of this item; and

(b) proposals for the development of such standards, or variations of standards, that are initiated on or after the commencement of this item.

### 70 Meaning of *Principal Act*

In this Part:

***Principal Act*** means the *Australia New Zealand Food Authority Act 1991*.

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*Australia New Zealand Food Authority Amendment Act 2001* (No. 81, 2001)

### 2 Commencement

(6) In this section:

***Australia New Zealand Joint Food Standards Agreement*** means the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards, signed at Wellington on 5 December 1995.

## Schedule 1

### 33 Transitional—validity of food regulatory measures

To avoid doubt, the amendments of section 9 of the *Australia New Zealand Food Authority Act 1991* made by this Part do not affect the validity of a food regulatory measure in force immediately before the commencement of this item.

### 120A Transitional—making of regulations for the nomination of Board members

(1) A power conferred by paragraph 40(3)(b) or 40(4)(b) of the *Australia New Zealand Food Authority Act 1991* as amended by this Schedule to make regulations in relation to the nomination of persons for selection as members of the Board may be exercised before the commencement of those provisions as if those provisions had come into operation.

(2) Subitem (1) has effect despite anything in the *Acts Interpretation Act 1901*.

**Table A**

(3) Subitem (1) has effect in addition to section 4 of the *Acts Interpretation Act 1901*.

## Schedule 1

### 124 Transitional—termination of existing appointments

If a person held office as a member (other than the Chief Executive Officer) immediately before the commencement of this item, the member's appointment is terminated at the commencement of this item.

### 133 Transitional—abolition of existing committees

If a committee established under section 43 of the *Australia New Zealand Food Authority Act 1991* was in existence immediately before the commencement of this item, the committee is abolished at the commencement of this item.

### 147 Transitional—appointment of Chief Executive Officer

(1) This item applies if a person held office as the Chief Executive Officer immediately before the commencement of this item because of an appointment under subsection 52A(2) of the *Australia New Zealand Food Authority Act 1991*.

(2) The person continues to hold that office, as if that appointment were an appointment under the corresponding provision of the *Food Standards Australia New Zealand Act 1991*, until:

(a) the end of the period of 6 months beginning at the commencement of this item; or

(b) the Board re-appoints the person to that office; or

(c) the Board appoints another person to that office;

whichever first happens.

### 153 Transitional—determination of terms and conditions for Chief Executive Officer

(1) This item applies if a determination was in force under section 52F of the *Australia New Zealand Food Authority Act 1991* immediately before the commencement of this item.

(2) The *Food Standards Australia New Zealand Act 1991* has effect, after the commencement of this item, as if the determination had been made by the Board under section 52F of that Act.

### 155 Transitional—appointment of acting Chief Executive Officer during a vacancy

(1) This item applies if a person was acting as the Chief Executive Officer immediately before the commencement of this item because of an appointment under paragraph 52G(1)(a) of the *Australia New Zealand Food Authority Act 1991*.

(2) The person continues to act as the Chief Executive Officer, as if that appointment were an appointment under the corresponding provision of the *Food Standards Australia New Zealand Act 1991*, until:

(a) the end of the period of 6 months beginning at the commencement of this item; or

(b) the Board terminates the person's appointment; or

(c) the Board appoints the person, or another person, to the office of Chief Executive Officer under subsection 52A(2) of the *Food Standards Australia New Zealand Act 1991*;

whichever first happens.

### 156 Transitional—appointment of acting Chief Executive Officer during temporary absence etc.

(1) This item applies if a person was acting as the Chief Executive Officer immediately before the commencement of this item because of an appointment under paragraph 52G(1)(b) of the *Australia New Zealand Food Authority Act 1991*.

(2) The person continues to act as the Chief Executive Officer, as if that appointment were an appointment under the corresponding provision of the *Food Standards Australia New Zealand Act 1991*, until:

(a) the end of the period of 6 months beginning at the commencement of this item; or

(b) the Board terminates the person's appointment; or

(c) the Chief Executive Officer returns to duty;

whichever first happens.

### 163 Transitional—agreement under section 65A of the *Australia New Zealand Food Authority Act 1991*

(1) This item applies to an agreement in force under section 65A of the *Australia New Zealand Food Authority Act 1991* immediately before the commencement of this item.

**Table A**

(2) The agreement has effect, after the commencement of this item, as if it had been entered into between the Authority and the lead New Zealand Minister on the Council under section 65A of the *Food Standards Australia New Zealand Act 1991*.

### 168 Transitional—exemption from suit

Despite the amendments of section 68 of the *Australia New Zealand Food Authority Act 1991* made by this Part, that section continues to apply, after the commencement of this item, in relation to a member of the Authority, as if those amendments had not been made.

### 172 Transitional—annual report in the course of preparation immediately before this item commenced

To avoid doubt, if, immediately before the commencement of this item, the members of the Australia New Zealand Food Authority had not completed the preparation of an annual report under section 9 of the *Commonwealth Authorities and Companies Act 1997* for the last financial year that ended before the commencement of this item, the members of the Board are responsible, in accordance with that section, for:

(a) completing the preparation of that report; and

(b) giving the report to the Minister by the relevant deadline for the financial year.

### 173 Transitional—annual report for the financial year in which this item commenced

(1) To avoid doubt, the obligations imposed on the members of the Board by:

(a) section 9 of the *Commonwealth Authorities and Companies Act 1997*; and

(b) section 69 of the *Food Standards Australia New Zealand Act 1991*;

to prepare an annual report on the Authority for the financial year in which this item commenced extends to so much of the financial year as occurred before this item commenced (when the Authority was known as the Australia New Zealand Food Authority).

(2) Despite the amendments of section 69 of the *Australia New Zealand Food Authority Act 1991* made by this Part, that section continues to apply, after the commencement of this item, in relation to so much of

that financial year as occurred before this item commenced, as if those amendments had not been made.

### 174 Transitional—certain draft standards etc. deemed to be notified to Council

(1) This item applies if, before the commencement of this item:

(a) ANZFA made a recommendation to the old Council under section 18 or 26 of the *Australia New Zealand Food Authority Act 1991*:

(i) that the old Council adopt a draft standard or a draft variation of a standard; or

(ii) that the old Council adopt a draft standard or a draft variation of a standard subject to such amendments as ANZFA considers necessary; and

(b) the old Council had not made a decision under section 20 or 28 of that Act in relation to that recommendation.

(2) The *Food Standards Australia New Zealand Act 1991* has effect after the commencement of this item, in relation to the draft, as if:

(a) in a case where subparagraph (1)(a)(i) applies—FSANZ had approved the draft under section 18 of that Act; and

(b) in a case where subparagraph (1)(a)(ii) applies—FSANZ had approved the draft under section 18 of that Act subject to those amendments; and

(c) in all cases—FSANZ had notified the new Council of the approval under section 20 of that Act; and

(d) paragraphs 20(1)(b), (c), (d), (e) and (f) of that Act had not been enacted.

(3) As soon as practicable after the commencement of this item, FSANZ must:

(a) prepare a written list of the drafts covered by subitem (1); and

(b) give a copy of that list to the new Council.

(4) In this item:

***ANZFA*** means the Australia New Zealand Food Authority.

***FSANZ*** means Food Standards Australia New Zealand.

***new Council*** means the Australia and New Zealand Food Regulation Ministerial Council.

**Table A**

***old Council*** means the Australia New Zealand Food Standards Council.

## 175 Transitional—applications pending immediately before this item commenced

(1) For the purposes of this item, an application for the development or variation of a food regulatory measure is an ***eligible application*** if:

(a) the application was made under section 12 of the old Act before the commencement of this item; and

(b) the application was not withdrawn before that commencement; and

(c) the application was not rejected before that commencement; and

(d) in a case where the application was for the development or variation of a standard and a draft standard or draft variation was prepared as a result of the application—ANZFA neither:

(i) made a recommendation to the old Council about the draft; nor

(ii) made a decision about the draft under section 20A of the old Act;

before that commencement; and

(e) in a case where the application was for the development or variation of a code of practice and a draft code of practice or a draft variation was developed as a result of the application—ANZFA neither:

(i) approved the draft; nor

(ii) rejected the draft;

before that commencement.

(2) The eligible application lapses at the commencement of this item and, except as provided by this item, FSANZ is not to take any action under the new Act after that commencement in relation to:

(a) the eligible application; or

(b) any draft prepared as a result of the eligible application.

(3) For the purposes of the new Act:

(a) the eligible applicant is taken to have made an application (the ***fresh application***) under section 12 of that Act in the same terms as the eligible application; and

(b) the fresh application is taken to have been made immediately after the commencement of this item; and

(c) if the eligible application was accompanied by information in support of the eligible application—the fresh application is taken to be accompanied by that information; and

(d) if, under subsection 12(3) of the old Act, the applicant had provided a sample of the food to which the eligible application relates—the applicant is taken to have provided that sample in relation to the fresh application under subsection 12(3) of the new Act.

(4) The applicant may, within 28 days after the commencement of this item, request FSANZ, in writing, to defer making a decision under section 13A of the new Act in relation to the application until the applicant gives FSANZ additional information to support the application. FSANZ must comply with that request.

(5) If the applicant makes a request under subitem (4), the time taken by the applicant to provide the information is not to be included in the period set or prescribed for the purpose of subsection 35(1) of the new Act or set for the purposes of subsection 35(1A) or (3) of the new Act.

(6) Subsections 35(1) and (1A) of the new Act have effect, in relation to the fresh application, as if a reference in those subsections to 12 months were a reference to 15 months.

(7) If ANZFA made a preliminary assessment of the eligible application before the commencement of this item, FSANZ is taken to have made an initial assessment of the fresh application.

(8) If, before the commencement of this item, any submissions had been made to ANZFA about the eligible application in response to a notice given under section 13A or 14 of the old Act, those submissions have effect as if they had been made to FSANZ about the fresh application in response to a notice given under section 13A or 14 of the new Act.

(9) If notice is given under section 13A or 14 of the new Act in relation to the fresh application, the notice must set out an explanation of the effect of subitem (8).

(10) If:

(a) FSANZ accepts the fresh application under section 13A of the new Act; and

**Table A**

(b) ANZFA had:

(i) made a full assessment of the eligible application before the commencement of this item; and

(ii) prepared a draft food regulatory measure or a draft variation of a food regulatory measure before the commencement of this item;

FSANZ is taken to have made a draft assessment of the fresh application if it reviews the full assessment having regard to:

(c) any submissions made to it in response to a notice given under section 13A or 14 of the new Act in relation to the fresh application, being submissions that were not considered in making the full assessment; and

(d) the matter set out in paragraph 10(2)(e) of the new Act.

(11) If, before the commencement of this item, any submissions had been made to ANZFA in response to a notice given under section 16 or 17 of the old Act in relation to the eligible application, those submissions have effect as if they had been made to FSANZ in response to a notice given under section 16 or 17 of the new Act in relation to the fresh application.

(12) If notice is given under section 16 or 17 of the new Act in relation to the fresh application, the notice must set out an explanation of the effect of subitem (11).

(13) If ANZFA held an inquiry in relation to the eligible application before the commencement of this item, FSANZ is taken to have made a final assessment in relation to the draft that resulted from the fresh application if it reviews the inquiry having regard to:

(a) any submissions made to it in response to a notice given under section 16 or 17 of the new Act in relation to the draft that resulted from the fresh application, being submissions that were not considered in holding the inquiry; and

(b) the matter set out in paragraph 10(2)(e) of the new Act.

(14) If, before the commencement of this item, the applicant paid ANZFA a charge fixed under section 66 of the old Act for a service provided in relation to the eligible application:

(a) if the service was provided before the commencement of this item—the applicant is taken to have paid FSANZ the charge fixed under section 66 of the new Act for the corresponding service in relation to the fresh application; and

(b) if the service was not provided before the commencement of this item—FSANZ must refund the charge unless the applicant elects to treat the payment as fully discharging the applicant's liability to pay FSANZ the charge fixed under section 66 of the new Act for the corresponding service in relation to the fresh application.

(15) For the purposes of subitem (14):

(a) the service of making an initial assessment in relation to the fresh application corresponds to the service of making a preliminary assessment in relation to the eligible application; and

(b) the service of making a draft assessment in relation to the fresh application corresponds to the service of making a full assessment in relation to the eligible application; and

(c) the service of making a final assessment in relation to the fresh application corresponds to the service of holding an inquiry in relation to the eligible application; and

(d) the service of the giving of notices under a provision of the new Act in relation to the fresh application corresponds to the service of the giving of notices under the corresponding provision of the old Act in relation to the eligible application; and

(e) the service of the preparation of a draft food regulatory measure, or a draft variation of a food regulatory measure, in relation to the fresh application corresponds to the service of the preparation of a draft food regulatory measure, or a draft variation of a food regulatory measure, as the case requires, in relation to the eligible application.

(16) If, under subitem (14), the applicant is taken to have paid FSANZ a charge referred to in subparagraph 12(2)(c)(i) or (ii) of the new Act in relation to the fresh application, the requirements of paragraph 12(2)(c) of the new Act are taken to have been met in relation to that charge.

(17) If, under subitem (14), the applicant elects to treat a payment as fully discharging the applicant's liability to pay FSANZ a charge referred to in subparagraph 12(2)(c)(i) or (ii) of the new Act in relation to the fresh application, the requirements of paragraph 12(2)(c) of the new Act are taken to have been met in relation to that charge.

**Table A**

(18) If the eligible application was made before 23 December 1999:

(a) the applicant is not liable to pay FSANZ a charge fixed under section 66 of the new Act for a service in relation to the fresh application; and

(b) the new Act has effect, in relation to the fresh application, as if paragraph 12(2)(c) and subsections 15(2) and 16(4) had not been enacted.

(19) If the eligible application was in a particular year of a 3 year plan, the fresh application is taken to be in the same year of the plan.

(20) In this item:

***ANZFA*** means the Australia New Zealand Food Authority.

***FSANZ*** means Food Standards Australia New Zealand.

***new Act*** means the *Food Standards Australia New Zealand Act 1991*, as in force at or after the commencement of this item.

***old Act*** means the *Australia New Zealand Food Authority Act 1991*, as in force before the commencement of this item.

***old Council*** means the Australia New Zealand Food Standards Council.

## 176 Transitional—proposals pending immediately before this item commenced

(1) For the purposes of this item, a proposal for the development or variation of a food regulatory measure is an ***eligible proposal*** if:

(a) the proposal was prepared under section 21 of the old Act before the commencement of this item; and

(b) the proposal was not abandoned before that commencement; and

(c) in a case where the proposal was for the development or variation of a standard and a draft standard or draft variation was prepared as a result of the proposal—ANZFA neither:

(i) made a recommendation to the old Council about the draft; nor

(ii) made a decision about the draft under section 28A of the old Act;

before that commencement; and

(d) in a case where the proposal was for the development or variation of a code of practice and a draft code of practice or

a draft variation was developed as a result of the proposal—ANZFA neither:

(i) approved the draft; nor

(ii) rejected the draft;

before that commencement.

(2) The eligible proposal lapses at the commencement of this item and, except as provided by this item, FSANZ is not to take any action under the new Act after that commencement in relation to:

(a) the eligible proposal; or

(b) any draft prepared as a result of the eligible proposal.

(3) For the purposes of the new Act:

(a) FSANZ is taken to have prepared a proposal (the ***fresh proposal***) under section 12AA of that Act in the same terms as the eligible proposal; and

(b) the fresh proposal is taken to have been prepared immediately after the commencement of this item.

(4) If, before the commencement of this item, any submissions had been made to ANZFA about the eligible proposal in response to a notice given under section 22 of the old Act, those submissions have effect as if they had been made to FSANZ about the fresh proposal in response to a notice given under section 14A of the new Act.

(5) If notice is given under section 14A of the new Act in relation to the fresh proposal, the notice must set out an explanation of the effect of subitem (4).

(6) If ANZFA had:

(a) made a full assessment of the eligible proposal before the commencement of this item; and

(b) prepared a draft food regulatory measure or a draft variation of a food regulatory measure before the commencement of this item;

FSANZ is taken to have made a draft assessment of the fresh proposal if it reviews the full assessment having regard to:

(c) any submissions made to it in response to a notice given under section 14A of the new Act in relation to the fresh proposal, being submissions that were not considered in making the full assessment; and

**Table A**

(d) the matter set out in paragraph 10(2)(e) of the new Act.

(7) If, before the commencement of this item, any submissions had been made to ANZFA in response to a notice given under section 24 of the old Act in relation to the eligible proposal, those submissions have effect as if they had been made to FSANZ in response to a notice given under section 17AA of the new Act in relation to the fresh proposal.

(8) If notice is given under section 17AA of the new Act in relation to the fresh proposal, the notice must set out an explanation of the effect of subitem (7).

(9) If ANZFA held an inquiry in relation to the draft that resulted from the eligible proposal before the commencement of this item, FSANZ is taken to have made a final assessment of the fresh proposal if it reviews the inquiry having regard to.

(a) any submissions made to it in response to a notice given under section 17AA of the new Act in relation to the draft that resulted from the fresh proposal, being submissions that were not considered in holding the inquiry; and

(b) the matter set out in paragraph 10(2)(e) of the new Act.

(10) If the eligible proposal was in a particular year of a 3 year plan, the fresh proposal is taken to be in the same year of the plan.

(11) In this item:

***ANZFA*** means the Australia New Zealand Food Authority.

***FSANZ*** means Food Standards Australia New Zealand.

***new Act*** means the *Food Standards Australia New Zealand Act 1991*, as in force at or after the commencement of this item.

***old Act*** means the *Australia New Zealand Food Authority Act 1991*, as in force before the commencement of this item.

***old Council*** means the Australia New Zealand Food Standards Council.

## 177 Transitional—regulations

(1) The regulations may make provision for matters of a transitional nature relating to the amendments made by this Part.

(2) The Governor-General may make regulations for the purposes of subitem (1).

*Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001* (No. 111, 2001)

### 4 Application of amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Food Standards Australia New Zealand Amendment Act 2007* (No. 98, 2007)

## Schedule 1

### 77 Application

The amendments made by Parts 1 and 4 of this Schedule apply in relation to:

(a) applications made after a period of 3 months, beginning on the day on which Part 4 of the Schedule commences, has elapsed; and

(b) proposals prepared after a period of 3 months, beginning on the day on which Part 4 of the Schedule commences, has elapsed.

### 78 Annual reports

To avoid doubt, if, during a financial year to which a report on the Authority under section 9 of the *Commonwealth Authorities and Companies Act 1997* relates, the Authority considers:

(a) applications and proposals to which this Schedule does not apply (***earlier applications***); and

(b) applications and proposals to which it does apply (***later applications***);

the members must include in the report:

(c) in relation to the earlier applications—particulars of the matters mentioned in section 69 of the *Food Standards*

**Table A**

*Australia New Zealand Act 1991*, as in force immediately before the commencement of Part 3 of this Schedule; and

(d) in relation to the later applications—particulars of the matters mentioned in section 152 of that Act, as in force on commencement of item 71 of this Schedule.

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*Food Standards Australia New Zealand Amendment Act 2010* (No. 121, 2010)

## Schedule 1

### 20 Application and transitional

(1) Despite the amendments made by items 10 and 12, subsections 66(2) and 70(2) of the *Food Standards Australia New Zealand Act 1991*, as in force immediately before the commencement of those items, continue to apply on and after that commencement in relation to proposals made in compliance with Subdivision H of Division 2 of Part 3 of that Act before, on or after the commencement of those items.

(2) The amendments made by items 13 and 14 apply in relation to a notification under section 13A of the Agvet Code occurring on or after the commencement of those items (where the application or variation that is the subject of the notification is also made on or after that commencement).

(3) Despite the amendments made by items 16 to 18, paragraphs 152(m), (o) and (p) of the *Food Standards Australia New Zealand Act 1991*, as in force immediately before the commencement of those items, continue to apply on and after that commencement for the financial year in which those items commence and the following financial year.

### 39 Application

The amendments made by items 23 to 38 apply in relation to financial years ending on or after the commencement of those items.

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*Acts Interpretation Amendment Act 2011* (No. 46, 2011)

## Schedule 3

### 10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

### 11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

## Renumbering Table

Table showing Sections of the *Food Standards Australia New Zealand Act 1991* after renumbering by the *Food Standards Australia New Zealand Amendment Act 2007* (No. 98, 2007).

## Renumbering Table

**NOTE**—This Table does not form part of the *Food Standards Australia New Zealand Act 1991* and is printed for convenience of reference only.

| Old number | New number |
|---|---|
| Section | Section |
| 1 | 1 |
| 2 | 2 |
| 2A | 3 |
| 3 | 4 |
| 3A | 5 |
| 3B | 6 |
| 3C | 7 |
| 3D | 8 |
| 4 | 9 |
| 5 | 10 |
| 5A | 11 |
| 6 | 12 |
| 7 | 13 |
| 8 | 14 |
| (11) 8A | 15 |
| 9 | 16 |
| 9A | 17 |
| 10 | 18 |
| (11A) 10A | 19 |
| (10A) 10B | 20 |
| 39 | 114 |
| 39A | 115 |
| 40 | 116 |
| 41 | 117 |
| 43 | 118 |
| 44 | 119 |
| 45 | 120 |
| 46 | 121 |
| 47 | 122 |
| 48 | 123 |

| Old number | New number |
|---|---|
| Section | Section |
| 49 | 124 |
| 50 | 125 |
| 51 | 126 |
| 52 | 127 |
| 52A | 128 |
| 52B | 129 |
| 52C | 130 |
| 52D | 131 |
| 52E | 132 |
| 52F | 133 |
| 52G | 134 |
| 53 | 135 |
| 54 | 136 |
| 55 | 138 |
| 57 | 139 |
| 58 | 140 |
| 60 | 141 |
| 62 | 142 |
| 63 | 143 |
| 64 | 144 |
| 65A | 145 |
| 66 | 146 |
| 66A | 147 |
| 66B | 148 |
| 66C | 149 |
| 67 | 150 |
| 68 | 151 |
| 69 | 152 |
| 70 | 153 |