



**Australia New Zealand Food Authority
Amendment Act (No. 2) 1997**

No. 201, 1997

***An Act to amend the *Australia New Zealand Food
Authority Act 1991****

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Australia New Zealand Food Authority Amendment Act (No. 2) 1997

No. 201, 1997

An Act to amend the Australia New Zealand Food Authority Act 1991

[Assented to 16 December 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australia New Zealand Food
Authority Amendment Act (No. 2) 1997*.

2 Commencement

- (1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.
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- (2) Subject to subsection (3), items 1, 25, 27 to 39, 40, 42, 43, 46, 48 and 49 of Schedule 1 commence on a day to be fixed by Proclamation.
 - (3) If an item to which subsection (2) applies does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
 - (4) Item 41 of Schedule 1 commences immediately after the commencement of the *Public Service Act 1997*, 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.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Australia New Zealand Food Authority Act 1991

1 Subsection 3(1) (at the end of the definition of *member*)

Add “and the Chief Executive Officer”.

2 Paragraph 7(g)

Omit “food safety education initiatives”, substitute “food education initiatives”.

3 After paragraph 7(l)

Insert:

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

4 At the end of section 7

Add:

- (2) The function conferred by paragraph (1)(la):
 - (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.

5 After paragraph 8(1)(f)

Insert:

- (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

6 Paragraphs 12(2)(b) and (c)

Repeal the paragraphs, substitute:

- (b) contain, or be accompanied by, information in support of the application; and

7 At the end of subsection 12(2)

Add:

- Note: The Authority's objectives in developing standards and variations of standards are set out in section 10. These objectives should be considered in deciding what information to provide in support of an application.

8 After section 12

Insert:

12A Withdrawal of application

- (1) The applicant may, by notice in writing to the Authority, withdraw the application at any time before the Authority makes a recommendation to the Council under section 18 in relation to a draft standard or draft variation of a standard prepared as a result of the application.
- (2) If the Authority receives notice of the withdrawal of the application after the application has been accepted (see section 13), the Authority must give notice of the withdrawal:
 - (a) by writing sent to each appropriate government agency, and to each other body or person who made a submission in response to a notice sent or published under section 14 or 16; and
 - (b) by advertisement published in the *Gazette* and in a newspaper circulating in each State or Territory; and
 - (c) by advertisement published in the *New Zealand Gazette* and in a newspaper circulating in New Zealand.

9 Paragraph 13(2)(c)

Repeal the paragraph.

10 Section 17

Omit “and give reasons for its decision”.

11 At the end of section 17

Add:

- (2) The Authority must state in a notice given under subsection (1) how further information about the rejection of the application, and the reasons for the rejection of the application, may be obtained.

12 At the end of subsection 20(1)

Add:

The Council’s decision on which of these actions it will take must be made, and that action must be taken, within 6 months of the making of the recommendation, unless it is not practicable to do so within that time limit.

13 At the end of section 20

Add:

- (4) If the Council requests the Authority to provide the Council with further information to enable it to consider a recommendation, the time taken by the Authority to provide the information needed to consider the recommendation is not to be included in the period set out in subsection (1).

14 Section 25

Omit “and give reasons for its decision”.

15 At the end of section 25

Add:

- (2) The Authority must state in a notice given under subsection (1) how further information about the abandonment of the proposal, and reasons for the abandonment of the proposal, may be obtained.

16 At the end of subsection 28(1)

Add:

The Council's decision on which of these actions it will take must be made, and that action must be taken, within 6 months of the making of the recommendation, unless it is not practicable to do so within that time limit.

17 At the end of section 28

Add:

- (4) If the Council requests the Authority to provide the Council with further information to enable it to consider a recommendation, the time taken by the Authority to provide the information needed to consider the recommendation is not to be included in the period set out in subsection (1).

18 Paragraph 32(1)(d)

Omit "no later than which", substitute "on which".

19 Subsection 34(1)

Repeal the subsection, substitute:

- (1) If the Authority is of the opinion that it needs more information:
 - (a) to enable a preliminary or full assessment of an application for the development or variation of a standard to be properly made; or
 - (b) to enable the Authority to complete an inquiry to consider a draft standard or a draft variation of a standard that has been prepared as a result of such 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.

20 At the end of section 34

Add:

- (3) If the application is taken to have been withdrawn, the Authority must give notice of that fact:
 - (a) by writing sent to the applicant; and
 - (b) if the application has been accepted (see section 13):

- (i) by writing sent to each appropriate government agency, and to each other body or person who made a submission in response to a notice sent or published under section 14 or 16; and
- (ii) by advertisement published in the *Gazette* and in a newspaper circulating in each State or Territory; and
- (iii) by advertisement published in the *New Zealand Gazette* and a newspaper circulating in New Zealand.

21 Subsection 35(4)

Repeal the subsection, substitute:

- (4) If the Authority requests an applicant under subsection 34(1) to provide it with further information, the time taken by the applicant to provide the information needed by the Authority to enable it to carry out the function specified in that subsection is not to be included in the period set or prescribed for the purpose of subsection (1) or set for the purpose of subsection (3).

22 At the end of section 35

Add:

- (6) 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 review period is not to be included in the period set or prescribed for the purpose of subsection (1) or set for the purpose of subsection (3).

- (7) In subsection (6):

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

review period, in relation to an application to the Administrative Appeals Tribunal for the review of a decision of the Authority, means the period:

- (a) beginning on the day on which the application for review is made; and
- (b) ending at the end of the day on which the application for review is finalised.

23 Paragraph 36(1)(b)

Omit “adversely affect”, substitute “have a significant adverse effect on”.

24 After section 36

Insert:

36A 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 12, or a proposal prepared under section 21, 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) The Authority must cause notice of its decision to be published:
 - (a) in the *Gazette* and in a newspaper circulating in each State or Territory; and
 - (b) in the New Zealand Gazette and in a newspaper circulating in New Zealand.

The notice must identify the government agency and must contain a brief statement of the work it has done, or the process it has gone through.

- (3) The regulations may modify the provisions of this Part, or specified provisions of this Part, as they apply to the application or proposal, to take account of the Authority’s decision.
- (4) 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.

25 Subsection 39(4)

Omit “Chairperson” (wherever occurring), substitute “Chief Executive Officer”.

26 Subsection 39(5)

Repeal the subsection, substitute:

- (5) The Chairperson must not disclose, under paragraph (4)(a), any confidential commercial information given by a person in respect of food unless the Chairperson:
 - (a) has advised the person, in writing, of the Chairperson’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.

27 Subsection 39(5)

Omit “Chairperson” (wherever occurring), substitute “Chief Executive Officer”.

28 Paragraph 39(5)(a)

Omit “Chairperson’s”, substitute “Chief Executive Officer’s”.

29 Subsection 39(7)

Omit “Chairperson”, substitute “Chief Executive Officer”.

30 Part 4 (heading)

Repeal the heading, substitute:

**Part 4—The Authority (constitution and meetings),
the Chief Executive Officer and the
Authority’s staff**

31 Before section 40

Insert:

Division 1—Constitution and meetings of the Authority

32 After paragraph 40(1)(a)

Insert:

(aa) the Chief Executive Officer; and

33 Subsection 40(2)

After “member”, insert “, other than the Chief Executive Officer.”.

34 After subsection 40(2)

Insert:

(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 41;
- (c) section 44;
- (d) section 45;
- (e) section 46;
- (f) section 51;
- (g) section 52.

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.

35 Subsection 40(7)

Repeal the subsection, substitute:

- (7) The Chairperson and the other members hold office on a part-time basis.

36 Paragraph 42(4)(a)

Omit “the Chairperson”, substitute “the Chief Executive Officer”.

37 Paragraph 42(4)(e)

Omit “Chairperson”, substitute “Chief Executive Officer”.

38 After section 52

Insert:

Division 2—The Chief Executive Officer

52A Appointment

- (1) There is to be a Chief Executive Officer of the Authority.
- (2) The Chief Executive Officer is to be appointed by the Minister on a full-time basis.

52B 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 Authority in writing.

52C 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.

52D 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 Minister.

- (2) The Chief Executive Officer is to be paid the allowances that are determined in writing by the Minister.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

52E Resignation

The Chief Executive Officer may resign by giving the Minister a written resignation.

52F Other terms and conditions

The Minister 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).

52G Acting Chief Executive Officer

- (1) The Minister 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.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

39 Before section 53

Insert:

Division 3—Staff and consultants

40 Subsection 53(2)

Omit “Chairperson” (wherever occurring), substitute “Chief Executive Officer”.

41 Subsection 53(2)

Omit “Chairperson” (wherever occurring), substitute “Chief Executive Officer”.

42 Subsection 54(1)

Omit “Authority”, substitute “Chief Executive Officer, on the Authority’s behalf,”.

43 Subsection 54(2)

Omit “Authority”, substitute “Chief Executive Officer”.

44 At the end of section 62

Add:

- (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 Authority, or a person assisting the Authority, in relation to the publication or public inspection of the document.

45 Paragraph 63(1)(b)

Omit “or matters”, substitute “or under section 36A not to do something”.

46 Subsection 65A(1)

Omit “Chairperson”, substitute “Authority”.

47 Subsection 68(1)

Omit “in respect of which a standard has been adopted by the Council and published in the *Gazette*”.

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;
- (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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[*Minister's second reading speech made in—
Senate on 28 May 1997
House of Representatives on 26 November 1997*]

(47/97)
