

# **Australia New Zealand Food Authority Amendment Regulations 2002 (No. 2) 2002 No. 119**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 2002 No. 119**

Issued by Authority of the Parliamentary Secretary for The Minister for Health and Ageing

*Australia New Zealand Food Authority Act 1991*

Australia New Zealand Food Authority Amendment Regulations 2002 (No. 2)

The Australia New Zealand Food Authority (ANSFA) is a body corporate continued in existence by section 6 of the *Australia New Zealand Food Authority Act 1991* (the Act). The recent passage of the *Australia New Zealand Food Authority Amendment Act 2001* establishes a new statutory authority, Food Standards Australia New Zealand, to be based upon the existing Authority and implements the new food regulatory system set up under the Amendment Act.

Section 70 of the Act provides that the Governor-General may make regulations that are required or permitted by the Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to amend the Australia New Zealand Food Authority Regulations 1994 to implement the new food regulatory system arising from the replacement of Australia New Zealand Food Authority with Food Standards Australia New Zealand.

The Regulations would:

- change the name of the regulations from "Australia New Zealand Food Authority Regulations 1994", to "Food Standards Australia New Zealand 1994" to reflect the name change of the Act to *Food Standards Australia New Zealand Act 1991*, (proposed items 1 and 2 refer);
- prescribe the appropriate government agencies with which the Food Standards Australia New Zealand (the Authority) must consult in developing food regulatory measures or variations to food regulatory measures, (proposed items 4 and 22 refer);
- provide for a 28 day time limit in which the applicant must make a written request for reconsideration of a decision, as well as a 28 day time limit in which the Authority must reconsider the matter and notify the applicant of its decision, (proposed items 16 - 18 refer);
- prescribe the agencies to which the Authority may disclose confidential commercial information, (proposed items 8 and 23 refer); and
- make consequential amendments to give effect to changes in terminology arising under the *Australia New Zealand Food Authority Amendment Act 2001*, such as substituting initial assessment for the words 'preliminary assessment', (proposed items 3, 5 - 7, 9 - 15, 19 - 21 and 24 refer).

Details of the Regulations are provided in the Attachment.

The Regulations would commence on the commencement of the Australia New Zealand Food Standards Agreement (defined in item 5 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 2001* to mean the "Agreement between the Government of Australia

and the Government of New Zealand Establishing a System of the Development of Joint Food Standards, signed at Wellington on 5 December 1995"). Under the agreement both countries have agreed to adopt only food standards that have been developed under this system. The Australia New Zealand Food Standards system is based on the current Australian Food Standards System. The anticipated commencement date is July 2002.

## **ATTACHMENT**

### **DETAILS OF THE AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT REGULATIONS 2002 (No. 2)**

#### **Regulation 1**

Regulation 1 provides that the name of the regulations will be the Australia New Zealand Food Authority Amendment Regulations 2002.

#### **Regulation 2**

Regulation 2 provides that the Proposed Regulations commence on the commencement of Part 1 of Schedule 1 (other than item 120A) to the *Australia New Zealand Food Authority Amendment Act 2001*.

#### **Regulation 3**

Regulation 3 provides that Schedule 1 amends the Australia New Zealand Food Authority Regulations 1994.

#### **Schedule 1 - Amendments**

##### **Item 1**

Item 1 amends existing regulation 1 (Name of Regulations) to provide that the existing regulations are the Food Standards Australia New Zealand Regulations 1994.

##### **Item 2**

Item 2 amends existing regulation 2 (Interpretation) to omit the existing definition of 'Act' and substitute a new definition that refers to *Food Standards Australia New Zealand Act 1991*.

##### **Item 3**

Item 3 amends definition of 'proposal' so that it relates to section 12A of the Act and not section 21.

##### **Item 4 and Item 22**

Item 4 amends existing regulation 3 (Appropriate government agencies) with a new regulation 3. New regulation 3 states that appropriate government agencies are those listed in Part 1 and Part 2 of new Schedule 1, item 22. This amendment is necessary to update the lists of Commonwealth government departments and State and Territory Health Departments, as well as adding the following to the list of appropriate government agencies for when Food Standards Australia New Zealand takes on the role of developing primary production and processing standards;

NSW Agriculture

Safe Food Production New South Wales

Department of Natural Resources and Environment of Victoria

Department of State and Regional Development of Victoria

Department of Primary Industry of Queensland

Safe Food Production Queensland

Department of Agriculture of Western Australia

Department of Primary Industry and Resources of South Australia

Department of Primary Industries, Water and Environment of Tasmania

Department of Business, Industry and Resource Development of the Northern Territory

## **Item 5**

Item 5 amends existing subregulation 4(1) (Section 36 of the Act: application, modification and adaptation by modification and adaptation of Part 3 of the Act) replacing 'subsection 36(1) of the Act, to omit to do one or more of the matters' with 'subsection 36(1A) of the Act, not to do something'.

## **Item 6**

Item 6 amends existing subregulation 4(2) (Section 36 of the Act: application, modification and adaptation by modification and adaptation of Part 3 of the Act) by inserting a new Schedule 1A. This schedule is set out on the schedule to the amending regulations.

The new Schedule 1A makes modifications and adaptations to Part 3 of the Act under subsection 36(2) of the Act. It simplifies the application or proposal procedure where an application or proposal to develop or vary a food regulatory measure raises issues of minor significance or complexity. The changes in Schedule 1A are necessary as a result of the amendments made by the *Australia New Zealand Food Authority Amendment Act 2001* that the Authority omit:

- to give notice that it will make a draft assessment in relation to an application (as would otherwise be required by section 15);
- to give notice that it will make a draft assessment in relation to a proposal (as would otherwise be required by section 15AA).

## **Item 7**

Item 7 repeals existing regulation 5 (Section 37 of the Act: application, modification and adaptation of Part 3 of the Act) because section 37, which deals with 'urgent applications' has been repealed under the *Australia New Zealand Food Authority Amendment Act 2001* and replaced by section 24 which expressly provides that Divisions 2, 3 and 4 do not apply to urgent applications. As a result, there is no need for any modifications or adaptations in the regulations to accommodate section 24 urgent applications.

## **Item 8 and Item 23**

Item 8 amends existing regulation 6 (Disclosure of commercial confidential information) with a new regulation 6. Section 39 of the Act imposes upon members of the Board, the Authority, its staff and committee members and its consultants a duty not to disclose and confidential commercial information in respect of food that has been acquired by a person because of his or

her work with the Authority. Subsection 39(4) of the Act provides that despite this duty of confidentiality, the Chief Executive Officer of the Authority may disclose such confidential commercial information to a prescribed authority or person.

Existing regulation 6 lists the names of prescribed authorities. The new regulation 6 states that the prescribed authorities are listed in Schedule 2, item 23. This amendment is necessary to update the lists of Commonwealth government departments and State and Territory Health Departments, as well as adding the following to the list of prescribed authorities for when Food Standards Australia New Zealand takes on the role of developing primary production and processing standards;

NSW Agriculture

Safe Food Production New South Wales

Department of Natural Resources and Environment of Victoria

Department of State and Regional Development of Victoria

Department of Primary Industry of Queensland

Safe Food Production Queensland

Department of Agriculture of Western Australia

Department of Primary Industry and Resources of South Australia

Department of Primary Industries, Water and Environment of Tasmania

Department of Business, Industry and Resource Development of the Northern Territory

## **Item 9**

Item 9 makes a consequential amendment to paragraph (a) in the Example contained in existing regulation 7 (Additional information about application) by changing the reference to section 37, which has been repealed under the *Australia New Zealand Food Authority Act 2001* and replacing it with one that refers to paragraph 24(1)(a), which allows the Board of the Authority to make decisions regarding declarations of urgency.

## **Item 10**

Item 10 amends existing subregulation 8(2) (Application Fees) by omitting the words 'without delay'. This amendment is a result of an undertaking made by the previous Parliamentary Secretary to the Minister for Health and Ageing, Senator the Hon Grant Tambling to the Senate Committee.

## **Item 11**

Item 11 amends existing regulation 9 (Refunds - withdrawal before preliminary assessment) by substituting initial assessment for the words 'preliminary assessment' in the heading.

## **Item 12**

Item 12 amends existing regulation 10 (Refunds - withdrawal after preliminary assessment) by substituting initial assessment for the words 'preliminary assessment' in the heading.

### **Item 13**

Item 13 amends the existing regulation 11 (Refunds - no request for inquiry) by substituting final assessment for the word 'inquiry' in the heading.

### **Item 14**

Item 14 amends existing regulation 12 (Preliminary assessment - relevant matters) by substituting initial assessment for the words 'preliminary assessment' in the heading.

### **Item 15**

Item 15 amends existing regulation 13 (Outcome of preliminary assessment) by substituting initial assessment for the words 'preliminary assessment' in the heading.

### **Items 16 - 18**

Items 16 - 18 amend existing regulation 14 (Review of decisions) by;

- making provision for a 28 day time limit within which the applicant must make a written request to the Authority for reconsideration of a decision under subsections 13A(2) and (3) of the Act; and
- equally, making provision for a 28 day time limit for ANZFA to notify the applicant of the outcome of its reconsideration of its decision.

This amendment is the result of an undertaking made by the previous Parliamentary Secretary to the Minister for Health and Ageing, Senator the Hon Grant Tambling to the Senate Committee that a time limit be provided in relation to an application for a reconsideration of a decision as provided under the new regulation 14.

### **Item 19**

Item 19 amends existing subregulation 14(3) (Review of decisions) by inserting the word 'made' after the word 'decision'.

### **Item 20**

Item 20 amends existing regulation 15 (Charges - full assessment) by substituting draft assessment for the words 'full assessment' in the heading.

### **Item 21**

Item 21 amends existing regulation 16 (Charges - inquiry relating to food regulatory measure) by substituting final assessment for the word 'inquiry' in the heading.

### **Item 24**

Item 24 amends existing Schedule 3, Part 2 (Charges for full assessments, inquiries and draft food regulatory measures) by substituting draft assessments and final assessments for the words 'full assessments' and 'inquiries' respectively.

## Item 25

Item 25 makes consequential amendments to the existing regulations listed below by the following;

<b>Provision</b>	<b>omit</b>	<b>insert</b>
Subregulation 8(1), note	a preliminary	an initial
1 Regulation 9	preliminary	initial
Subregulation 10(1)	preliminary	initial
Subregulation 10(2)	Full	draft
Subregulation 10(3)	after full	after draft
Subregulation 10(3)	for full	for draft
Paragraph 10(3)(b)	inquiry	final assessment
Paragraph 10(3)(b)	held-	made-
Subregulation 10(4)	full	draft
Subregulation 10(4)	an inquiry	a final assessment
Subregulation 10(4)	holding of the	making of the final
	inquiry.	assessment.
Regulation 11	hold an inquiry	make a final assessment
Paragraph 12(a)	full	draft
Paragraph 13(1)(d)	full	draft
Regulation 15	full	draft