



Food Standards Australia New Zealand Amendment Act 2010

No. 121, 2010

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

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

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[Assented to 17 November 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Food Standards Australia New Zealand Amendment Act 2010*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 November 2010
2. Schedule 1	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 this Act receives the Royal Assent, they commence on the day after the end of that period.	1 March 2011 (see F2011L00312)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Agricultural and Veterinary Chemicals (Administration) Act 1992

1 After subsection 7(1B)

Insert:

- (1C) The APVMA has any functions and powers that are conferred on it by Division 2A of Part 3 of the *Food Standards Australia New Zealand Act 1991*.

Agricultural and Veterinary Chemicals Code Act 1994

2 Subsection 13A(1) of the Code set out in the Schedule

Repeal the subsection, substitute:

(1) If:

- (a) an application under section 10 or 27 is made in relation to a chemical product; and
- (b) the application is acknowledged; and
- (c) it is likely that, if the application were granted, a variation would be required to the Maximum Residue Limits Standard; the APVMA must notify Food Standards Australia New Zealand of the application.

(1A) If:

- (a) either:
 - (i) a variation under subsection 34(5) relates to the registration of a chemical product; or
 - (ii) a variation under subsection 34(5) or 34A(3) relates to the approval of a label for containers for a chemical product; and
- (b) it is likely that, as a result of the variation, a variation will be required to the Maximum Residue Limits Standard;

the APVMA must notify Food Standards Australia New Zealand of the variation mentioned in paragraph (a).

(1B) If:

- (a) an application under section 110 is made for a permit in respect of a chemical product and the application is in accordance with subsection 110(2); and
- (b) it is likely that, if the application were granted, a variation would be required to the Maximum Residue Limits Standard; the APVMA must notify Food Standards Australia New Zealand of the application.

3 Subsection 13A(2) of the Code set out in the Schedule

Omit “The notice”, substitute “A notice under this section”.

4 Paragraph 13A(2)(c) of the Code set out in the Schedule

Repeal the paragraph, substitute:

- (c) be given to Food Standards Australia New Zealand:
 - (i) if subsection (1) applies—as soon as practicable after the application is acknowledged; or
 - (ii) if subsection (1A) applies—as soon as practicable after the variation is made; or
 - (iii) if subsection (1B) applies—as soon as practicable after the application is made.

5 After paragraph 14(5)(e) of the Code set out in the Schedule

Insert:

- (ea) any dietary exposure assessment prepared under subsection 82(4) of the *Food Standards Australia New Zealand Act 1991* as a result of any proposed variation notified under subsection 82(3) of that Act in relation to the product, and any comments on the assessment given to the APVMA under subsection 82(4) of that Act;

6 Application

The amendments made by items 2 to 4 apply in relation to applications or variations made on or after the commencement of those items.

Food Standards Australia New Zealand Act 1991

7 At the end of section 54

Add:

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

8 Paragraph 57(d)

Repeal the paragraph.

9 Subsection 66(1)

Omit “(1) Subject to subsection (2), this”, substitute “This”.

10 Subsection 66(2)

Repeal the subsection.

11 Subsection 70(1)

Omit “(1) Subject to subsection (2), this”, substitute “This”.

12 Subsection 70(2)

Repeal the subsection.

13 Subdivision H of Division 2 of Part 3

Repeal the Subdivision.

14 After Division 2 of Part 3

Insert:

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

80 Application of Division

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

81 Authority to give notice of APVMA notification

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

82 APVMA may vary the Maximum Residue Limits Standard

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

Variation is a legislative instrument

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

Proposed variation

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

Dietary exposure assessment

- (4) The Authority must:
 - (a) prepare a dietary exposure assessment of the proposed variation and give a copy of the assessment to the APVMA and the Council; or
 - (b) if, with the Authority's agreement, a dietary exposure assessment of the proposed variation is prepared by another person or body:
 - (i) review the assessment and prepare comments on the assessment (including comments relating to the dietary exposure risk of the proposed variation); and

- (ii) give a copy of the assessment to the Council and, if the assessment is not prepared by the APVMA, give a copy of the assessment to the APVMA; and
 - (iii) give a copy of the comments on the assessment to the APVMA and the Council.
- (5) Before making a variation under subsection (1), the APVMA must:
- (a) if paragraph (4)(a) applies—consider the assessment; or
 - (b) if paragraph (4)(b) applies—consider the assessment and the comments on the assessment referred to in that paragraph.

APVMA to give the Authority a copy of the variation

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

Gazettal

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

When variation takes effect

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

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

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

15 Paragraph 95(6)(b)

Omit "H", substitute "G".

16 Paragraph 152(m)

Repeal the paragraph.

17 Paragraph 152(o)

Omit “, G and H”, substitute “and G”.

18 Paragraph 152(p)

Repeal the paragraph, substitute:

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

19 After paragraph 152(t)

Insert:

- (ta) the number of variations given to the Authority under subsection 82(6) during the current year; and

20 Application and transitional

- (1) Despite the amendments made by items 10 and 12, subsections 66(2) and 70(2) of the *Food Standards Australia New Zealand Act 1991*, as in force immediately before the commencement of those items, continue to apply on and after that commencement in relation to proposals made in compliance with Subdivision H of Division 2 of Part 3 of that Act before, on or after the commencement of those items.
- (2) The amendments made by items 13 and 14 apply in relation to a notification under section 13A of the Agvet Code occurring on or after the commencement of those items (where the application or variation that is the subject of the notification is also made on or after that commencement).
- (3) Despite the amendments made by items 16 to 18, paragraphs 152(m), (o) and (p) of the *Food Standards Australia New Zealand Act 1991*, as in force immediately before the commencement of those items, continue to apply on and after that commencement for the financial year in which those items commence and the following financial year.

Part 2—Other amendments

Food Standards Australia New Zealand Act 1991

21 Paragraph 66(1)(a)

Omit “a”, substitute “any”.

22 Subsection 146(6)

Repeal the subsection, substitute:

- (6) A charge may be fixed in relation to an application to develop or vary a standard only if:
- (a) the development or variation of the standard would confer an exclusive capturable commercial benefit on the applicant; or
 - (b) the applicant has elected to have the consideration of the application expedited.

23 Section 152

Before “The members”, insert “(1)”.

24 Section 152

After “for a financial year”, insert “(the *current year*)”.

25 Before paragraph 152(a)

Insert:

- (aa) the number of applications that were made under section 22 during the current year; and
- (ab) the number of applications accepted under subsection 26(1) during the current year; and
- (ac) the number of applications rejected under subsection 26(1) during the current year and the reasons for the rejections; and
- (ad) the number of applications withdrawn under subsection 24(1) during the current year; and
- (ae) the number of applications accepted under subsection 26(1) during the current year that the Authority had not begun to assess under section 29 during the current year; and

- (af) the number of applications accepted under subsection 26(1) during a previous financial year that the Authority had not begun to assess under section 29 before the end of the current year; and

26 Paragraphs 152(a) to (f)

Omit “that year”, substitute “the current year”.

27 After paragraph 152(f)

Insert:

- (fa) the number of applications accepted under subsection 26(1) during a previous financial year that the Authority had begun to assess under section 29 before the end of the current year, but that the Authority had not disposed of before the end of the current year; and
- (fb) for an application covered by paragraph (fa), the period that has elapsed since the application was accepted under subsection 26(1); and

28 Paragraphs 152(g) to (k)

Omit “that year”, substitute “the current year”.

29 After paragraph 152(k)

Insert:

- (ka) the number of applications declared under section 95 to be urgent applications during the current year; and

30 Paragraph 152(l)

Omit “made”, substitute “prepared”.

31 Paragraph 152(l)

Omit “that year”, substitute “the current year”.

32 After paragraph 152(l)

Insert:

- (la) the number of proposals prepared under section 55 during the current year that the Authority had not begun to assess under section 59 during that year; and

- (lb) the number of proposals prepared under section 55 during a previous financial year that the Authority had not begun to assess under section 59 before the end of the current year; and

33 Paragraph 152(n)

Omit “so made”.

34 Paragraph 152(n)

Omit “that year”, substitute “the current year”.

35 Paragraph 152(o)

Omit “that year”, substitute “the current year”.

36 After paragraph 152(p)

Insert:

- (pa) the number of proposals prepared under section 55 during a previous financial year that the Authority had begun to assess under section 59 before the end of the current year, but that the Authority had not disposed of before the end of the current year; and
- (pb) for a proposal covered by paragraph (pa), the period that has elapsed since the proposal was prepared under section 55; and
- (pc) the number of proposals declared under section 95 to be urgent proposals during the current year; and
- (pd) the number of occasions during the current year when the 12 month period referred to in subsection 101(1) ended with no decision having been made under that subsection and the reasons for no decision having been made; and

37 Paragraphs 152(q) to (y)

Omit “that year”, substitute “the current year”.

38 At the end of section 152

Add:

- (2) The report may include any other matters that the members consider relevant.

39 Application

The amendments made by items 23 to 38 apply in relation to financial years ending on or after the commencement of those items.

*[Minister's second reading speech made in—
House of Representatives on 30 September 2010
Senate on 25 October 2010]*

(184/10)
