



# **Australia New Zealand Food Authority Amendment Act 2001**

**Act No. 81 of 2001 as amended**

This compilation was prepared on 2 August 2002

**[This Act was amended by Act No. 63 of 2002]**

**Amendments from Act No. 63 of 2002**

[Schedule 2 (item 2) amended heading to Item 185 of Schedule 1  
Schedule 2 (item 2) commenced on 10 July 2001]

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# **An Act to amend the *Australia New Zealand Food Authority Act 1991*, and for other purposes**

[Assented to 10 July 2001]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Australia New Zealand Food Authority Amendment Act 2001*.

## **2 Commencement**

- (1) The following provisions commence on the day on which this Act receives the Royal Assent:
  - (a) sections 1, 2 and 3;
  - (aa) item 120A of Part 1 of Schedule 1;
  - (b) Parts 3 and 4 of Schedule 1.
- (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*.
- (4) Schedule 2 is taken to have commenced on 16 December 1997, immediately after the commencement of subsection 2(4) of the *Australia New Zealand Food Authority Amendment Act (No. 2) 1997*.
- (5) As soon as practicable after the commencement of the following provisions:
  - (a) Part 1 of Schedule 1 (other than item 120A);
  - (b) Schedule 3;



## **Schedule 1—Amendment of the Australia New Zealand Food Authority Act 1991**

### **Part 1—General amendments**

#### **1 Title**

Omit “**an Australia New Zealand Food Authority**”, substitute “**a body to be known as Food Standards Australia New Zealand**”.

#### **2 Section 1**

Omit “*Australia New Zealand Food Authority*”, substitute “*Food Standards Australia New Zealand*”.

#### **3 Section 2A**

Omit “Food Authority”, substitute “body to be known as Food Standards Australia New Zealand”.

#### **4 Subsection 3(1) (paragraph (a) of the definition of Australia New Zealand Food Standards Code)**

Omit “the Council”, substitute “a former Council”.

#### **5 Subsection 3(1)**

Insert:

*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.

#### **6 Subsection 3(1) (definition of Authority)**

Repeal the definition, substitute:

*Authority* means Food Standards Australia New Zealand.

#### **7 Subsection 3(1)**

Insert:

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

### **8 Subsection 3(1)**

Insert:

**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.

### **9 Subsection 3(1) (definition of Council)**

Repeal the definition, substitute:

**Council** means the Australia and New Zealand Food Regulation Ministerial Council that was established by the Food Regulation Agreement 2000.

### **10 Subsection 3(1)**

Insert:

**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.

### **11 Subsection 3(1) (definition of Food Advisory Committee)**

Repeal the definition.

### **12 Subsection 3(1)**

Insert:

**Food Regulation Agreement 2000** means the Food Regulation Agreement that was entered into on 3 November 2000 between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory.

### **13 Subsection 3(1)**

Insert:

*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.

**14 Subsection 3(1) (definition of member)**

Omit “Authority”, substitute “Board”.

**15 Subsection 3(1)**

Insert:

*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.

**16 Subsection 3(1) (before paragraph (a) of the definition of standard)**

Insert:

- (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

**17 Subsection 3(1) (paragraph (a) of the definition of standard)**

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Omit “the Council under this Act”, substitute “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*”.

**18 Subsection 3(2)**

Repeal the subsection.

**19 Part 2 (heading)**

Repeal the heading, substitute:

**Part 2—Establishment, functions and powers of the Authority**

**20 Subsection 6(1)**

Repeal the subsection, substitute:

- (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*.

**21 Paragraph 7(1)(a)**

Repeal the paragraph, substitute:

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

**22 Paragraph 7(1)(b)**

Omit “draft” (wherever occurring).

**23 After paragraph 7(1)(q)**

Insert:

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

**24 After subparagraph 9(1)(a)(i)**

Insert:

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

**25 Paragraph 9(1)(b)**

Repeal the paragraph, substitute:

- (b) the production of food;

**26 Paragraph 9(1)(c)**

Omit “packaging, storage or”.

**27 Paragraphs 9(1)(e), (f) and (g)**

Omit “dealing with” (wherever occurring), substitute “handling”.

**28 Subparagraph 9(1)(i)(i)**

Omit “dealt with”, substitute “handled”.

**29 Subparagraph 9(1)(i)(ii)**

Omit “deal with”, substitute “handle”.

**30 Paragraph 9(1)(j)**

Omit “deals with”, substitute “handles”.

**31 Paragraph 9(1)(m)**

Omit “dealt with”, substitute “handled”.

**32 Subsection 9(3)**

Repeal the subsection, substitute:

- (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 3(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.

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### **34 Section 10**

After “developing” (wherever occurring), insert “or reviewing”.

Note: The heading to section 10 is altered by inserting “**or reviewing**” after “**developing**”.

### **35 Paragraph 10(2)(d)**

Omit “food.”, substitute “food;”.

### **36 At the end of subsection 10(2)**

Add:

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

### **37 At the end of section 10**

Add:

- (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 Internet.
- (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 and 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.

### **38 Before Division 1 of Part 3**

Insert:

## **Division 1—Introduction**

### **11A Simplified explanation of the process for the development of standards etc.**

The following is a simplified explanation of the process for the development or variation of a standard:

- The Authority may develop or vary a standard:
  - (a) in response to an *application* that has been accepted by the Authority after an *initial assessment*; or
  - (b) by preparing a *proposal* on its own initiative.
- After conducting a *draft assessment* of the application or proposal, the Authority must:

- (a) prepare a draft; or
- (b) reject the application or abandon the proposal.
- If the Authority prepares a draft, the Authority must conduct a **final assessment** in relation to the draft, and then:
  - (a) approve the draft and notify the Council; or
  - (b) reject the draft.
- If a draft is notified to the Council, the Council may request the Authority to **review** the draft.
- If the Council does not request a review, the draft comes into effect in accordance with a *Gazette* notice.
- If a review is conducted and the Council still has concerns about the draft, the Council may request a **second review**.
- If the Council does not request a second review, the draft comes into effect in accordance with a *Gazette* notice.
- If a second review is conducted and the Council still has concerns about the draft, the Council may **amend or reject** the draft.
- If the Council does not amend or reject the draft, the draft comes into effect in accordance with a *Gazette* notice.
- If the Council amends the draft, the amended draft comes into effect in accordance with a *Gazette* notice.
- Special rules apply to urgent applications and urgent proposals.

## **11B Definitions**

In this Part:

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*application* means an application under section 12.

*proposal* means a proposal under section 12AA.

*urgent application* means an application declared to be an urgent application under a declaration in force under subsection 24(1).

*urgent proposal* means a proposal declared to be an urgent proposal under a declaration in force under subsection 24(1).

### **39 Division 1 of Part 3 (heading)**

Repeal the heading, substitute:

## **Division 2—Applications and proposals for the development or variation of food regulatory measures**

### **40 Subparagraph 12(2)(c)(i)**

Omit “preliminary”, substitute “initial”.

### **41 After section 12**

Insert:

#### **12AA Authority may prepare proposal for development or variation of a food regulatory measure**

- (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.

### **42 Subsection 12A(1)**

Omit “The applicant may withdraw the application”, substitute “An applicant may withdraw the applicant’s application”.

### **43 Paragraphs 12A(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (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) give written notice of those matters to each appropriate government agency.
- (2) The Authority may give notice of the matters mentioned in subsection (3) to another body or person.
- (3) A notice under subsection (1) or (2) must:
  - (a) state that the Authority has prepared a proposal for the development or variation of the measure; and
  - (b) state that the Authority will make a draft assessment of the proposal; and
  - (c) state how to obtain information about the proposal; and
  - (d) invite written submissions on matters relevant to the proposal to be made to the Authority within the period specified in the notice.

## **52 Section 15**

Omit “full” (wherever occurring), substitute “draft”.

Note: The heading to section 15 is altered by omitting “**Full**” and substituting “**Draft**”.

## **53 After section 15**

Insert:

### **15AA Draft assessment of proposal**

- (1) The Authority must make a draft assessment of a proposal.
- (2) In making a draft assessment of the proposal, the Authority must have regard to:
  - (a) any submissions made to it within the specified period in response to a notice sent or published under section 14A; and
  - (b) the objectives and matters listed in section 10; and
  - (c) any relevant New Zealand standards; and
  - (d) any other relevant matters.

## **54 Subsection 15A(1)**

Omit “full”, substitute “draft”.

Note: The heading to section 15A is altered by omitting “**full assessment**” and substituting “**draft assessment of application**”.

**55 After section 15A**

Insert:

**15B Outcome of draft assessment of proposal**

After making a draft assessment of a proposal, the Authority must:

- (a) prepare in writing a draft food regulatory measure or a draft variation of a food regulatory measure, as the case requires; or
- (b) abandon the proposal.

**56 Paragraph 16(1)(a)**

Before “the Authority”, insert “after making a draft assessment of an application,”.

Note: The heading to section 16 is altered by inserting “**resulting from an application**” after “**variation**”.

**57 Paragraph 16(1)(b)**

Omit “holding of an inquiry into”, substitute “making of a final assessment in relation to”.

**58 Subsections 16(2) and (3)**

Omit “hold an inquiry to consider”, substitute “make a final assessment in relation to”.

**59 Subsection 16(4)**

Omit “hold the inquiry”, substitute “make the final assessment”.

**60 Subsection 16(4)**

Omit “holding of the inquiry”, substitute “making of the final assessment”.

**61 Paragraph 16(5)(a)**

Omit “inquiry”, substitute “final assessment”.

**62 Paragraph 16(6)(b)**

Omit “hold an inquiry to consider”, substitute “make a final assessment in relation to”.

**63 Paragraph 16(6)(c)**

Omit “inquiry”, substitute “final assessment”.

**64 Paragraph 17(1)(a)**

Before “the Authority”, insert “after making a draft assessment of an application,”.

Note: The heading to section 17 is altered by inserting “**resulting from an application**” after “**variation**”.

**65 Paragraph 17(1)(b)**

Omit “holding of an inquiry into”, substitute “making of a final assessment in relation to”.

**66 Paragraph 17(3)(b)**

Omit “hold an inquiry to consider”, substitute “make a final assessment in relation to”.

**67 Paragraph 17(3)(c)**

Omit “inquiry”, substitute “final assessment”.

**68 After section 17**

Insert:

**17AA Notice following preparation of draft regulatory measure or variation resulting from a proposal**

- (1) If, after making a draft assessment of a proposal, the Authority prepares a draft food regulatory measure, or a draft variation of a food regulatory measure, the Authority must give written notice of the matters mentioned in subsection (2) to:
  - (a) each appropriate government agency; and
  - (b) each other body or person who made a submission within the specified period in response to a notice given under section 14A.
- (2) The notice must:
  - (a) state that the Authority has prepared the draft and how to obtain further information about it; and

- (b) state that the Authority will make a final assessment in relation to the draft; and
- (c) invite written submissions for the purpose of the final assessment to be made to the Authority within the period specified in the notice.

**69 After section 17A**

Insert:

**17AB Notice following abandonment of proposal**

- (1) If the Authority abandons a proposal under section 15B, it must give written notice of that decision to:
  - (a) each appropriate government agency; and
  - (b) each other body or person who made a submission within the specified period in response to a notice given under section 14A.
- (2) The notice must state how to obtain further information about the decision and the reasons for it.

**70 Subsection 17B(1)**

Omit “holds an inquiry to consider”, substitute “makes a final assessment in relation to”.

**71 Paragraph 17B(3)(a)**

Before “the applicant”, insert “if the draft resulted from an application—”.

**72 After paragraph 17B(3)(a)**

Insert:

- (aa) the Council; and

**73 At the end of paragraph 17B(3)(c)**

Add “or 14A”.

**74 Section 18**

Repeal the section, substitute:



## **20 Approved draft standards etc. to be notified to Council**

- (1) If the Authority approves a draft standard or variation under section 18 (with or without amendments), the Authority must, within 14 days after the approval, give the Council:
  - (a) a written notification of the approval; and
  - (b) a copy of the approved draft; and
  - (c) a list of the written submissions that were made for the purpose of the draft assessment and final assessment concerned; and
  - (d) a statement analysing those submissions; and
  - (e) a summary of the Authority's reasons for approving the draft; and
  - (f) a Regulation Impact Statement.
- (2) The things mentioned in paragraphs (1)(c), (d), (e) and (f) may be set out in the same document.
- (3) A failure to comply with paragraph (1)(c), (d), (e) or (f) does not affect the validity of the draft.
- (4) If the Authority approves a draft standard or variation under section 18 (with or without amendments), the Authority must publish on the Internet:
  - (a) a copy of the draft; and
  - (b) a notice setting out the matters mentioned in subsection (5).
- (4A) As soon as practicable after complying with subsection (4), the Authority must publish in a newspaper circulating in each State or Territory and in New Zealand a copy of the notice mentioned in paragraph (4)(b), together with information about where a copy of the draft may be obtained.
- (5) A notice under subsection (4) must:
  - (a) state that the Authority has approved the draft under section 18; and
  - (b) state that the Authority has given, or is about to give, the Council a written notification of the approval of the draft; and
  - (c) summarise the effect of Divisions 3 and 4 in relation to the notification.

- (6) If the Authority has notified the Council under subsection (1) that the Authority has approved a draft standard or variation (with or without amendments), 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 section 21, 22 or 23.

### **81 Divisions 1A, 2 and 2A of Part 3**

Repeal the Divisions, substitute:

### **Division 3—Council may request a review of approved draft standard etc.**

#### **21 Council may request a first review**

- (1) If the Authority notifies the Council under section 20 that the Authority has approved a draft standard or 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) If the Council requests the Authority to review a draft standard or variation, the Council must inform the Authority of the Council's concerns with the draft.
- (3) 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 variation.
- (4) Subject to any directions under subsection (3), a review is to be conducted in such manner as the Authority considers appropriate.
- (5) If the Council requests the Authority to review a draft standard or variation, the Authority must complete that review, and make a decision under subsection (6):
- (a) within 3 months after the request was made; or
  - (b) if the Council allows a longer period—within that longer period.

- (6) After completing a review under this section of a draft standard or 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;
- and give the Council:
- (d) written notification of the terms of the Authority's decision; and
  - (e) the Authority's reasons for making that decision.
- Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 67.
- (7) 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 2000; and
  - (b) the Australia New Zealand Joint Food Standards Agreement.

## **22 Council may request a second review**

- (1) If the Authority notifies the Council that the Authority has:
- (a) made a decision under paragraph 21(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
  - (b) made a decision under paragraph 21(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments;
- the Council must, within 60 days after the notification:
- (c) request the Authority to review the draft; or
  - (d) inform the Authority that the Council does not intend to request the Authority to review the draft.
- (2) If the Council requests the Authority to review a draft standard or variation, the Council must inform the Authority of the Council's concerns with the draft.
- (3) 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 variation.

- (4) Subject to any directions under subsection (3), a review is to be conducted in such manner as the Authority considers appropriate.
  - (5) If the Council requests the Authority to review a draft standard or variation, the Authority must complete that review, and make a decision under subsection (6):
    - (a) within 3 months after the request was made; or
    - (b) if the Council allows a longer period—within that longer period.
  - (6) After completing a review under this section of a draft standard or 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;and give the Council:
    - (d) written notification of the terms of the Authority's decision; and
    - (e) the Authority's reasons for making that decision.
- Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 67.
- (7) In exercising its powers under this section in relation to a draft standard or variation, the Council must comply with the Food Regulation Agreement 2000.

### **23 Council may amend or reject draft after second review**

- (1) If the Authority notifies the Council that the Authority has:
  - (a) made a decision under paragraph 22(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
  - (b) made a decision under paragraph 22(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments;the Council must, within 60 days after the notification:
  - (c) inform the Authority that the Council does not intend to amend or reject the draft; or
  - (ca) by written instrument, amend the draft; or
  - (d) reject the draft.

- (1A) Before amending the draft standard or variation, the Council must give the Authority an opportunity to submit to the Council a draft of the text of the amendment.
- (1B) As soon as practicable after the Council decides to amend a draft standard or variation, the Council must inform the Authority that the Council has amended the draft, and give the Authority a copy of the amended draft standard or variation.
- (2) If the Council decides to reject the draft, the Council must:
- (a) prepare a notice setting out that decision and the reasons for that decision; and
  - (b) give the Authority a copy of the notice; and
  - (c) publish a copy of the notice on the Internet and in a newspaper circulating in each State or Territory and in New Zealand.

## **Division 4—Publication of standard or variation**

### **23A Publication of standard or variation**

*Standard or variation not subject to review at the request of the Council*

- (1) If:
- (a) the Authority notifies the Council under section 20 that the Authority has approved a draft standard or variation (with or without amendments); and
  - (b) the Council informs the Authority that the Council does not intend to request the Authority to review the draft;
- then, as soon as practicable, the Authority must comply with the publication requirements set out in subsection (4) in relation to the draft or the draft as so amended.

*Standard or variation subject to a first review at the request of the Council*

- (2) If:
- (a) the Authority notifies the Council under subsection 21(6) that the Authority has:

- (i) made a decision under paragraph 21(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
  - (ii) made a decision under paragraph 21(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments; and
- (b) the Council informs the Authority that the Council does not intend to request the Authority to review the draft;
- then, as soon as practicable, the Authority must comply with the publication requirements set out in subsection (4) in relation to the draft or the draft as so amended.

*Standard or variation subject to a second review at the request of the Council*

- (3) If:
- (a) the Authority notifies the Council under subsection 22(6) that the Authority has:
    - (i) made a decision under paragraph 22(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
    - (ii) made a decision under paragraph 22(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments; and
  - (b) the Council informs the Authority that the Council does not intend to amend or reject the draft;
- then, as soon as practicable, the Authority must comply with the publication requirements set out in subsection (4) in relation to the draft or the draft as so amended.

*Standard or variation amended by the Council at the second review*

- (3A) If:
- (a) the Authority notifies the Council under subsection 22(6) that the Authority has:
    - (i) made a decision under paragraph 22(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or

- (ii) made a decision under paragraph 22(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments; and
  - (b) the Council informs the Authority that the Council has amended the draft;
- then, as soon as practicable, the Authority must comply with the publication requirements set out in subsection (4) in relation to the draft as so amended.

*Publication requirements*

- (4) The publication requirements applicable to a draft or draft as amended are as follows:
  - (a) the Authority must prepare a notice stating that the draft or the draft as so amended is to come into effect on a date specified in the notice;
  - (b) the Authority must cause a copy of the notice to be published in the *Gazette* and in the *New Zealand Gazette* and in a newspaper circulating in each State or Territory and in New Zealand, together with information about where a copy of the draft or draft as amended 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 draft as so amended; available for inspection by the public;
  - (d) the Authority must publish on the Internet a copy of:
    - (i) the notice; and
    - (ii) the text of the draft or the draft as so amended.

*When standard or variation made under this Act*

- (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 in accordance with the notice.

*Draft as so amended*

- (6) To avoid doubt, a reference in this section to a ***draft as so amended*** does not imply that a reference in another provision of this Act to a draft does not include a reference to an amended draft.

## **Division 5—Urgent applications and proposals**

### **24 Declaration of urgency**

- (1) If the Authority considers that it is appropriate to do so in order to protect public health and safety, the Authority may:
- (a) declare in writing that a specified application made under section 12 is an ***urgent application*** for the purposes of this Part; or
  - (b) declare in writing that a specified proposal prepared under section 12AA is an ***urgent proposal*** for the purposes of this Part;
- so long as the application or proposal relates to the development or variation of a standard.
- (2) The Authority must publish a copy of a declaration under subsection (1):
- (a) on the Internet; and
  - (b) in a newspaper circulating in each State or Territory and in New Zealand.
- (2A) 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.
- (3) The Authority must give a copy of a declaration under subsection (1) to:
- (a) each appropriate government agency; and
  - (b) the Council; and
  - (c) if the declaration relates to an application—the applicant.
- (4) Division 2 (other than sections 12 and 12AA) and Divisions 3 and 4 do not apply to an urgent application or an urgent proposal.

- (5) Paragraph 12(2)(c) does not apply to an urgent application.

## **25 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.
- (2) After considering an urgent proposal, the Authority must:
- (a) prepare in writing a draft standard or a draft variation of a standard, as the case requires; or
  - (b) abandon the proposal.
- (3) If, under this section, the Authority prepares a draft standard, or a draft variation of a standard, the Authority must publish on the Internet:
- (a) a copy of the draft; and
  - (b) a notice inviting interested persons and appropriate government agencies to give written submissions about the draft to the Authority:
    - (i) within 10 business days after the publication of the notice; or
    - (ii) if the Authority specifies a shorter period in the notice—within that shorter period.
- (4) As soon as practicable after complying with subsection (3), the Authority must publish in a newspaper circulating in each State or Territory and in New Zealand a copy of the notice mentioned in paragraph (3)(b), together with information about where a copy of the draft may be obtained.

## **26 Approval and publication of standard or variation**

- (1) After considering a draft standard, or a draft variation of a standard, prepared under section 25, 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 67.

- (2) If interested persons and/or appropriate government agencies have made written submissions about the draft in accordance with the notice under paragraph 25(3)(b), the Authority must have due regard to those submissions in considering the draft.
- (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 variation under this section (with or without amendments), the Authority must:
  - (a) prepare a notice stating that the draft or the draft as so amended is to come into effect on a date specified in the notice; and
  - (b) cause a copy of the notice to be published in the *Gazette* and in the *New Zealand Gazette* and in a newspaper circulating in each State or Territory and in New Zealand, together with information about where a copy of the draft or draft as amended may be obtained or inspected; and
  - (c) make a copy of:
    - (i) the notice; and
    - (ii) the text of the draft or the draft as so amended; available for inspection by the public; and
  - (d) publish on the Internet a copy of:
    - (i) the notice; and
    - (ii) the text of the draft or the draft as so amended.

*Draft as so amended*

- (5) To avoid doubt, a reference in subsection (4) to a ***draft as so amended*** does not imply that a reference in another provision of this Act to a draft does not include a reference to an amended draft.

**27 Final assessment to be completed within 12 months after standard or variation comes into effect**

- (1) This section applies if the Authority approves a draft standard or variation under section 26 (with or without amendments).
- (2) The Authority must, as soon as practicable, and in any event within 12 months, after the draft comes into effect, complete a final assessment under section 16, 17 or 17AA, whichever is appropriate, in relation to the draft in the same manner as if that draft:
  - (a) had been the subject of a draft assessment under section 15 or 15AA; and
  - (b) were a draft prepared under section 15A or 15B.

**28 Standard or variation to be notified to Council within 14 days after completion of final assessment**

- (1) If the Authority completes a final assessment under section 27 in relation to a standard or variation, the Authority must, within 14 days after the completion of the final assessment:
    - (a) decide to re-affirm the standard or variation; or
    - (b) decide to prepare a proposal under section 12AA for the development of:
      - (i) a variation, or further variation, of the standard; or
      - (ii) a replacement standard;and give the Council:
    - (c) written notification of the terms of the Authority's decision; and
    - (d) the Authority's reasons for making that decision.
- Note 1: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 67.
- Note 2: Section 28D deals with the consequences of a decision under paragraph (b).
- (2) If the Authority decides to re-affirm the standard or variation, the Authority must also give the Council:
    - (a) a list of the submissions that were made for the purposes of the final assessment; and
    - (b) a statement analysing those submissions; and

- (c) a Regulation Impact Statement.
- (3) The things mentioned in paragraphs (1)(d) and (2)(a), (b) and (c) may be set out in the same document.
- (4) If the Authority has notified the Council under subsection 28(1) that the Authority has made a decision under paragraph 28(1)(a) to re-affirm 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 28A, 28B or 28C.

### **28A Council may request a first review**

- (1) If the Authority notifies the Council under subsection 28(1) that the Authority has made a decision under paragraph 28(1)(a) to re-affirm a standard or variation of a standard, the Council may, 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) If the Council requests the Authority to review a standard or variation, the Council must inform the Authority of the Council's concerns with the standard or variation.
- (3) 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.
- (4) Subject to any directions under subsection (3), a review is to be conducted in such manner as the Authority considers appropriate.
- (5) If the Council requests the Authority to review a standard or variation, the Authority must complete that review, and make a decision under subsection (6):
  - (a) within 3 months after the request was made; or
  - (b) if the Council allows a longer period—within that longer period.
- (6) After completing a review under this section of a standard or variation, the Authority must:

- (a) decide to re-affirm the standard or variation; or
- (b) decide to prepare a proposal under section 12AA for the development of:
  - (i) a variation, or further variation, of the standard; or
  - (ii) a replacement standard;

and give the Council:

- (c) written notification of the terms of the Authority's decision; and
- (d) the Authority's reasons for making that decision.

Note 1: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 67.

Note 2: Section 28D deals with the consequences of a decision under paragraph (b).

- (7) In exercising its powers under this section, the Council must comply with:
  - (a) the Food Regulation Agreement 2000; and
  - (b) the Australia New Zealand Joint Food Standards Agreement.

### **28B Council may request a second review**

- (1) If the Authority notifies the Council under subsection 28A(6) that the Authority has made a decision under paragraph 28A(6)(a) to re-affirm a standard or variation of a standard, the Council may, 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) If the Council requests the Authority to review a standard or variation, the Council must inform the Authority of the Council's concerns with the standard or variation.
- (3) 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.
- (4) Subject to any directions under subsection (3), a review is to be conducted in such manner as the Authority considers appropriate.

- (5) If the Council requests the Authority to review a standard or variation, the Authority must complete that review, and make a decision under subsection (6):
- (a) within 3 months after the request was made; or
  - (b) if the Council allows a longer period—within that longer period.
- (6) After completing a review under this section of a standard or variation, the Authority must:
- (a) decide to re-affirm the standard or variation; or
  - (b) decide to prepare a proposal under section 12AA for the development of:
    - (i) a variation, or further variation, of the standard; or
    - (ii) a replacement standard;
- and give the Council:
- (c) written notification of the terms of the Authority's decision; and
  - (d) the Authority's reasons for making that decision.
- Note 1: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 67.
- Note 2: Section 28D deals with the consequences of a decision under paragraph (b).
- (7) In exercising its powers under this section, the Council must comply with the Food Regulation Agreement 2000.

**28C Council may revoke or amend standard or variation after second review**

- (1) If the Authority notifies the Council that the Authority has made a decision under paragraph 28B(6)(a) to re-affirm a standard or variation, the Council may, 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 written 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 a 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 on the Internet and in a newspaper circulating 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 in the *Gazette* and in the *New Zealand Gazette* and in a newspaper circulating 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 revocation or amendment; available for inspection by the public; and
  - (d) publish on the Internet 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 in accordance with the notice.

## **28D Procedure for dealing with alternative variations and replacement standards**

- (1) If:
  - (a) the Authority makes a decision under paragraph 28(1)(b), 28A(6)(b) or 28B(6)(b) to prepare a proposal under section 12AA for the development of:
    - (i) a variation, or further variation, of a standard; or

- (ii) a replacement standard; and
  - (b) the Authority decides that it is appropriate to apply this section to the proposal in order to protect public health and safety;
- this Division applies in relation to the proposal as if:
- (c) the proposal were the subject of a declaration under subsection 24(1); and
  - (d) section 27 and subsection 28(2) (which deal with final assessments) had not been enacted; and
  - (e) each reference in subsection 28(1) to the completion of a final assessment in relation to a standard or variation were a reference to the preparation of the notice under subsection 26(4) in relation to the standard or variation that results from the proposal.
- (2) The Authority must publish a notice setting out a decision under paragraph (1)(b):
- (a) on the Internet; and
  - (b) in a newspaper circulating in each State or Territory and in New Zealand.

## **82 Division 3 of Part 3 (heading)**

Repeal the heading, substitute:

## **Division 6—Miscellaneous**

### **83 Subsection 29(1)**

Omit “An inquiry”, substitute “A final assessment”.

Note: The heading to section 29 is altered by omitting “**Inquiries**” and substituting “**Final assessments**”.

### **84 Subsection 29(2)**

Omit “an inquiry”, substitute “a final assessment”.

### **85 Subsection 29(3)**

Omit “at an inquiry” (wherever occurring), substitute “in the course of a final assessment”.

### **86 Section 30**

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Omit “an inquiry”, substitute “a final assessment”.

Note: The heading to section 30 is altered by omitting “**inquiries**” and substituting “**final assessments**”.

**87 At the end of section 30A**

Add:

(3) Subsection (1) does not apply to a notice under section 20.

**88 Section 31**

Repeal the section.

**89 Section 32**

Repeal the section.

**90 After subsection 33(1)**

Insert:

(1A) 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 (1B), the Authority may conduct the review in such manner as the Authority considers appropriate.

(1B) The Council may give to the Authority such directions as it thinks fit in relation to the conduct of a review under subsection (1A).

(1C) If the Council requests the Authority to review a standard under subsection (1A), 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.

(1D) After completing a review under subsection (1A), the Authority must notify the Council of the result of the review.

**91 Subsection 33(2)**

Omit “, it must”, substitute “under this section, it may”.

**92 Subsection 33(3)**

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Repeal the paragraphs, substitute:

- (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 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.

### **119 Subsection 40(2)**

Repeal the subsection, substitute:

- (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.

### **120 Subsections 40(3) and (4)**

Repeal the subsections, substitute:

- (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.

**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*.
- (3) Subitem (1) has effect in addition to section 4 of the *Acts Interpretation Act 1901*.

**121 Subsection 40(5)**

Omit “(1)(c)”, substitute “(1)(d)”.

**122 Subsection 40(6)**

Repeal the subsection.

**123 Subsection 40(9)**

Omit “Authority” (wherever occurring), substitute “Board”.

**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.

**125 Subsection 41(1)**

Omit “, other than a special purpose member,”.

**126 Subsection 41(2)**

Repeal the subsection, substitute:

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- (2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.

**127 Subsection 41(3)**

Repeal the subsection.

**127A At the end of subsection 41(4)**

Add “for a second term but must not be reappointed for a third or subsequent term”.

**128 At the end of section 41**

Add:

- (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.

### **129 Section 42**

Repeal the section.

### **130 Section 43**

Omit “Authority” (wherever occurring), substitute “Board”.

Note: The heading to section 43 is altered by omitting “**other than the Food Advisory Committee**”.

### **131 Subsection 43(1)**

Omit “other”.

### **132 At the end of section 43**

Add:

- (4) In exercising its powers under subsection (1), (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.

### **133 Transitional—abolition of existing committees**



- (6) The entries recorded in the register of members' interests must be published by the Board on the Internet.

**142 Paragraph 52(2)(d)**

Omit "or a special purpose member".

**143 Paragraph 52(2)(d)**

Omit "Authority", substitute "Board".

**144 Paragraph 52(2)(d)**

Omit "or" (last occurring).

**145 Paragraph 52(2)(e)**

Repeal the paragraph.

**146 Subsection 52A(2)**

Omit "Minister", substitute "Board".

**146A At the end of section 52A**

Add:

- (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.

**147 Transitional—appointment of Chief Executive Officer**

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- (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.

**148 Subsection 52B(2)**

Omit “Authority”, substitute “Board”.

**149 At the end of section 52B**

Add:

- (3) The Chief Executive Officer is not authorised to act on behalf of the Authority under:
  - (a) section 18; or
  - (b) subsection 21(6); or
  - (c) subsection 22(6); or
  - (d) subsection 26(1); or
  - (e) subsection 28(1); or
  - (f) subsection 28A(6); or
  - (g) subsection 28B(6).

**150 Section 52D**

Omit “Minister” (wherever occurring), substitute “Board”.

**151 Section 52E**

Omit “Minister”, substitute “Board”.

**152 Section 52F**

Omit “Minister”, substitute “Board”.

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**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.

**154 Section 52G**

Omit “Minister”, substitute “Board”.

**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.

**157 Section 61**

Omit "at an inquiry" (wherever occurring), substitute "in the course of a final assessment".

**158 Subsection 62(1)**

Omit "at an inquiry", substitute "in the course of a final assessment".

**159 Subsection 62(2)**

Omit "member of the Authority", substitute "member of the Board".

**160 After subparagraph 63(1)(a)(ii)**

Insert:

- (iii) a decision by the Authority under section 25 to reject the application; or

**161 Subsection 65A(1)**

Omit "New Zealand Minister", substitute "New Zealand lead Minister on the Council".

**162 Subsection 65A(2)**

Repeal the subsection.

**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.

- (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*.

**164 Paragraph 66(9)(a)**

Omit “adoption”, substitute “coming into effect”.

**165 Section 67**

Repeal the section, substitute:

**67 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) section 18; or
  - (b) subsection 21(6); or
  - (c) subsection 22(6); or
  - (d) subsection 26(1); or
  - (e) subsection 28(1); or
  - (f) subsection 28A(6); or
  - (g) subsection 28B(6).
- (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.

#### **166 Subsection 68(1)**

Omit “of the Authority”, substitute “of the Board”.

#### **167 Subsection 68(2)**

Omit “action that 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.”, substitute:

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.

#### **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.

#### **169 Paragraph 69(c)**

Omit “21”, substitute “12AA”.

#### **170 Paragraph 69(e)**

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Omit “a recommendation to the Council, or a decision under subsection 20A(2),”, substitute “decision under section 18”.

**171 At the end of section 69**

Add:

- ; (i) the number of standards made under this Act during that year; and
- (j) the number of draft standards and draft variations approved during that year under:
  - (i) section 18; or
  - (ii) subsection 26(1); and
- (k) the number of occasions during that year when requests were made under section 21 for a review of a draft standard or draft variation; and
- (l) the number of occasions during that year when requests were made under section 22 for a review of a draft standard or draft variation; and
- (m) the number of occasions during that year when a draft standard or draft variation was rejected under section 23; and
- (n) the number of occasions during that year when requests were made under section 28A for a review of a standard or variation; and
- (o) the number of occasions during that year when requests were made under section 28B for a review of a standard or variation; and
- (p) the number of occasions during that year when a standard or variation was revoked or amended under section 28C; and
- (q) a summary of policy guidelines notified to the Authority during that year under paragraph 10(2)(e); and
- (r) such other matters (if any) as are specified in the regulations.

**172 Transitional—annual report in the course of preparation immediately before this item commenced**



- (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.
  - 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
  - (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.
- (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
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- (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;
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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
    - (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
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**Part 2—Technical correction to section 7**

**178 Subsection 7(2)**

Omit “paragraph (1)(n)”, substitute “paragraph (1)(o)”.



## **Part 4—Amendments relating to matters that may be included in standards**

### **186 After paragraph 9(1)(c)**

Insert:

- (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;

### **187 Paragraph 9(2)(a)**

Omit “type”, substitute “class”.

### **188 After subsection 9(2)**

Insert:

- (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.

**Schedule 2—Amendment of the Australia New  
Zealand Food Authority Amendment  
Act (No. 2) 1997**

**1 Subsection 2(4)**

Omit “*Public Service Act 1997*”, substitute “*Public Service Act 1999*”.



Omit “within the meaning of that Act”.

***Industrial Chemicals (Notification and Assessment) Act 1989***

**6 Subsection 7(2) (definition of food additive)**

After “under the”, insert “Australia New Zealand”.

**7 Subsection 7(2) (definition of food additive)**

Omit “*Australia New Zealand Food Authority Act 1991*”, substitute “*Food Standards Australia New Zealand Act 1991*”.

***Therapeutic Goods Act 1989***

**8 Subsection 3(1) (paragraph (e) of the definition of therapeutic goods)**

Omit “*Australia New Zealand Food Authority Act 1991*”, substitute “*Food Standards Australia New Zealand Act 1991*”.

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[*Minister’s second reading speech made in—  
Senate on 8 February 2001  
House of Representatives on 28 June 2001*]

(01/01)

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