



# **Food Standards Australia New Zealand Amendment Act 2007**

**No. 98, 2007**

**An Act to amend the law relating to food regulatory  
measures, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Food Standards Australia New Zealand Amendment Act 2007

No. 98, 2007

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## **An Act to amend the law relating to food regulatory measures, and for related purposes**

[Assented to 28 June 2007]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Food Standards Australia New Zealand Amendment Act 2007*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	28 June 2007
2. Schedule 1, Parts 1 and 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 July 2007 (see F2007L01822)
3. Schedule 1, items 64 to 67	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2007
4. Schedule 1, items 68 to 70	Immediately after the commencement of the provisions covered by table item 3.	1 July 2007
5. Schedule 1, item 71	Immediately after the commencement of the provision(s) covered by table item 4.	1 July 2007
6. Schedule 1, Parts 4 and 5	Immediately after the commencement of the provision(s) covered by table item 5.	1 July 2007
7. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 18 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	28 December 2008
8. Schedule 3, Part 1	The day on which an amendment of the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards,	6 July 2010

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	signed at Wellington on 5 December 1995, enters into force to reduce from two to one the number of occasions on which the Council may request the Authority to review a draft standard or a draft variation of a standard.  However, if no such amendment of the Agreement is made, the provision(s) do not commence at all.	
9. Schedule 3, Part 2	Immediately after the commencement of Part 1 of Schedule 3.  However, if Part 1 of Schedule 3 does not commence before Schedule 2, the provision(s) do not commence at all.	Does not commence

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.
- (3) The Minister must announce by notice in the *Gazette* the day on which the amendment of the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards, signed at Wellington on 5 December 1995 (mentioned in item 8 of the table in subsection (1)) enters into force.

### **3 Schedule(s)**

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

## Schedule 1—New application and proposal procedures

### Part 1—Amendments consequential on new application and proposal procedures

#### *Food Standards Australia New Zealand Act 1991*

##### 1 Subsection 3(1)

Insert:

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

##### 2 Subsection 3(1)

Insert:

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

##### 3 Subsection 3(1) (definition of *committee*)

Repeal the definition.

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

Omit “Food Regulation Agreement 2000”, substitute “Food Regulation Agreement”.

##### 5 Subsection 3(1)

Insert:

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

Note: After the Act is renumbered by Part 3 of this Schedule, section 3D will become section 8.

##### 6 Subsection 3(1)

Insert:

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

- (a) that is between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory; and
- (b) that was first made on 3 November 2000 or that was made:
  - (i) in substitution for that agreement; or
  - (ii) in substitution for a prior substituted agreement.

#### **7 Subsection 3(1) (definition of *Food Regulation Agreement 2000*)**

Repeal the definition.

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

Insert:

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

#### **9 Subsection 3(1)**

Insert:

***general procedure*** means:

- (a) in relation to the consideration of an application—the procedure set out in Subdivision D of Division 1 of Part 3; and
- (b) in relation to the consideration of a proposal—the procedure set out in Subdivision D of Division 2 of Part 3.

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

Insert:

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

#### **11 Subsection 3(1)**

Insert:

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

**Schedule 1** New application and proposal procedures

**Part 1** Amendments consequential on new application and proposal procedures

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Note: After the Act is renumbered by Part 3 of this Schedule, section 10 will become section 18.

**12 Subsection 3(1)**

Insert:

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

Note: After the Act is renumbered by Part 3 of this Schedule, section 3C will become section 7.

**13 Subsection 3(1) (at the end of the definition of *standard*)**

Add:

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

- (c) text identified as an editorial note;
- (d) text identified as an example.

**14 Subsection 3B(1)**

Omit “make a written declaration”, substitute “, by legislative instrument, declare”.

**15 Subsection 3B(2)**

Repeal the subsection, substitute:

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

**16 Subsection 3B(4)**

Repeal the subsection, substitute:

*Declaration not subject to disallowance or sunseting*

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

**17 After section 3B**

Insert:

**3C How is *public notice* given?**

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

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- (a) publishing notice of the matter on the Authority’s Internet site; and
- (b) giving written notice of the matter to each appropriate government agency; and
- (c) if the requirement to give notice arises in the course of considering an application to develop or vary a food regulatory measure—giving written notice of the matter to the applicant; and
- (d) if the Authority has called for submissions in the course of considering an application or proposal for the development or variation of a food regulatory measure—giving written notice of the matter to each of the persons invited to make a submission who made a submission within the relevant submission period; and
- (e) giving written notice to any other person or body whom the Authority considers appropriate.

**3D When is an *exclusive capturable commercial benefit* conferred on an applicant?**

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

- (a) the applicant can be identified as a person or body that may derive a financial gain from the coming into effect of the draft standard or draft variation of the standard that would be prepared in relation to the application; and
- (b) any other unrelated persons or bodies, including unrelated commercial entities, would require the agreement of the applicant in order to benefit financially from the approval of the application.

**18 After paragraph 7(1)(i)**

Insert:

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

**19 Subsection 10(3)**

Omit “on the Internet”, substitute “on the Authority’s Internet site”.

**20 At the end of section 10**

Add:

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

**21 At the end of section 10A**

Add:

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

**22 At the end of section 11**

Add:

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

**23 Subsection 39(3)**

Repeal the subsection, substitute:

- (3) Subsection (1) does not preclude the disclosure of confidential information in respect of food to any court in any proceeding. However, the Authority must apply to the court for an order preventing disclosure of that information to any other person otherwise than for the purpose of the proceedings, if it is within the jurisdiction of the court to make such an order.

**24 Paragraph 39(7)(a)**

Omit “paragraph 38(a)”, substitute “paragraph 137(a)”.

Note: The existing section 38 is repealed and a new section to the same effect added at the end of Division 3 of Part 4 under Part 4 of this Schedule. The new section is numbered section 137.

**25 Paragraph 39(7)(b)**

Omit “paragraph 38(b)”, substitute “paragraph 137(b)”.

**26 Paragraph 39(7)(ba)**

Omit “paragraph 38(ba)”, substitute “paragraph 137(c)”.

**27 Paragraph 39(7)(c)**

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Omit “paragraph 38(c)”, substitute “paragraph 137(d)”.

**28 Subsection 39(8)**

Omit “section 38”, substitute “section 137”.

**29 Subsection 50(6)**

Omit “the Internet”, substitute “the Authority’s Internet site”.

**30 Subsection 52B(3)**

Repeal the subsection, substitute:

- (3) The Chief Executive Officer is not authorised to act on behalf of the Authority under:
- (a) paragraph 33(1)(a); or
  - (b) subsection 35(1); or
  - (c) paragraph 41(2)(a); or
  - (e) paragraph 63(1)(a); or
  - (f) subsection 65(1); or
  - (g) paragraph 69(2)(a); or
  - (i) subsection 84(6) or 85(6); or
  - (j) subsection 97(1); or
  - (k) subsection 101(1); or
  - (l) subsection 104(2).

Note: The cross-references are to new sections inserted under Part 4 of this Schedule.

**31 Division 3 of Part 4 (heading)**

Repeal the heading, substitute:

**Division 3—Staff, consultants and assistance from other agencies**

**32 At the end of Division 3 of Part 4**

Add:

**137 Arrangements with Commonwealth Departments etc.**

The Authority may make arrangements:

**Schedule 1** New application and proposal procedures

**Part 1** Amendments consequential on new application and proposal procedures

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- (a) with an Agency Head (within the meaning of the *Public Service Act 1999*) or the Chief Officer of any Commonwealth authority; or
  - (b) with the Secretary of a Department of the Public Service of a State or Territory, or the Chief Officer of a State or Territory authority; or
  - (c) with the chief executive of a Department of State of New Zealand or the Chief Officer of a New Zealand authority; or
  - (d) with the Chief Officer of any other authority or body;
- for:
- (e) the services of officers or employees in those Agencies, Departments, authorities or bodies to be made available to the Authority; or
  - (f) officers or employees in those Agencies, Departments, authorities or bodies to give advice to the Authority.

**33 Section 61**

Repeal the section.

**34 Subsection 62(1)**

Omit “in the course of a final assessment”, substitute “to assist the Authority in the consideration of an application or proposal, or in the assessment or review of a resulting food regulatory measure.”.

**35 Subsection 63(1)**

Repeal the subsection, substitute:

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal:
  - (a) by an applicant for the development or variation of a standard, for a review of:
    - (i) a decision by the Authority under paragraph 26(1)(b) to reject an application, other than a decision to reject the application because it does not comply with subsection 22(2); or
    - (ii) a decision by the Authority under paragraph 30(1)(b) to reject an application; or
    - (iv) a decision by the Authority under paragraph 96(1)(b) to reject an application; or

- (b) by a person whose interests are affected by one of the following decisions, for a review of that decision:
  - (i) a decision by the Authority under subsection 56(1) to abandon a proposal;
  - (ii) a decision by the Authority under paragraph 60(b) to abandon a proposal;
  - (iii) a decision by the Authority under paragraph 96(2)(b); or
- (c) for review of a decision under section 112 not to do something.

Note: The cross-references are to new sections inserted by Part 4 of this Schedule.

### **36 Subsection 66(1)**

Omit “The regulations may also deal with the time for payment of charge.”.

### **37 After subsection 66(1)**

Insert:

- (1A) The regulations may also:
  - (a) provide for the charge to be paid by instalments; and
  - (b) fix the times at which instalments are due to be paid.

### **38 Subsections 66(6) to (10)**

Repeal the subsections, substitute:

- (6) A charge may only be fixed if:
  - (a) it relates to an application to develop or vary a standard; and
  - (b) either of the following apply:
    - (i) the development or variation of the standard would confer an exclusive capturable commercial benefit on the applicant;
    - (ii) the applicant has elected to have the consideration of the application expedited.
- (7) The consideration of an application in relation to which a charge is fixed under subsection (6) must not displace the development of, or variation to, any other food regulatory measure in a three year plan.
- (8) For the purposes of subsection (7), a *three year plan* means a three year forward plan of the Authority developed under section 20.

**39 Subsection 66C(1)**

Omit “subsection 12B(1)”, substitute “subsection 24(2)”.

Note: The cross-reference is to a new section inserted by Part 4 of this Schedule.

**40 Subsection 67(1)**

Repeal the subsection, substitute:

- (1) The Board may, by resolution, delegate to a member of the Board, or to a senior member of the staff of the Authority, all or any of its powers under this Act, other than its powers to act on behalf of the Authority under:
- (a) paragraph 33(1)(a); or
  - (b) subsection 35(1); or
  - (c) paragraph 41(2)(a); or
  - (e) paragraph 63(1)(a); or
  - (f) subsection 65(1); or
  - (g) paragraph 69(2)(a); or
  - (i) paragraphs 84(6)(a), (b) or (c) or 85(6)(a), (b) or (c); or
  - (j) subsection 97(1); or
  - (k) subsection 101(1); or
  - (l) subsection 104(2).

Note: The cross-references are to new sections inserted by Part 4 of this Schedule.

**41 Subsection 68(1)**

Repeal the subsection, substitute:

- (1) No civil or criminal proceeding, and no action or suit of any other kind, lies against any of the following:
- (a) the Commonwealth;
  - (b) a member of the Board;
  - (c) a person assisting the Authority in the performance of its functions;
- in relation to any loss or injury directly or indirectly sustained by a person because of the consumption of, or other dealing with, food.
- (1A) No civil or criminal proceeding, and no action or suit of any other kind, lies against any of the following:
- (a) the Commonwealth;
  - (b) a member of the Board;



(c) a person assisting the Authority in the performance of its functions;

in relation to anything done, or not done, by the Authority or the person in the performance of functions or the exercise of powers under this Act, provided that the Authority or the person (as the case requires) acts honestly and reasonably in doing, or not doing, that thing.

## **42 Section 69**

Repeal the section, substitute:

## **69 Annual report**

The members must include in each report on the Authority under section 9 of the *Commonwealth Authorities and Companies Act 1997* for a financial year particulars of:

- (a) the number of applications that were considered under Subdivision D of Division 1 of Part 3 during that year; and
- (b) the number of applications that were considered under Subdivision E of Division 1 of Part 3 during that year; and
- (c) the number of applications that were considered under Subdivision F of Division 1 of Part 3 during that year; and
- (e) for each of those Subdivisions, the number of applications considered under that Subdivision that were disposed of during that year and the manner of their disposal; and
- (f) for each of those Subdivisions, the average time taken to dispose of applications during that year; and
- (g) the number of applications made during that year in relation to which a charge fixed under section 146 was payable; and
- (h) the number of applications made during that year in relation to which no charge fixed under section 146 was payable; and
- (i) the average number of days that elapsed between the acceptance or rejection under section 26 of an application made during that year in relation to which no charge fixed under section 146 was payable, and the commencement of the assessment of the application under section 29; and
- (j) each occasion during that year on which the consideration period under section 109 elapsed without the Authority completing the procedure that the Authority must, under

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Subdivision C of Division 1, adopt in considering the application; and

- (k) each occasion during that year on which the Authority extended the consideration period under subsection 109(4), and the reasons for that extension; and
  - (l) the number of proposals made by the Authority under section 55 during that year; and
  - (m) the number of proposals made by the Authority under section 81 during that year; and
  - (n) the number of proposals so made that were disposed of during that year and the manner of their disposal; and
  - (o) the average time taken to dispose of proposals under each of Subdivisions D, E, F and H of Division 2 of Part 3 during that year; and
  - (p) the average number of days that elapsed between the preparation of a proposal during that year under each of sections 55 and 81 and the commencement of the assessment of the proposal under section 59; and
  - (q) the number of applications made to the Administrative Appeals Tribunal during that year for review of decisions of the Authority; and
  - (r) the results of the applications made to the Administrative Appeals Tribunal that were determined during that year; and
  - (s) the number of standards made during that year; and
  - (t) the number of draft standards and draft variations approved during that year under each of the following:
    - (i) section 33;
    - (ii) section 41; and
  - (u) the number of occasions during that year when requests were made by the Council under Division 3 of Part 3 for a review of a draft standard or draft variation; and
  - (v) the number of occasions during that year when a draft standard or draft variation was rejected by the Council under Division 3 of Part 3; and
  - (w) the number of occasions during that year when requests were made by the Council under Division 3 of Part 3 for a review of a standard or variation; and
-

- (x) the number of occasions during that year when a standard or variation was revoked or amended by the Council under Division 3 of Part 3; and
- (y) a summary of policy guidelines notified to the Authority during that year; and
- (z) such other matters (if any) as are specified in the regulations.

Note: The cross-references are to new sections inserted by Part 4 of this Schedule, or sections as renumbered by Part 3 of this Schedule.

## **Part 2—Aligning cross-references to provisions renumbered by Part 3 of this Schedule**

### *Food Standards Australia New Zealand Act 1991*

#### **43 Subsection 3(1) (definition of food)**

Omit “3A”, substitute “5”.

#### **44 Paragraph 3A(1)(e)**

Omit “3B”, substitute “6”.

#### **45 Subsection 9(3) (note)**

Omit “3(1)”, substitute “4(1)”.

#### **46 Subsections 39(1) and (4)**

Omit “54”, substitute “136”.

#### **47 Paragraphs 40(2A)(b) to (g)**

Repeal the paragraphs, substitute:

(b) section 117;

(c) section 119;

(d) section 120;

(e) section 121;

(f) section 126;

(g) section 127.

#### **48 Paragraph 49(b)**

Omit “47(5)”, substitute “122(5)”.

#### **49 Subsection 50(4)**

Omit “49”, substitute “124”.

#### **50 Paragraph 52(2)(b)**

Omit “50”, substitute “125”.

#### **51 Subparagraph 52(2)(d)(ii)**

Omit “45(2)”, substitute “120(2)”.

**52 Paragraph 57(1)(a)**

Omit “55”, substitute “138”.

**53 Paragraph 57(1)(ab)**

Omit “65A”, substitute “145”.

**54 Paragraph 57(1)(ac)**

Omit “66 or 66A”, substitute “146 or 147”.

**55 Subsection 62(1)**

Omit “39”, substitute “114”.

**56 Paragraph 64(1)(a)**

Omit “63(1)(a)”, substitute “143(1)(a)”.

**57 Paragraph 64(1)(b)**

Omit “63(1)(b)”, substitute “143(1)(b)”.

**58 Subparagraph 64(1)(c)(i)**

Omit “63(1)(a)”, substitute “143(1)(a)”.

**59 Subparagraph 64(1)(c)(ii)**

Omit “63(1)(b)”, substitute “143(1)(b)”.

**60 Subsection 66A(1)**

Omit “66”, substitute “146”.

**61 Subsection 66B**

Omit “66”, substitute “146”.

**62 Paragraph 66C(2)(a)**

Omit “66”, substitute “146”.

**63 Paragraph 66C(2)(b)**

Omit “66A”, substitute “147”.

**Schedule 1** New application and proposal procedures

**Part 3** Restructuring and renumbering the Food Standards Australia New Zealand Act 1991

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## **Part 3—Restructuring and renumbering the Food Standards Australia New Zealand Act 1991**

### *Food Standards Australia New Zealand Act 1991*

#### **64 Part 2 (heading)**

Repeal the heading, substitute:

### **Part 2—The Authority**

#### **65 Section 10A**

Move the section to the end of Part 2 and renumber as section 10B.

#### **66 Section 11**

Move the section to immediately after section 8 and renumber as section 8A.

#### **67 Section 11A (first occurring)**

Renumber as section 10A.

#### **68 Before section 6**

Insert:

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

#### **69 After section 8A**

Insert:

### **Division 2—Food regulatory measures**

#### **70 After section 10A**

Insert:

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## Division 3—Forward planning

### 71 Renumbering sections

- (1) The sections of the *Food Standards Australia New Zealand Act 1991* are renumbered in accordance with the following table:

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<b>Section renumbering in the <i>Food Standards Australia New Zealand Act 1991</i></b>		
<b>Item</b>	<b>This section ...</b>	<b>is renumbered as ..</b>
1	1	1
2	2	2
3	2A	3
4	3	4
5	3A	5
6	3B	6
7	3C	7
8	3D	8
9	4	9
10	5	10
11	5A	11
12	6	12
13	7	13
14	8	14
15	8A	15
16	9	16
17	9A	17
18	10	18
19	10A	19
20	10B	20
21	39	114
22	39A	115
23	40	116
24	41	117
25	43	118
26	44	119
27	45	120

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**Schedule 1** New application and proposal procedures

**Part 3** Restructuring and renumbering the Food Standards Australia New Zealand Act 1991

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**Section renumbering in the *Food Standards Australia New Zealand Act 1991***

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<b>Item</b>	<b>This section ...</b>	<b>is renumbered as ..</b>
28	46	121
29	47	122
30	48	123
31	49	124
32	50	125
33	51	126
34	52	127
35	52A	128
36	52B	129
37	52C	130
38	52D	131
39	52E	132
40	52F	133
41	52G	134
42	53	135
43	54	136
44	55	138
45	57	139
46	58	140
47	60	141
48	62	142
49	63	143
50	64	144
51	65A	145
52	66	146
53	66A	147
54	66B	148
55	66C	149
56	67	150
57	68	151
58	69	152
59	70	153

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- (2) A reference in an instrument or document made before the commencement of this item to a provision of the *Food Standards Australia New Zealand Act 1991* that has been renumbered under this item is to be construed as a reference to that provision as so renumbered.

## Part 4—New application and proposal procedures

### *Agricultural and Veterinary Chemicals Code Act 1994*

#### 72 Section 3 of the Code set out in the Schedule

Insert:

*Maximum Residue Limits Standard* means the Maximum Residue Limits Standard, made under the *Food Standards Australia New Zealand Act 1991*, as in force from time to time, or any standard in force in substitution for that standard.

#### 73 After section 13 of the Code set out in the Schedule

Insert:

##### 13A Notifying Food Standards Australia New Zealand

- (1) If it is likely that a chemical product in relation to which an application for registration is made would, if used, be present in foods (as defined for the purposes of the *Food Standards Australia New Zealand Act 1991*) at a level that is not already permitted under the Maximum Residue Limits Standard, the APVMA must notify Food Standards Australia New Zealand of the application.
- (2) The notice must:
  - (a) be in writing; and
  - (b) set out:
    - (i) particulars of the product and its active constituents other than confidential commercial information; and
    - (ii) any other matters that the APVMA thinks appropriate; and
  - (c) be given to Food Standards Australia New Zealand at least 30 working days before notice of the application and public invitation for submissions is published in the *Gazette* under section 13 or otherwise.

### *Food Standards Australia New Zealand Act 1991*

#### 74 Divisions 1 to 5 of Part 3

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Repeal the Divisions, substitute:

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

### **Subdivision A—Overview**

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

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

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

*Step 8.* If the application is for a minor variation, the Authority calls for submissions from the applicant and appropriate government agencies.

In any other case, the Authority calls for public submissions.

*Step 9.* If the draft is a draft standard or a draft variation of a standard, the Authority must decide whether to approve or reject it and prepare a report, having regard to any submissions made. If approved, the Authority notifies the Council and the public of the approval and proceeds to step 10.

If the draft is a draft code of practice or a draft variation of a code of practice, the Authority must revoke or vary any existing code or practice and give public notice of its decision. No further steps are taken in relation to measures of this kind.

*Step 10.* The standard or variation comes into effect after it has been considered by the Council and published.

## **Subdivision B—Applications**

### **22 Applications**

- (1) A body or person may apply to the Authority for the development of a food regulatory measure or the variation of a food regulatory measure.
- (2) The application must:
  - (a) be in writing; and
  - (b) if the form in which the application is to be made is specified in guidelines made under section 23—be in the form specified; and
  - (c) include all of the information that, under guidelines made under section 23, is to be included with the application; and

- (d) include each thing that, under guidelines made under section 23, is to be included with the application; and
- (e) identify the procedure that, in the applicant's view, applies to the consideration of the application.

## **23 Application guidelines**

### *Authority may make guidelines*

- (1) The Authority may, by legislative instrument, make guidelines:
  - (a) specifying the form in which applications for the development of a food regulatory measure, or the variation of a food regulatory measure, are to be made; and
  - (b) specifying the information, or the kinds of information, to be included with such applications; and
  - (c) specifying any thing, or kind of thing, to be included with such applications.
- (2) The Authority may only specify information, or kinds of information, under paragraph (1)(b) in relation to an application if the inclusion of that information, or information of those kinds:
  - (a) would enable the Authority to assess the application and develop the relevant food regulatory measure, or the relevant variation of a food regulatory measure; or
  - (b) would enable the Authority to determine whether a charge fixed under section 146 is payable to the Authority in relation to the application.
- (3) The Authority may only specify a thing, or a kind of thing, under paragraph (1)(c) in relation to an application, if the inclusion of that thing, or things of those kinds, would enable the Authority to assess the application and develop the relevant food regulatory measure, or the relevant variation of a food regulatory measure.

### *Guidelines not subject to disallowance or sunseting*

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

## **24 Withdrawal of applications**

- (1) An applicant may withdraw the applicant's application by giving written notice of the withdrawal to the Authority at any time after the Authority has accepted the application under paragraph 26(1)(a), but before:
  - (a) the Authority approves a draft food regulatory measure, or a draft variation of a food regulatory measure, as a result of the application; or
  - (b) the Authority notifies the applicant that the Authority has rejected the application.
- (2) If the Authority receives notice of the withdrawal of an application after the applicant pays a charge fixed under section 146, the Authority must refund to the applicant so much of the charge as is equivalent to the sum paid by the applicant but not expended from the charge, calculated in accordance with the regulations.
- (3) If the Authority receives notice of the withdrawal of an application after public notice of the application has been given under section 28, the Authority must give public notice that the application has been withdrawn.

## **Subdivision C—Procedures for considering applications**

### **25 Which procedure is appropriate?**

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

- (a) the application is one to which Subdivision E applies (application for a minor variation of a food regulatory measure); or
- (b) the application is one to which Subdivision F applies (application for the development of a new food regulatory measure or a major variation of a food regulatory measure); or
- (d) the application is declared to be an urgent application for the purposes of this Part under section 95.

## **Subdivision D—General procedure**

### **26 Accepting an application**

- (1) The Authority must, within 15 business days after an application is given to the Authority:
  - (a) accept the application; or
  - (b) reject the application.
- (2) In determining whether to accept or reject the application, the Authority must have regard to the following matters:
  - (a) whether the application complies with subsection 22(2);
  - (b) whether the application relates to a matter that may be developed as a food regulatory measure, or that warrants the variation of a food regulatory measure;
  - (c) whether the application is so similar to a previous application or proposal for the development or variation of a food regulatory measure that it ought to be rejected;
  - (d) any other relevant matter.
- (3) If an application is rejected because it does not comply with subsection 22(2), the application must be disregarded for the purposes of determining whether a later application or proposal for the development or variation of a food regulatory measure is so similar to a previous application that the later application or proposal ought to be rejected.

### **27 Notice of acceptance**

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

- (a) that the application has been accepted; and
- (b) of the procedure the Authority will adopt in considering the application; and
- (c) in the case of an applicant who has applied for the development or variation of a standard and on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application:
  - (i) that the applicant must pay the charge fixed under subparagraph 146(6)(b)(i) or, if the charge is payable in

- instalments, the first instalment of the charge, within 20 business days after the notification is given; and
- (ii) that the application will be rejected if the charge, or the first instalment of the charge, is not paid within that period; and
- (d) in any other case—that the applicant may, if the applicant elects to have the consideration of the application expedited, pay the charge fixed under subparagraph 146(6)(b)(ii) or, if the charge is payable in instalments, the first instalment of the charge.

## **28 Public notice of the application**

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

### *Content of notice*

- (2) The notice must:
  - (a) state that the Authority has received an application for the development of a food regulatory measure or the variation of a food regulatory measure, as the case requires; and
  - (b) state the date on which the application was received by the Authority; and
  - (c) state the name of the applicant; and
  - (d) give a summary of the application; and
  - (e) state that the Authority has accepted the application; and
  - (f) identify the procedure that the Authority will adopt in considering the application; and
  - (g) indicate when the Authority proposes to undertake the key steps in that procedure; and
  - (h) state how to obtain further information about the application.

### *Period within which notice must be given*

- (3) The notice must be given:
  - (a) if the applicant pays a charge, or the first instalment of a charge, mentioned in subparagraph 27(c)(i) within the period mentioned in that paragraph—within 5 business days after that payment; or



- (b) if the applicant pays a charge, or the first instalment of a charge, mentioned in paragraph 27(d) within 20 business days after notice is given to the applicant under section 27 (the *early payment period*)—within 5 business days after that payment; or
- (c) in any other case—within 25 business days after notice is given to the applicant under section 27.

*Exclusive capturable commercial benefit—fee not paid*

- (4) If an applicant:
  - (a) who applies for the development or variation of a standard; and
  - (b) on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application;does not pay the charge, or the first instalment of the charge, mentioned in subparagraph 27(c)(i) within the period mentioned in that subparagraph:
  - (c) the Authority must reject the application; and
  - (d) the Authority need not give notice under this section.

*Fee to expedite consideration paid after early payment period*

- (5) If an applicant pays a charge, or the first instalment of a charge, mentioned in paragraph 27(d) after the end of the early payment period, the Authority must, within 5 business days after that payment, again give public notice of the matters mentioned in subsection (2), including an update on when the Authority now proposes to undertake the key steps in the procedure.

## **29 Assessing the application**

- (1) If the Authority accepts an application, the Authority must assess the application.
- (2) In assessing the application, the Authority must have regard to the following matters:
  - (a) whether costs that would arise from a food regulatory measure developed or varied as a result of the application outweigh the direct and indirect benefits to the community,

Government or industry that would arise from the development or variation of the food regulatory measure;

- (b) whether other measures (available to the Authority or not) would be more cost-effective than a food regulatory measure developed or varied as a result of the application;
- (c) any relevant New Zealand standards;
- (d) any other relevant matters.

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

### **30 Preparing a draft variation**

- (1) After assessing an application, the Authority must:
  - (a) prepare in writing a draft food regulatory measure or a draft variation of a food regulatory measure; or
  - (b) reject the application.
- (2) If:
  - (a) the Authority prepares a draft food regulatory measure or a draft variation of a food regulatory measure as a result of an application; and
  - (b) the draft measure or draft variation differs from that sought in the application, or was not sought in the application at all; the Authority must give the applicant notice in writing of that fact and state in the notice that the Authority will call for submissions for the purpose of assessing the draft measure or draft variation.
- (3) The Authority must not give public notice under section 31 within 10 business days immediately after notice is given to the applicant under subsection (2) of this section.

### **31 Calling for submissions**

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

- (a) state that the Authority has prepared a draft food regulatory measure or a draft variation of a food regulatory measure, as the case requires; and
- (b) include:
  - (i) a copy of the draft food regulatory measure or draft variation; and
  - (ii) a summary of the results of the Authority's assessment of the application;or state how a copy of those documents can be obtained; and
- (c) call for written submissions, for the purpose of the Authority's consideration of the draft measure or draft variation, to be given to the Authority within the period specified in the notice (the *submission period*).

### **32 Alternative steps to be followed**

- (1) If an application results in the development or variation of a standard, the Authority must follow the steps set out in sections 33 and 34.
- (2) However, if an application results in the development or variation of a code of practice, the Authority must follow the steps set out in section 35.

### **33 Approving the draft standard or draft variation**

- (1) After the submission period, the Authority must:
    - (a) do one of the following:
      - (i) approve the draft standard or draft variation;
      - (ii) approve the draft standard or draft variation subject to such amendments as the Authority considers necessary;
      - (iii) reject the draft standard or draft variation; and
    - (b) prepare a report under this section.
- Note: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.
- (2) The Authority must have regard to all submissions made during the submission period in making a decision under subsection (1).
  - (3) The report must include each of the following:
    - (a) the reasons for initially accepting the application;

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

### **34 Notifying the Council**

- (1) If the Authority approves a draft standard or a draft variation of a standard, the Authority must, within 10 business days after the approval:
  - (a) give the Council:
    - (i) a written notification of the approval; and
    - (ii) a copy of the report prepared by the Authority under section 33; and
  - (b) give public notice of the approval, together with information about where further information about the draft standard or draft variation may be obtained; and
  - (c) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a notice:
    - (i) stating that the draft standard or draft variation has been approved; and
    - (ii) stating that the Council has been notified that the draft standard or draft variation has been approved; and
    - (iii) stating that the Council may request the Authority to review the draft standard or draft variation under Division 3; and

- (iv) stating where further information about the draft standard or draft variation may be obtained.
- (2) If the Authority has notified the Council under subsection (1), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

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

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

- (1) After the submission period, the Authority must:
  - (a) approve the draft code of practice or draft variation; or
  - (b) reject the draft code of practice or draft variation.

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

- (2) If another code of practice would be superseded, in whole or in part, by the Authority's decision under subsection (1), the Authority must:
  - (a) revoke the other code of practice (if it would be wholly superseded); or
  - (b) vary the other code of practice (if it would be partly superseded).
- (3) The Authority must give public notice of its decision.
- (4) The notice must:
  - (a) specify the date of effect of the decision; and
  - (b) state how to obtain further information about the decision and the reasons for it.
- (5) The Authority must also give written notice of its decision to the Council.

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

### **36 Application of Subdivision**

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

- (a) impose, vary or remove an obligation on any person; or
- (b) create, vary or remove a right of any person; or
- (c) otherwise alter the legal effect of the measure.

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

- (a) to correct a typographical error; or
- (b) to update a reference to another document; or
- (c) to change a cross-reference within a food regulatory measure; or
- (d) to omit provisions of a food regulatory measure that have ceased to have effect.

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

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

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

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

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

### **39 Modification of step set out in section 30**

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

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

### **40 Modification of step set out in section 31**

- (1) Section 31 does not apply.

- (2) However, after preparing a draft variation of the food regulatory measure as a result of an application, the Authority must give written notice to the applicant and appropriate government agencies:
- (a) stating that the Authority has prepared a draft variation of a food regulatory measure; and
  - (b) including:
    - (i) a copy of the draft variation; and
    - (ii) a summary of the results of the Authority's assessment of the application;or stating how a copy of those documents can be obtained; and
  - (c) calling for written submissions, for the purpose of the Authority's consideration of the draft variation, to be made to the Authority within the period specified in the notice (the *submission period*).

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

- (1) Sections 32, 33, 34 and 35 do not apply.
- (2) However, after the submission period, the Authority must:
- (a) do one of the following:
    - (i) approve the draft variation;
    - (ii) approve the draft variation subject to such amendments as the Authority considers necessary;
    - (iii) reject the draft variation; and
  - (b) prepare a report under this section.
- Note: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.
- (3) The report must include each of the following:
- (a) the reasons for initially accepting the application;
  - (b) a summary of the results of the Authority's assessment of the application;
  - (c) the Authority's reasons for approving or rejecting the draft variation;
  - (d) a copy of the draft variation.

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

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

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

### **42 Application of Subdivision**

This Subdivision applies to:

- (a) an application for the development of a new food regulatory measure; and
- (b) an application for the variation of a food regulatory measure that:



- (i) involves such scientific or technical complexity that it is necessary to adopt this procedure in considering it; or
- (ii) involves such a significant change to the scope of the food regulatory measure that it is necessary to adopt this procedure in considering it.

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

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

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

- (1) The Authority must, after assessing the application under section 29 but before undertaking the step set out in section 30, give public notice of the matters set out in subsection (2).
- (2) The notice must:
  - (a) state that the Authority has assessed the application; and
  - (b) include a summary of the results of the Authority's assessment of the application, or state how a copy of the summary can be obtained; and
  - (c) call for written submissions on matters relevant to the application to be given to the Authority within the period specified in the notice (the *submission period*).

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

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

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

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

### Subdivision A—Overview

#### 54 Steps in the consideration of a proposal

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

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

*Step 8.* If the proposal is for a minor variation, the Authority calls for submissions from the applicant and appropriate government agencies.

In any other case, the Authority calls for public submissions.

*Step 9.* If the draft is a draft standard or a draft variation of a standard, the Authority must decide whether to approve or reject it and prepare a report, having regard to any submissions made. If approved, the Authority notifies the Council and the public of the approval and proceeds to step 10.

If the draft is a draft code of practice or a draft variation of a code of practice, the Authority must revoke or vary any existing code of practice and give public notice of its decision. No further steps are taken in relation to measures of this kind.

*Step 10.* The standard or variation comes into effect after it has been considered by the Council and published.

## **Subdivision B—Proposals**

### **55 Proposals**

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

### **56 Abandonment of proposals**

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

- (2) However, if the Authority abandons a proposal after public notice has been given under section 58, the Authority must give public notice of the matters mentioned in subsection (3).
- (3) The notice must:
  - (a) state that the Authority has decided to abandon the proposal; and
  - (b) state how to obtain further information about the decision and the reasons for it.

### **Subdivision C—Procedures for considering proposals**

#### **57 Which procedure is appropriate?**

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

- (a) the proposal is one to which Subdivision E applies (proposal for a minor variation of a food regulatory measure); or
- (b) the proposal is one to which Subdivision F applies (proposal for the development of a new food regulatory measure, or a major variation of a food regulatory measure); or
- (d) the proposal is one to which Subdivision H applies (proposal for a variation of the Maximum Residue Limits Standard); or
- (e) the proposal is declared to be an urgent proposal for the purposes of this Part under section 95.

### **Subdivision D—General procedure**

#### **58 Public notice of a proposal**

- (1) If the Authority prepares a proposal, the Authority must give public notice of the matters mentioned in subsection (2).
- (2) The notice must:
  - (a) state that the Authority has prepared a proposal for the development or variation of a food regulatory measure, as the case requires; and
  - (b) state the date on which the proposal was made; and
  - (c) give a summary of the proposal; and

- (d) identify the procedure that the Authority will adopt in considering the proposal; and
- (e) indicate when the Authority proposes to undertake the key steps in that procedure; and
- (f) state how to obtain further information about the proposal.

## **59 Assessing a proposal**

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

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

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

After assessing a proposal, the Authority must:

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

## **61 Calling for submissions**

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

- (a) state that the Authority has prepared a draft food regulatory measure or a draft variation of a food regulatory measure, as the case requires; and
- (b) include:
  - (i) a copy of the draft food regulatory measure or draft variation; and
  - (ii) a summary of the results of the Authority's assessment of the proposal;or state how a copy of those documents can be obtained; and
- (c) call for written submissions, for the purpose of the Authority's consideration of the draft measure or draft variation, to be given to the Authority within the period specified in the notice (the *submission period*).

## **62 Alternative steps to be followed**

- (1) If a proposal results in the development or variation of a standard, the Authority must follow the steps set out in sections 63 and 64.
- (2) However, if a proposal results in the development or variation of a code of practice, the Authority must follow the step set out in section 65.

## **63 Approving the draft standard or draft variation**

- (1) After the submission period, the Authority must:
  - (a) do one of the following:
    - (i) approve the draft standard or draft variation;
    - (ii) approve the draft standard or draft variation subject to such amendments as the Authority considers necessary;
    - (iii) reject the draft standard or draft variation; and
  - (b) prepare a report under this section.

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

- (2) The Authority must have regard to all submissions made during the submission period in making a decision under subsection (1).
- (3) The report must include each of the following:
  - (a) the reasons for initially preparing the proposal;

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

#### **64 Notifying the Council**

- (1) If the Authority approves a draft standard or a draft variation of a standard, the Authority must, within 10 business days after the approval:
  - (a) give the Council:
    - (i) a written notification of the approval; and
    - (ii) a copy of the report prepared by the Authority under section 63; and
  - (b) give public notice of the approval, together with information about where further information about the draft standard or draft variation may be obtained; and
  - (c) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a notice:
    - (i) stating that the draft standard or draft variation has been approved; and
    - (ii) stating that the Council has been notified that the draft standard or draft variation has been approved; and
    - (iii) stating that the Council may request the Authority to review the draft standard or draft variation under Division 3; and

- (iv) stating where further information about the draft standard or draft variation may be obtained.
- (2) If the Authority has notified the Council under subsection (1), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

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

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

- (1) After the submission period, the Authority must:
  - (a) approve the draft code of practice or draft variation; or
  - (b) reject the draft code of practice or draft variation.

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

- (2) If another code of practice would be superseded, in whole or in part, by the Authority's decision under subsection (1), the Authority must:
  - (a) revoke the other code of practice (if it would be wholly superseded); or
  - (b) vary the other code of practice (if it would be partly superseded).
- (3) The Authority must give public notice of its decision.
- (4) The notice must:
  - (a) specify the date of effect of the decision; and
  - (b) state how to obtain further information about the decision and the reasons for it.
- (5) The Authority must also give written notice of its decision to the Council.



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

### **66 Application of Subdivision**

- (1) Subject to subsection (2), this Subdivision applies to a proposal for the variation of a food regulatory measure that, if made, would not directly or indirectly:
  - (a) impose, vary or remove an obligation on a person; or
  - (b) create, vary or remove a right of any person; or
  - (c) otherwise alter the legal effect of the measure.

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

- (a) to correct a typographical error; or
  - (b) to update a reference to another document; or
  - (c) to change a cross-reference within a food regulatory measure; or
  - (d) to omit provisions of a food regulatory measure that have ceased to have effect.
- (2) This Subdivision does not apply to a proposal made in compliance with Subdivision H.

Note: Subdivision H requires the Authority to propose a variation of the Maximum Residue Limits Standard if the APVMA notifies the Authority that it is considering the registration of a chemical product and the product is likely to be present in food at a level that is not already permitted under the Maximum Residue Limits Standard.

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

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

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

- (1) Section 61 does not apply.
- (2) However, after preparing a draft variation of the food regulatory measure as a result of a proposal, the Authority must give written notice to appropriate government agencies:

- (a) stating that the Authority has prepared a draft variation of a food regulatory measure; and
- (b) including:
  - (i) a copy of the draft variation; and
  - (ii) a summary of the results of the Authority's assessment of the proposal;or stating how a copy of those documents can be obtained; and
- (c) calling for written submissions, for the purpose of the Authority's consideration of the draft variation, to be made to the Authority within the period specified in the notice (the *submission period*).

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

- (1) Sections 62, 63, 64 and 65 do not apply.
- (2) However, after the submission period, the Authority must:
  - (a) do one of the following:
    - (i) approve the draft variation;
    - (ii) approve the draft variation subject to such amendments as the Authority considers necessary;
    - (iii) reject the draft variation; and
  - (b) prepare a report under this section.

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

- (3) The report must include each of the following:
  - (a) the reasons for initially preparing the proposal;
  - (b) a summary of the results of the Authority's assessment of the proposal;
  - (c) the Authority's reasons for approving or rejecting the draft variation;
  - (d) a copy of the draft variation.
- (4) If the draft variation is of a standard and the Authority approves the draft variation, the Authority must, within 10 business days after the approval:
  - (a) give the Council:
    - (i) a written notification of the approval; and

- (ii) a copy of the report prepared by the Authority under this section; and
- (b) give public notice of the approval, together with information about where further information about the draft variation may be obtained; and
- (c) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a notice:
  - (i) stating that the draft variation has been approved; and
  - (ii) stating that the Council has been notified that the draft variation has been approved; and
  - (iii) stating that the Council may request the Authority to review the draft variation under Division 3; and
  - (iv) stating where further information about the draft variation may be obtained.
- (5) If the Authority has notified the Council under subsection (4), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

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

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

### **70 Application of Subdivision**

- (1) Subject to subsection (2), this Subdivision applies to:
  - (a) a proposal for the development of a new food regulatory measure; and
  - (b) a proposal for the variation of a food regulatory measure that:
    - (i) involves such scientific or technical complexity that it is necessary to adopt this procedure in considering it; or
    - (ii) involves such a significant change to the scope of the food regulatory measure that it is necessary to adopt this procedure in considering it.

- (2) This Subdivision does not apply to a proposal made in compliance with Subdivision H.

Note: Subdivision H requires the Authority to propose a variation of the Maximum Residue Limits Standard if the APVMA notifies the Authority that it is considering the registration of a chemical product and the product is likely to be present in food at a level that is not already permitted under the Maximum Residue Limits Standard.

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

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

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

- (1) The Authority must, after assessing the proposal under section 59 but before undertaking the step set out in section 60, give public notice of the matters set out in subsection (2).
- (2) The notice must:
- (a) state that the Authority has assessed the proposal; and
  - (b) include a summary of the results of the Authority's assessment of the proposal, or state how a copy of the summary can be obtained; and
  - (c) call for written submissions on matters relevant to the proposal to be given to the Authority within the period specified in the notice (the *submission period*).

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

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

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

## **Subdivision H—Variations of the Maximum Residue Limits Standard**

### **80 Application of Subdivision**

This Subdivision applies if:

- (a) the APVMA notifies the Authority under section 13A of the Agvet Code of an application to register a chemical product; and
- (b) it is likely that the chemical product would, if used, be present in foods at a level that is not already permitted under the Maximum Residue Limits Standard.

### **81 Authority must prepare a proposal to vary the Maximum Residue Limits Standard and adopt the general procedure to consider it**

The Authority must:

- (a) prepare a proposal to vary the Maximum Residue Limits Standard to include or change a permitted maximum residue limit to cover the chemical product; and
- (b) adopt the general procedure in considering the proposal, with the modifications set out in this Subdivision.

### **82 Section 58 notice to be given within 10 business days**

The Authority must give notice in compliance with section 58 within 10 business days after receiving the notice from the APVMA mentioned in paragraph 80(a).

### **83 Authority to complete its consideration of the proposal within prescribed period**

The Authority must complete the general procedure within the prescribed period.

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

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

- (1) If the Authority notifies the Council under section 34, 41, 64 or 69 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. A direction given under this subsection is not a legislative instrument.
- (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, within 10 business days after making its decision:

- (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 paragraphs (a), (b) or (c)—see section 150.

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

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

- (1) If the Authority notifies the Council that the Authority has:
  - (a) made a decision under paragraph 84(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
  - (b) made a decision under paragraph 84(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. A direction under this subsection is not a legislative instrument.
- (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, within 10 business days after making its decision:
- (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 paragraphs (a), (b) or (c)—see section 150.
- (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.

## **86 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 85(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
  - (b) made a decision under paragraph 85(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
  - (d) by written instrument, amend the draft; or
  - (e) reject the draft.
- (2) 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.
- (3) 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.



- (4) An instrument made under paragraph (1)(d) is not a legislative instrument.
- (5) 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.

## **87 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 34, 41, 64 or 69 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 (5) 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 84(6) that the Authority has:
    - (i) made a decision under paragraph 84(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
    - (ii) made a decision under paragraph 84(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 (5) 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 85(6) that the Authority has:
    - (i) made a decision under paragraph 85(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
    - (ii) made a decision under paragraph 85(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 (5) in relation to the draft or the draft as so amended.

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

- (4) If:
- (a) the Authority notifies the Council under subsection 85(6) that the Authority has:
    - (i) made a decision under paragraph 85(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
    - (ii) made a decision under paragraph 85(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 (5) in relation to the draft as so amended.

*Publication requirements*

- (5) 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:
    - (i) in the *Gazette*; and
    - (ii) in the New Zealand Gazette; and
    - (iii) in a generally circulating newspaper, in each State or Territory and in New Zealand;together with information about where a copy of the draft or 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 Authority's Internet site 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*

- (6) If a standard or variation is the subject of a notice under subsection (5), 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*

- (7) 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.

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

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

## **Division 4—Urgent applications and proposals**

### **Subdivision A—Urgent consideration of applications and proposals**

#### **95 Declaration of urgency**

- (1) The Authority may:
- (a) declare in writing that a specified application made under section 22 is an urgent application for the purposes of this Part; or
  - (b) declare in writing that a specified proposal prepared under section 55 is an urgent proposal for the purposes of this Part;
- if:
- (c) the application or proposal relates to the development or variation of a standard; and
  - (d) the Authority considers that it is appropriate to do so in order to protect public health and safety.
- (2) The Authority may:
- (a) declare in writing that a specified application made under section 22 is an urgent application for the purposes of this Part; or
  - (b) declare in writing that a specified proposal prepared under section 55 is an urgent proposal for the purposes of this Part;
- if:
- (c) the application or proposal relates to the variation of a standard; and
  - (d) the standard has had or, if not varied in the manner sought in the application or proposal, will have, a negative impact on trade that was not envisaged when the standard was made; and

- (e) the Authority considers that the variation of the standard will meet the following objectives:
  - (i) the protection of public health and safety;
  - (ii) the provision of adequate information relating to food to enable consumers to make informed choices;
  - (iii) the prevention of misleading or deceptive conduct.
- (3) The Authority must:
  - (a) give public notice of a declaration under subsection (1) or (2), and include a copy of the declaration in the notice; and
  - (b) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a copy of the declaration.
- (4) The Authority must take all reasonable steps to distribute copies of the declaration to the print and electronic media in Australia and New Zealand for the purpose of seeking media publicity about the urgent application or proposal.
- (5) The Authority must give a copy of a declaration under subsection (1) or (2) to:
  - (a) each appropriate government agency; and
  - (b) the Council; and
  - (c) if the declaration relates to an application—the applicant.
- (6) The following do not apply to an urgent application or urgent proposal:
  - (a) Subdivisions C to F of Division 1 of this Part;
  - (b) Subdivisions C to H of Division 2 of this Part;
  - (c) Division 3 of this Part.
- (7) No charge fixed under section 146 is payable in relation to an urgent application.

## **96 Preparation of draft standard or variation**

- (1) After considering an urgent application, the Authority must:
  - (a) prepare in writing a draft standard or a draft variation of a standard; or
  - (b) reject the application.

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

- (2) After considering an urgent proposal, the Authority must:
- (a) prepare in writing a draft standard or a draft variation of a standard; or
  - (b) abandon the proposal.

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

- (3) If, under this section, the Authority prepares a draft standard, or a draft variation of a standard, the Authority must give public notice of the matters mentioned in subsection (4).
- (4) The notice must:
- (a) state that the Authority has prepared a draft standard, or a draft variation of a standard, as the case requires; and
  - (b) include a copy of the draft standard or draft variation; and
  - (c) call for written submissions from interested persons and appropriate government agencies, for the purposes of the Authority's consideration of the draft standard, or draft variation, to be given to the Authority within the period specified in the notice (the *submission period*).
- (5) The submission period must not end later than 10 business days after the publication of the notice.
- (6) As soon as practicable after complying with subsection (3), the Authority must publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a copy of the notice mentioned in subsection (3), together with information about where a copy of the draft may be obtained.

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

### *Approval*

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

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

- (2) In doing so, the Authority must have regard to all submissions made by interested persons and appropriate government agencies during the submission period.
- (3) To avoid doubt, the draft does not take effect except in accordance with a notice under subsection (4).

*Publication*

- (4) If the Authority approves a draft standard or a draft variation of a standard under this section (with or without amendments), the Authority must:
  - (a) give public notice of the approval, together with information about where further information about the draft standard or draft variation may be obtained; and
  - (b) publish in a generally circulating newspaper, in each State or Territory and in New Zealand, a notice stating that the draft standard or draft variation has been approved and stating where further information about the draft standard or draft variation may be obtained.

*When a standard or variation takes effect*

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

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

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

## **Subdivision B—Assessing the resulting standard or variation**

### **98 Application**

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

## 99 Assessing the standard or variation

- (1) The Authority must assess the standard or variation.
- (2) In assessing the standard or variation, the Authority must have regard to the following matters:
  - (a) whether costs that have arisen, or will arise, from the standard or variation outweigh the direct and indirect benefits to the community, Government or industry that have arisen, or will arise, from the standard or variation;
  - (b) whether other measures (available to the Authority or not) would be more cost-effective than the standard or variation;
  - (c) all relevant New Zealand standards;
  - (d) any other relevant matters.

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

## 100 Calling for submissions

- (1) After assessing the standard or variation, the Authority must call for submissions by giving public notice of the matters mentioned in subsection (2).
- (2) The notice must:
  - (a) identify the standard or variation; and
  - (b) include a copy of the standard or variation, or state how a copy of the standard or variation can be obtained; and
  - (c) call for written submissions, for the purpose of making a decision under subsection 101(1), to be given to the Authority within the period specified in the notice (the *submission period*).

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

- (1) After the submission period, and in any event within 12 months after the standard or variation takes effect, the Authority must:
  - (a) re-affirm its decision to approve the standard or variation; or
  - (b) prepare a proposal under section 55 for the development of:
    - (i) the variation, or further variation, of the relevant standard; or



(ii) a replacement standard.

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

- (2) In making a decision under subsection (1), the Authority must take into account all submissions made during the submission period.
- (3) Within 10 business days after making a decision under subsection (1), the Authority must give the Council written notice of its decision, and include with that notice a report prepared in accordance with subsection (4).
- (4) The report must include each of the following:
  - (a) the reasons for initially declaring the application or proposal that resulted in the standard or variation to be urgent;
  - (b) a copy of the declaration under section 95;
  - (c) a copy of the standard or variation approved as a result of the application or proposal;
  - (d) a summary of the submissions received by the Authority in relation to the standard or variation approved as a result of the urgent application or proposal;
  - (e) the Authority's responses to the issues raised in those submissions;
  - (f) the Authority's reasons for its decision under subsection (1);
  - (g) a Regulation Impact Statement in relation to the standard or variation.
- (5) If the Authority notifies the Council that the Authority has re-affirmed a standard or variation of a standard, the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the standard or variation under section 102.

## **102 Council may request Authority to review**

- (1) If the Authority notifies the Council under section 101 that the Authority has re-affirmed its approval of the standard or variation, the Council must, within 60 days after the notification:
  - (a) request the Authority to review the standard or variation; or
  - (b) inform the Authority that the Council does not intend to request the Authority to review the standard or variation.

- (2) In exercising its powers under this section in relation to the standard or variation, the Council must comply with:
- (a) the Food Regulation Agreement; and
  - (b) the Australia New Zealand Joint Food Standards Agreement.

### **103 Review requested**

- (1) If the Council requests the Authority to review the standard or variation, the Council must inform the Authority of the Council's concerns with the standard or variation.
- (2) The Council may give to the Authority such directions as it thinks fit in relation to the conduct of a review of a standard or variation under this Subdivision.
- (3) A direction under subsection (2) is not a legislative instrument.

### **104 Authority to respond to request**

- (1) If the Council requests the Authority to review the standard or variation:
- (a) the review is to be conducted, subject to any directions given under subsection 103(2), in such manner as the Authority considers appropriate; and
  - (b) the Authority must complete the review, and make a decision under subsection (2):
    - (i) within 3 months after the request was made; or
    - (ii) if the Council allows a longer period—within that longer period.
- (2) After completing a review under this section of the standard or variation, the Authority must:
- (a) re-affirm its decision to approve the standard or variation; or
  - (b) prepare a proposal under section 55 for the development of:
    - (i) the variation, or further variation, of the relevant standard; or
    - (ii) a replacement standard.
- Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.
- (3) The Authority must give to the Council within 10 business days after making its decision:

- (a) written notice of its decision under subsection (2); and
- (b) the Authority's reasons for making that decision.

### **105 Council may request second review**

- (1) If the Authority notifies the Council under section 104 that the Authority re-affirmed its decision to approve the standard or variation, the Council must, within 60 days after the notification:
  - (a) request the Authority to review the standard or variation; or
  - (b) inform the Authority that the Council does not intend to request the Authority to review the standard or variation.
- (2) In exercising its powers under this section in relation to the standard or variation, the Council must comply with the Food Regulation Agreement.
- (3) Sections 103 and 104 apply in the same way in relation to the second review as they apply in relation to the first.

### **106 Council may revoke or amend standard or variation**

- (1) If, after a second review, the Authority notifies the Council that the Authority has decided under paragraph 104(2)(a) to re-affirm the standard or variation, the Council must, within 60 days after the notification:
  - (a) inform the Authority that the Council does not intend to revoke or amend the standard or variation; or
  - (b) by legislative instrument, revoke or amend the standard or variation with effect from a date specified in the instrument.
- (2) If the Council decides to revoke or amend the standard or variation, the Council must:
  - (a) prepare a notice setting out the reasons for that decision; and
  - (b) give the Authority a copy of the notice; and
  - (c) publish a copy of the notice:
    - (i) on the Internet; and
    - (ii) in a generally circulating newspaper, in each State or Territory and in New Zealand.
- (3) Before amending the standard or variation, the Council must give the Authority an opportunity to submit to the Council a draft of the text of the amendment.

- (4) As soon as practicable after the Council decides to revoke or amend the standard or variation, the Authority must:
- (a) prepare a notice stating that the revocation or amendment is to come into effect on the date specified in the instrument of revocation or amendment; and
  - (b) cause a copy of the notice to be published:
    - (i) in the *Gazette*; and
    - (ii) in the *New Zealand Gazette*; and
    - (iii) in a generally circulating newspaper, in each State or Territory and in New Zealand;together with information about where the text of the revocation or amendment may be obtained or inspected; and
  - (c) make a copy of:
    - (i) the notice; and
    - (ii) the text of the instrument of revocation or amendment; available for inspection by the public; and
  - (d) publish on the Authority's Internet site a copy of:
    - (i) the notice; and
    - (ii) the text of the instrument of revocation or amendment.
- (5) If a standard or variation is the subject of a notice under subsection (4), the standard or variation is taken to have been made under this Act if and when the standard or variation comes into effect under the instrument of revocation or amendment.

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

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

## **75 Division 6 of Part 3 (heading)**

Repeal the heading, substitute:

## **Division 5—General rules for considering applications and proposals**

## **76 Division 6 of Part 3, other than section 114**

Repeal the Division, other than section 114, substitute:

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### **107 General conduct in considering an application or proposal**

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

- (a) the Authority is not bound to act in a formal manner; and
- (b) the Authority is not bound by the rules of evidence; and
- (c) the Authority may inform itself on any matter in such manner as it thinks fit; and
- (d) the Authority may receive written or oral information or submissions; and
- (e) the Authority may consult with such persons as it thinks fit.

### **108 Authority may require further information**

- (1) If the Authority needs more information:
  - (a) to enable it to assess an application and develop the relevant food regulatory measure, or the relevant variation of a food regulatory measure; or
  - (b) to enable it to determine whether a charge fixed under section 146 is payable to the Authority in relation to an application;the Authority may request the applicant to provide it with such further information as is specified in the request within such reasonable time as is specified in the request.
- (2) If the applicant refuses or fails to comply with the request within the period specified in the request, without reasonable excuse, the application is taken to have been withdrawn. The Authority must give written notice of that fact to the applicant.
- (3) If an application is taken to have been withdrawn under subsection (2) after public notice of the application is given under section 28, the Authority must give public notice that the application is taken to have been withdrawn under subsection (2).

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

*Applications must be considered within the consideration period*

- (1) If the Authority accepts an application under section 26 for the development of a standard or the variation of a standard, the Authority must complete the procedure that the Authority must,

under Subdivision C of Division 1, adopt in the consideration of the application within the consideration period.

*Consideration period*

- (2) The **consideration period** begins:
- (a) if an exclusive capturable commercial benefit would be conferred on the applicant as a result of the development of the resulting standard or variation—on the day on which the charge fixed under subparagraph 146(6)(b)(i) is paid or, if the charge is payable in instalments, the first instalment is paid; and
  - (b) if the applicant elects to have the consideration of the application expedited—on the day on which the charge fixed under subparagraph 146(6)(b)(ii) is paid or, if the charge is payable in instalments, the first instalment is paid; and
  - (c) in any other case, on the day on which the Authority begins its assessment of the application under section 29.
- (3) The **consideration period** ends 12 months after it begins or, if a shorter period is prescribed, at the end of that shorter period.

*Extension for consideration of new standard or major variation*

- (4) If the application is one to which Subdivision F of Division 1 applies (an application for the development of a new standard or a major variation), the Authority may extend the consideration period, if it is not practicable for the general procedure, as modified by that Subdivision, to be completed within the period specified under subsections (2) and (3).
- (5) The maximum period for which an extension may be given under subsection (4) is 6 months.

*Stopping the clock*

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

- (7) If an instalment of a charge fixed under section 146 is due, but not paid, the time during which it remains unpaid is not to be included in the consideration period.
- (8) If an application is made to the Administrative Appeals Tribunal for the review of a decision of the Authority made in connection with the preparation of a draft standard or a draft variation of a standard, the period beginning on the day on which the application for review is made and ending on the day on which it is finalised is not to be included in the consideration period.
- (9) If the Council notifies the Authority that it is formulating policy guidelines for the purposes of paragraph 18(2)(e):
- (a) the Authority may, subject to subsections (9A) and (9B), suspend its consideration of any application which, in the opinion of the Authority, would be affected by the guidelines once formulated; and
  - (b) if the Authority suspends its consideration of an application, notify the applicant of the suspension, and the period of the suspension.
- (9A) If:
- (a) an applicant has applied for the development or variation of a standard; and
  - (b) an exclusive capturable commercial benefit would be conferred on the applicant if the standard were made or varied in the manner sought in the application; and
  - (c) either:
    - (i) the charge fixed under subparagraph 146(6)(b)(ii) in relation to the application is paid; or
    - (ii) in a case where the charge is payable in instalments—each instalment that is due and payable in relation to the application is paid;
- the Authority must not suspend its consideration of the application unless the applicant first consents to that suspension.
- (9B) If:
- (a) an applicant elects to have the consideration of his or her application expedited; and
  - (b) either:

- (i) the charge fixed under subparagraph 146(6)(b)(ii) in relation to the application is paid; or
  - (ii) in a case where the charge is payable in instalments—each instalment that is due and payable in relation to the application is paid;
- the Authority must not suspend its consideration of the application unless the applicant first consents to that suspension.
- (10) The suspension begins on the day on which the Authority is notified by the Council and ends on the day on which:
- (a) the Council notifies the Authority of the policy guidelines; or
  - (b) the Council notifies the Authority that it has decided not to proceed with the policy guidelines; or
  - (c) a period of 18 months, beginning on the day on which the Authority was notified under subsection (9), has elapsed.
- (11) The period during which the consideration of the application is suspended is not to be included in the consideration period.

## **110 Rejecting an application or abandoning a proposal**

### *Notice of rejection*

- (1) If the Authority rejects:
- (a) an application for the development or variation of a food regulatory measure; or
  - (b) a draft food regulatory measure or a draft variation of a food regulatory measure that results from such an application;
- the Authority must comply with the notice requirements set out in subsection (2).
- (2) The notice requirements for the purposes of subsection (1) are as follows:
- (a) the Authority must give notice in writing of the rejection, and the reasons for the rejection, to the applicant;
  - (b) if the Authority rejects the application after public notice is given under section 28, the Authority must give public notice of the rejection, and the reasons for the rejection;
  - (c) if the rejection occurs after a draft food regulatory measure or a draft variation of a food regulatory measure has been



prepared as a result of the application—the Authority must give notice in writing of the rejection to the Council.

*Refund on rejection*

- (3) If the Authority rejects:
- (a) an application for the development or variation of a food regulatory measure; or
  - (b) a draft food regulatory measure or a draft variation of a food regulatory measure that results from an application;
- after the applicant has paid a charge fixed under section 146 in relation to the application, the Authority must refund to the applicant so much of the charge as is equivalent to the sum paid by the applicant but not expended from the charge, calculated in accordance with the regulations.

*Notice of abandonment*

- (4) If the Authority abandons:
- (a) a proposal for the development of a standard or the variation of a standard; or
  - (b) a draft food regulatory measure or a draft variation of a food regulatory measure that results from such a proposal;
- the Authority must comply with the notice requirements set out in subsection (5).
- (5) The notice requirements for the purposes of subsection (4) are as follows:
- (a) if the Authority abandons the proposal after public notice is given under section 58, the Authority must give public notice of the abandonment, and the reasons for the abandonment;
  - (b) if the abandonment occurs after a draft food regulatory measure or a draft variation of a food regulatory measure has been prepared as a result of the proposal—the Authority must give notice in writing of the abandonment to the Council.

## **111 Public hearings**

- (1) The Authority may, at the discretion of the Authority, conduct a public hearing at any point during the consideration of an application or proposal for the development or variation of a food regulatory measure.

- (2) If the consideration of an application or proposal includes a public hearing, the Authority, having regard to the confidential nature of any evidence or matter or for any other reason, may direct that any part of the hearing be held in private and determine who may attend.
- (3) The Authority may give directions prohibiting or restricting the publication of evidence given in the course of a public hearing or the review or assessment of a draft food regulatory measure or a draft variation of a food regulatory measure, whether in public or in private, or of matters contained in documents produced in the course of a public hearing or the review or assessment of a draft food regulatory measure or a draft variation of a food regulatory measure.
- (4) A direction under subsection (3) is not a legislative instrument.

## **112 Authority may rely on work or processes of other government agencies**

- (1) The Authority may decide, in writing, not to do something that it is required to do under this Part in relation to an application made under section 22, or a proposal prepared under section 55, if the Authority considers that doing the thing would be a duplication of work already done, or a process already gone through, by another government agency.
- (2) If the decision relates to an application in relation to which public notice has been given under section 28, the Authority must give public notice of its decision.
- (3) If the decision relates to an application in relation to which public notice has not, or not yet, been given under those sections, the Authority must give notice of its decision to the applicant.
- (4) If the decision relates to a proposal in relation to which public notice has been given under section 58, the Authority must give public notice of its decision.
- (5) The public notice must:
  - (a) identify the government agency referred to in subsection (1);
  - and

(b) contain a brief statement of the work the agency has done or the process it has gone through.

(7) In this section:

**government agency** means:

- (a) a Department of State of:
  - (i) the Commonwealth; or
  - (ii) a State or Territory; or
  - (iii) New Zealand; or
- (b) a body (whether incorporated or not) established by, or by a law of:
  - (i) the Commonwealth; or
  - (ii) a State or Territory; or
  - (iii) New Zealand.

**modifications** includes additions, omissions and substitutions.

## **Division 6—Other matters**

### **113 Review of food regulatory measures**

- (1) The Authority may review a food regulatory measure at the request of a body or person, or on its own initiative, in such manner as the Authority considers appropriate.
- (2) If the Council requests the Authority to review a standard:
  - (a) the Authority must review the standard; and
  - (b) subject to any directions under subsection (3), the Authority may conduct the review in such manner as the Authority considers appropriate.
- (3) The Council may give to the Authority such directions as it thinks fit in relation to the conduct of a review under subsection (2). Such a direction is not a legislative instrument.
- (4) If the Council requests the Authority to review a standard under subsection (2), the Authority must complete that review:
  - (a) within 3 months after the request was made; or
  - (b) if the Council allows a longer period—within that longer period.

**Schedule 1** New application and proposal procedures

**Part 4** New application and proposal procedures

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- (5) After completing a review under subsection (2), the Authority must notify the Council of the result of the review.
- (6) As soon as practicable after the Authority has reviewed a food regulatory measure under this section, it may prepare a proposal for the development of a food regulatory measure in substitution for the food regulatory measure that has been reviewed.
- (7) If the Authority prepares a proposal under this section, this Part has effect as if the proposal were a proposal under section 55.

## **Part 5—Application and transitional issues relating to Parts 1 and 4 of this Schedule**

### **77 Application**

The amendments made by Parts 1 and 4 of this Schedule apply in relation to:

- (a) applications made after a period of 3 months, beginning on the day on which Part 4 of the Schedule commences, has elapsed; and
- (b) proposals prepared after a period of 3 months, beginning on the day on which Part 4 of the Schedule commences, has elapsed.

### **78 Annual reports**

To avoid doubt, if, during a financial year to which a report on the Authority under section 9 of the *Commonwealth Authorities and Companies Act 1997* relates, the Authority considers:

- (a) applications and proposals to which this Schedule does not apply (*earlier applications*); and
- (b) applications and proposals to which it does apply (*later applications*);

the members must include in the report:

- (c) in relation to the earlier applications—particulars of the matters mentioned in section 69 of the *Food Standards Australia New Zealand Act 1991*, as in force immediately before the commencement of Part 3 of this Schedule; and
- (d) in relation to the later applications—particulars of the matters mentioned in section 152 of that Act, as in force on commencement of item 71 of this Schedule.

## Schedule 2—High level health claims

### *Food Standards Australia New Zealand Act 1991*

#### 1 Subsection 4(1)

Insert:

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

#### 2 Subsection 4(1)

Insert:

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

#### 3 Subsection 4(1)

Insert:

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

#### 4 Subsection 24(1)

After “under paragraph 26(1)(a)”, insert “or 47(1)(a)”.

#### 5 Subsection 24(3)

After “under section 28”, insert “or 51”.

#### 6 Section 25

Before “The”, insert “(1)”.

#### 7 After paragraph 25(b)

Insert:

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

## **8 At the end of section 25**

Add:

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

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

## **9 At the end of Division 1 of Part 3**

Add:

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

#### **46 Application of Subdivision**

This Subdivision applies to an application if:

- (a) the application is made for the variation of the Nutrition, Health and Related Claims Standard; and
- (b) the variation sought is a high level health claims variation.

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

#### **47 Accepting the application**

- (1) The Authority must, within 15 business days after the application is given to the Authority:
  - (a) accept the application; or
  - (b) reject the application.
- (2) In determining whether to accept or reject the application, the Authority must have regard to the following matters:

- (a) whether the application complies with subsection 22(2);
  - (b) whether the application is so similar to a previous application or proposal for a high level health claims variation that it ought to be rejected;
  - (c) any other relevant matter.
- (3) If an application is rejected because it does not comply with subsection 22(2), the application must be disregarded for the purposes of determining whether a later application or proposal for the variation of the standard is so similar to a previous application or proposal that the later application ought to be rejected.

#### **48 Notice of acceptance**

- (1) If the Authority accepts the application, the Authority must notify the applicant immediately in writing:
- (a) that the application has been accepted; and
  - (b) in the case of an applicant who has applied for the variation of a standard and on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application:
    - (i) that the applicant must pay the charge fixed under subparagraph 146(6)(b)(i) or, if the charge is payable in instalments, the first instalment of the charge, within 20 business days after the notification is given; and
    - (ii) that the application will be rejected if the charge, or the first instalment of the charge, is not paid within that period; and
  - (c) in any other case—that the applicant may, if the applicant elects to have the consideration of the application expedited, pay the charge fixed under subparagraph 146(6)(b)(ii) or, if the charge is payable in instalments, the first instalment of the charge.
- (2) The Authority must give notice in writing to the applicant:
- (a) identifying the procedure that the Authority will adopt in considering the application; and
  - (b) indicating when the Authority proposes to undertake the key steps in the procedure;
- within:



- 
- (c) if the applicant pays a charge, or the first instalment of a charge, mentioned in paragraph (1)(b) within the period mentioned in that paragraph—5 business days after that payment; or
  - (d) if the applicant pays a charge, or the first instalment of a charge, mentioned in paragraph (1)(c), within 20 business days after notice is given to the applicant under subsection (1) (the *early payment period*)—5 business days after that payment; or
  - (e) in any other case—within 25 business days after notice is given to the applicant under subsection (1).
- (3) If the applicant pays a charge, or the first instalment of a charge, mentioned in paragraph (1)(c) after the end of the early payment period, the Authority must, within 5 business days after that payment, again give the applicant notice of the matters mentioned in subsection (2), including an update on when the Authority now proposes to undertake the key steps in the procedure.

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

- (1) If the Authority accepts the application, the Authority must also give notice of the matters mentioned in subsection (2) to:
- (a) the High Level Health Claims Committee established for the purpose of making recommendations on the application, or applications of that kind; and
  - (b) the Food Regulation Standing Committee.

##### *Content of notice*

- (2) The notice must:
- (a) state that the Authority has received an application for a high level health claims variation; and
  - (b) state the date on which the application was received by the Authority; and
  - (c) state the name of the applicant; and
  - (d) give a summary of the application; and
  - (e) state that the Authority has accepted the application; and
  - (f) identify the procedure that the Authority will adopt in considering the application; and

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

*Period within which notice must be given*

- (3) The notice must be given:
  - (a) if the applicant pays a charge, or the first instalment of a charge, mentioned in subparagraph 48(1)(b)(i) within the period mentioned in that subparagraph—within 5 business days after that payment; or
  - (b) if the applicant pays a charge mentioned in paragraph 48(1)(c) within 20 business days after notice is given to the applicant under section 48 (the *early payment period*)—within 5 business days after that payment; or
  - (c) in any other case—within 25 business days after notice is given to the applicant under section 48.

*Exclusive capturable commercial benefit—fee not paid*

- (4) If an applicant:
  - (a) who applies for a high level health claims variation; and
  - (b) on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application;does not pay the charge, or the first instalment of the charge, mentioned in subparagraph 48(1)(b)(i) within the period mentioned in that subparagraph:
  - (c) the Authority must reject the application; and
  - (d) the Authority need not give notice under this section.

*Fee to expedite consideration paid after early payment period*

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

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**50 Considering the application**

- (1) The Authority must consider whether to approve a draft high level health claims variation.
- (2) Before approving such a draft variation, the Authority must:
  - (a) be satisfied that the approval of the draft variation will meet the following objectives:
    - (i) the protection of public health and safety;
    - (ii) the provision of adequate information relating to food to enable consumers to make informed choices;
    - (iii) the prevention of misleading or deceptive conduct; and
  - (b) assess the draft variation against the criteria set out in the Nutrition, Health and Related Claims Standard in relation to high level health claims, taking into account any recommendations made by the High Level Health Claims Committee in relation to the draft variation or the application that resulted in the draft variation; and
  - (c) take into account any submission made on behalf of a jurisdiction represented on the Food Regulation Standing Committee in relation to the draft variation or the application that resulted in the draft variation; and
  - (d) if the applicant has elected that the Authority give public notice under section 51 calling for submissions, consider all submissions made during the submission period.
- (3) If:
  - (a) the Authority prepares a draft high level health claims variation; and
  - (b) the draft variation differs from that sought in the application as a result of which it was prepared, or was not sought in the application at all;the Authority must give the applicant notice in writing of that fact and, if the applicant has elected that the Authority give public notice calling for submissions under section 51, state in the notice that the Authority will call for submissions for the purpose of assessing the draft variation.
- (4) The Authority must not give public notice calling for submissions under section 51 within 10 business days immediately after notice is given under subsection (3) of this section.

## 51 Calling for submissions

- (1) When applying for a high level health claims variation, the applicant may elect to have the Authority give public notice under this section calling for submissions.
- (2) If the applicant has made an election under subsection (1), the Authority must give public notice of the matters mentioned in subsection (3).
- (3) The notice must:
  - (a) state that the Authority has prepared a draft high level health claims variation; and
  - (b) include a copy of the draft variation, or state how a copy of the draft variation can be obtained; and
  - (c) call for written submissions, for the purpose of the Authority's consideration of the draft variation, to be given to the Authority within the period specified in the notice (the *submission period*).

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

- (1) After considering whether to approve a draft high level health claims variation and, if notice calling for submissions is given under section 51, after the submission period, the Authority must:
  - (a) do one of the following:
    - (i) approve the draft high level health claims variation;
    - (ii) reject the draft high level health claims variation; and
  - (b) prepare a report under this section.

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

- (2) The report must include each of the following:
  - (a) the reasons for initially accepting the application;
  - (b) a summary of the recommendations (if any) of the High Level Health Claims Committee in relation to the application and each draft variation that resulted from the application;
  - (c) a summary of the submissions (if any) made by members of the Food Regulation Standing Committee in relation to the

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application and each draft variation that resulted from the application;

- (d) a summary of the submissions (if any) received by the Authority within the submission period in response to a notice under section 51, if such notice was given;
- (e) the Authority's response to the issues raised in those submissions;
- (f) the Authority's reasons for approving the draft variation or rejecting the application.

### **53 Notifying the Council**

- (1) If the Authority approves a draft high level health claims variation, the Authority must, within 10 business days after the approval:
  - (a) give the Council:
    - (i) a written notification of the approval; and
    - (ii) a copy of the report prepared by the Authority under section 52; and
  - (b) if submissions were called for under section 51—give public notice of the decision.
- (2) If the Authority has notified the Council under subsection (1), the Council may direct the Authority to give the Council such information as the Council reasonably requires for the purpose of assisting the Council to make a decision about the draft under Division 3.

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

### **10 Subsection 56(2)**

After “under section 58”, insert “ or 77”.

### **11 After paragraph 57(b)**

Insert:

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

### **12 After Subdivision F of Division 2 of Part 3**

Add:

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

### **74 Application of Subdivision**

This Subdivision applies to a proposal if:

- (a) the proposal is for the variation of the Nutrition, Health and Related Claims Standard; and
- (b) the variation proposed is a high level health claims variation.

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

### **75 Notice of the proposal**

- (1) The Authority must give public notice of the matters mentioned in subsection (3).
- (2) The Authority must also give notice of the matters mentioned in subsection (3) to:
  - (a) the High Level Health Claims Committee established for the purpose of making recommendations on the proposal, or proposals of that kind; and
  - (b) the Food Regulation Standing Committee.
- (3) The notice must:
  - (a) state that the Authority proposes to make a high level health claims variation; and
  - (b) give a summary of the proposal; and
  - (c) identify the procedure that the Authority will adopt in considering the proposal; and
  - (d) indicate when the Authority proposes to undertake the key steps in that procedure.

### **76 Considering the proposal**

- (1) The Authority must consider whether to approve a draft high level health claims variation.
  - (2) Before approving such a draft variation, the Authority must:
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- 
- (a) be satisfied that the approval of the draft variation will meet the following objectives:
    - (i) the protection of public health and safety;
    - (ii) the provision of adequate information relating to food to enable consumers to make informed choices;
    - (iii) the prevention of misleading or deceptive conduct; and
  - (b) assess the draft variation against the criteria set out in the Nutrition, Health and Related Claims Standard in relation to high level health claims, taking into account any recommendations made by the High Level Health Claims Committee in relation to the draft variation or the proposal that resulted in the draft variation; and
  - (c) take into account any submission made on behalf of a jurisdiction represented on the Food Regulation Standing Committee in relation to the draft variation or the proposal that resulted in the draft variation; and
  - (d) all submissions made during the submission period.

### **77 Calling for submissions**

- (1) The Authority must give public notice of the matters mentioned in subsection (3) before a high level health claims variation is approved as a result of a proposal.
- (2) The Authority must also give notice of the matters mentioned in subsection (3) to the Food Regulation Standing Committee before a high level health claims variation is approved.
- (3) The notice must:
  - (a) state that the Authority has prepared a draft high level health claims variation; and
  - (b) include a copy of the draft variation, or state how a copy of the draft variation can be obtained; and
  - (c) call for written submissions, for the purpose of the Authority's consideration of the draft variation, to be given to the Authority within the period specified in the notice (the ***submission period***).

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

- (1) After the submission period, the Authority must:
  - (a) do one of the following:
    - (i) approve a draft high level health claims variation;
    - (ii) abandon the proposal to vary the list; and
  - (b) prepare a report under this section.

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

- (2) The report must include each of the following:
  - (a) the reasons for initially preparing the proposal;
  - (b) a summary of the recommendations (if any) of the High Level Health Claims Committee in relation to the proposal and each draft variation that resulted from the proposal;
  - (c) a summary of the submissions (if any) made by members of the Food Regulation Standing Committee in relation to the proposal and each draft variation that resulted from the proposal;
  - (d) a summary of the submissions (if any) received by the Authority within the submission period in response to a notice under section 77;
  - (e) the Authority's response to the issues raised in those recommendations and submissions;
  - (f) the Authority's reasons for approving the draft variation or abandoning the proposal.

## **79 Notifying the Council**

- (1) If the Authority approves a draft high level health claims variation, the Authority must, within 10 business days after the approval:
  - (a) give the Council:
    - (i) a written notification of the approval; and
    - (ii) a copy of the report prepared by the Authority under section 78; and
  - (b) if submissions were called for under section 77—give public notice of the decision.



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

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

**13 Subsection 84(1)**

Omit “under section 34, 41, 64 or 69”, substitute “under section 34, 41, 53, 64, 69 or 79”.

**14 Paragraph 95(6)(a)**

Omit “F”, substitute “G”.

**15 Subsection 108(3)**

After “under section 28”, insert “or 51”.

**16 Subsection 109(1)**

After “under section 26”, insert “or 47”.

**17 Paragraph 110(2)(b)**

After “under section 28”, insert “or 51”.

**18 Paragraph 110(5)(a)**

After “under section 58”, insert “or 77”.

**19 At the end of subsection 111(1)**

Add “, other than an application for a high level health claims variation”.

**20 Subsection 112(2)**

After “under section 28”, insert “or 51”.

**21 Subsection 112(4)**

After “under section 58”, insert “or 77”.

**22 After subsection 118(1)**

Insert:

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(1A) The Board may establish such committees as it thinks fit to make recommendations on applications or proposals for a high level health claims variation.

(1B) The Authority must not consider an application or proposal for a high level health claim variation, unless a committee is established to consider the application or proposal, or applications or proposals of that kind.

**23 Subsection 118(4)**

After “(1),” insert “(1A),”.

**24 After paragraph 129(3)(c)**

Insert:

(d) paragraph 52(1)(a); or

**25 After paragraph 129(3)(g)**

Insert:

(h) paragraph 78(1)(a); or

**26 After subparagraph 143(1)(a)(ii)**

Insert:

(iii) a decision by the Authority under paragraph 47(1)(b) to reject an application, other than a decision to reject the application because it does not comply with subsection 22(2); or

**27 After paragraph 150(1)(c)**

Insert:

(d) paragraph 52(1)(a); or

**28 After paragraph 150(1)(g)**

Insert:

(h) paragraph 78(1)(a); or

**29 After paragraph 152(c)**

Insert:

(d) the number of applications that were considered under Subdivision G of Division 1 of Part 3 during that year; and

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**30 Paragraph 152(o)**

Omit “, F”, substitute “, F, G”.

**31 Paragraph 152(p)**

Repeal the paragraph, substitute:

- (p) the average number of days that have elapsed:
  - (i) between the preparation of a proposal under section 55 to which Subdivision G of Division 1 of Part 3 does not apply and the commencement of the assessment of the proposal under section 59; and
  - (ii) between the preparation of a proposal under section 81 and the commencement of the assessment of the proposal under section 59; and

**32 Subparagraph 152(t)(ii)**

Repeal the subparagraph, substitute:

- (ii) section 41;
- (iii) section 52; and

## **Schedule 3—Council review of approved draft standards**

### **Part 1—Amendments**

#### *Food Standards Australia New Zealand Act 1991*

##### **1 Subsection 33(1) (note)**

Omit “Note”, substitute “Note 1”.

##### **2 At the end of subsection 33(1)**

Add:

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

##### **3 Subsection 63(1)(note)**

Omit “Note”, substitute “Note 1”.

##### **4 At the end of subsection 63(1)**

Add:

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

##### **5 Division 3 of Part 3**

Repeal the Division, substitute:

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

#### **84 Council may request a review**

- (1) If the Authority notifies the Council under section 34, 41, 64 or 69 that the Authority has approved a draft standard or draft variation (with or without amendments), the Council must, within 60 days after the notification:
  - (a) request the Authority to review the draft; or
  - (b) inform the Authority that the Council does not intend to request the Authority to review the draft.

- (2) In exercising its powers under this section in relation to a draft standard or variation, the Council must comply with:
  - (a) the Food Regulation Agreement; and
  - (b) the Australia New Zealand Joint Food Standards Agreement.

### **85 Review not requested**

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

### **86 Review requested**

- (1) If the Council requests the Authority to review a draft standard or draft variation, the Council must inform the Authority of the Council's concerns with the draft.
- (2) The Council may give to the Authority such directions as it thinks fit in relation to the conduct of a review of a draft standard or draft variation.
- (3) A direction under subsection (2) is not a legislative instrument.

### **87 Authority to respond to request**

- (1) If the Council requests the Authority to review a draft standard or draft variation:
  - (a) a review is to be conducted, subject to any directions given under subsection 86(2), in such manner as the Authority considers appropriate; and
  - (b) the Authority must complete the review, and make a decision under subsection (2):
    - (i) within 3 months after the request was made; or
    - (ii) if the Council allows a longer period—within that longer period.
- (2) After completing a review under this section of a draft standard or draft variation, the Authority must:
  - (a) decide to re-affirm its approval of the draft; or

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

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

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

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

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

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

### **88 Council may amend or reject draft after review**

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

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

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

(c) reject the draft.

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

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

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

### **90 Council amends the draft**

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

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

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

### **91 Council rejects the draft**

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

- (a) prepare a notice setting out that decision and reasons for that decision; and
- (b) give the Authority a copy of the notice; and
- (c) publish a copy of the notice:
  - (i) on the Internet; and
  - (ii) in a generally circulating newspaper, in each State or Territory and in New Zealand.

### **92 Publication requirements**

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

- (a) the Authority must prepare a notice stating that the draft or amended draft, as the case requires, is to come into effect on a day specified in the notice;
- (b) the Authority must cause a copy of the notice to be published:
  - (i) in the *Gazette*; and
  - (ii) in the *New Zealand Gazette*; and
  - (iii) in a generally circulating newspaper, in each State or Territory and in New Zealand;together with information about where a copy of the draft or amended draft may be obtained or inspected;
- (c) the Authority must make a copy of:
  - (i) the notice; and
  - (ii) the text of the draft or the amended draft;available for inspection by the public;
- (d) the Authority must publish on the Authority's Internet site a copy of:
  - (i) the notice; and
  - (ii) the text of the draft or the amended draft.

**93 When a standard or variation takes effect**

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

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

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

**6 Section 105**

Repeal the section.

**7 Subsection 106(1)**

Omit “, after a second review,”.

**8 Paragraph 129(3)(i)**

Repeal the paragraph, substitute:  
(i) subsection 87(2); or

**9 Paragraph 150(1)(i)**

Repeal the paragraph, substitute:  
(i) subsection 87(2); or



## **Part 2—Further amendment of section 84**

### *Food Standards Australia New Zealand Act 1991*

#### **10 Subsection 84(1)**

Omit “under section 34, 41, 64 or 69”, substitute “under section 34, 41, 53, 64, 69 or 79”.

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*[Minister’s second reading speech made in—  
Senate on 28 March 2007  
House of Representatives on 20 June 2007]*

(51/07)