



Food Standards Australia New Zealand Amendment (Charges) Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 21 March 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Bridget McKenzie
Minister for Regional Services, Sport, Local Government and Decentralisation

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1 Name

This instrument is the *Food Standards Australia New Zealand Amendment (Charges) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2019.	1 July 2019

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Food Standards Australia New Zealand Act 1991*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Food Standards Australia New Zealand Regulations 1994

1 Before regulation 1

Insert:

Part 1—Preliminary

2 Regulation 2 (definition of *administration charge*)

Repeal the definition.

3 Regulation 2

Insert:

administrative costs of the Authority for an application means the total of:

- (a) the amounts (however described) that are payable by the Authority for things required by a law of the Commonwealth to be done in connection with the application, except amounts payable for the services of Authority personnel doing work; and
- (b) if the application is for a high level health claims variation—the costs of the High Level Health Claims Committee:
 - (i) considering whether to make recommendations relating to the application or a draft high level health claims variation resulting from the application; and
 - (ii) formulating and making any such recommendations.

Authority personnel: the following are *Authority personnel*:

- (a) a member;
- (b) a person:
 - (i) who holds a position or classification as a member of the staff of the Authority described in any of items 4 to 16 of the table in the definition of *Authority personnel variable work cost*; or
 - (ii) whose variable work on an application is treated as if the person were a member of the staff of the Authority and held such a position or classification.

Note 1: Paragraph (a) and subparagraph (b)(i) cover both substantive holders of the offices and positions mentioned and persons acting in those offices and positions: see section 20 of the *Acts Interpretation Act 1901* (applying because of subsection 13(1) of the *Legislation Act 2003*).

Note 2: A person covered by subparagraph (b)(ii) may be a consultant engaged under section 136 of the Act or a person whose services are made available to the Authority under an arrangement under section 137 of the Act.

Authority personnel variable work cost for an application is the sum of each amount that is the product of:

- (a) the number of hours spent, by Authority personnel to whom column 1 of an item of the following table relates, on variable work on the application; and
- (b) the hourly amount in column 2 of the item.

Persons and rates for working out Authority personnel variable work cost		
Item	Column 1 Office, position or classification of Authority personnel	Column 2 Hourly amount
1	Chairperson of the Board	\$435
2	Member (except the Chairperson of the Board and the Chief Executive Officer of the Authority)	\$420
3	Chief Executive Officer of the Authority	\$288
4	SES officer	\$220
5	Principal research scientist	\$182
6	Executive Officer Level 2.6 or Legal 2	\$164
7	Executive Officer Level 2.5	\$161
8	Executive Officer Level 2.4	\$156
9	Executive Officer Level 2.3	\$152
10	Executive Officer Level 2.2 or Legal 1.9	\$145
11	Executive Officer Level 2.1	\$138
12	Executive Officer Level 1.3 or Legal 1.8	\$133
13	Executive Officer Level 1.2	\$128
14	Executive Officer Level 1.1 or Legal 1.7	\$122
15	APS 6 or Legal 1.6	\$114
16	APS 1, 2, 3, 4 or 5 or Legal 1.1, 1.2, 1.3, 1.4 or 1.5	\$100

general procedure level 5 application means an application that the Authority has classified as a general procedure level 5 application under regulation 7.

high level health claims procedure level 5 application means an application that the Authority has classified as a high level health claims procedure level 5 application under regulation 7.

4 Regulation 2 (definition of *minor procedure application*)

Repeal the definition.

5 Regulation 2

Insert:

variable work on an application means work for the Authority for the purposes of the Authority complying with any of the following provisions of the Act (applying of their own force or because of another provision of the Act):

- (a) section 29 (assessing the application);
- (b) paragraph 33(1)(b) and subsections 33(2) and (3) (preparing a report relating to the application having regard to public submissions relating to a draft food regulatory measure, or a draft variation of such a measure, prepared in response to the application);
- (c) section 45 (having regard to public submissions relating to the application);
- (d) paragraph 52(1)(b) and subsection 52(2) (preparing a report relating to an application for a high level health claims variation).

6 Before regulation 6

Insert:

Part 2—Commercial confidential information

7 Before regulation 6A

Insert:

Part 3—Nominations for Board members

8 Regulations 7, 8, 8A, 8B and 9

Repeal the regulations, substitute:

Part 4—Charges

6B Scope of this Part

This Part applies in relation to an application if:

- (a) the applicant has elected to have the consideration of the application expedited; or
- (b) the application is to develop or vary a standard and the development or variation of the standard would confer an exclusive capturable commercial benefit on the applicant.

7 Classification of application on basis of procedure and variable work

- (1) If the Authority accepts an application under section 26 or 47 of the Act, the Authority must:
 - (a) estimate the total number of person-hours of variable work by Authority personnel on the application; and
 - (b) classify the application in accordance with the estimate and the following table; and
 - (c) if the estimate is more than 680 person-hours—also estimate the number of those person-hours for each kind of office, position or classification.

Classification of application			
Item	Column 1 Procedure for considering application	Column 2 Estimated total number of person-hours of variable work	Column 3 Classification
1	General procedure	Not more than 240	General procedure level 1 application
2	General procedure	More than 240, but not more than 380	General procedure level 2 application
3	General procedure	More than 380, but not more than 540	General procedure level 3 application
4	General procedure	More than 540, but not more than 680	General procedure level 4 application
5	General procedure	More than 680	General procedure level 5 application

Classification of application			
Item	Column 1 Procedure for considering application	Column 2 Estimated total number of person-hours of variable work	Column 3 Classification
6	Subdivision F of Division 1 of Part 3 of the Act	Any number	Major procedure application
7	Subdivision G of Division 1 of Part 3 of the Act	Not more than 240	High level health claims procedure level 1 application
8	Subdivision G of Division 1 of Part 3 of the Act	More than 240, but not more than 380	High level health claims procedure level 2 application
9	Subdivision G of Division 1 of Part 3 of the Act	More than 380, but not more than 540	High level health claims procedure level 3 application
10	Subdivision G of Division 1 of Part 3 of the Act	More than 540, but not more than 680	High level health claims procedure level 4 application
11	Subdivision G of Division 1 of Part 3 of the Act	More than 680	High level health claims procedure level 5 application

Note: The classification of an application affects the charge payable for considering it and whether the charge may be paid in instalments.

- (2) The Authority must give the applicant written notice of:
- (a) the classification of the application; and
 - (b) if the application is classified as:
 - (i) a general procedure level 5 application; or
 - (ii) a major procedure application; or
 - (iii) a high level health claims procedure level 5 application;
 the amount of the charge under subregulation 8(2) for the application.
- (3) This regulation does not apply to an application if the procedure for considering the application is described in Subdivision E of Division 1 of Part 3 of the Act (about minor variations).

8 Charges

- (1) For the purposes of subsection 146(1) of the Act, this regulation fixes charges to be paid by the applicant for the Authority's services relating to an application.

Basic charge

- (2) The charge for an application described in column 1 of an item of the following table is the sum of:
- (a) the amounts described in columns 2 and 3 of the item; and
 - (b) \$19,470.

Charges relating to applications			
Item	Column 1 Application	Column 2 Variable component	Column 3 Administrative component
1	General procedure level 1 application	\$36,912	\$1,000

Schedule 1 Amendments

Charges relating to applications			
Item	Column 1 Application	Column 2 Variable component	Column 3 Administrative component
2	General procedure level 2 application	\$58,444	\$1,000
3	General procedure level 3 application	\$83,052	\$1,000
4	General procedure level 4 application	\$104,584	\$1,000
5	General procedure level 5 application	The total of: (a) \$104,584; and (b) if, on the basis of the estimates under regulation 7, the Authority personnel variable work cost for the application is expected to exceed \$104,584—the excess	\$1,000
6	Major procedure application	The total of: (a) \$174,930; and (b) if, on the basis of the estimates under regulation 7, the Authority personnel variable work cost for the application is expected to exceed \$174,930—the excess	\$1,000
7	High level health claims procedure level 1 application	\$36,912	\$4,000
8	High level health claims procedure level 2 application	\$58,444	\$4,000
9	High level health claims procedure level 3 application	\$83,052	\$4,000
10	High level health claims procedure level 4 application	\$104,584	\$4,000
11	High level health claims procedure level 5 application	The total of: (a) \$104,584; and (b) if, on the basis of the estimates under regulation 7, the Authority personnel variable work cost for the application is expected to exceed \$104,584—the excess	\$4,000

Extra charge for high administrative costs

- (3) Also, if:
- (a) the administrative costs of the Authority for the application exceed the amount described in column 3 of the relevant item of the table in subregulation (2); and
 - (b) the Authority notifies the applicant of the excess and its amount; there is a charge equal to the excess. The charge is due and payable 30 days after the applicant is notified.

8A Paying charges under subregulation 8(2) by instalments*Which charges may be paid by instalments*

- (1) For the purposes of subsection 146(1A) of the Act, a charge under subregulation 8(2) for any of the following applications may be paid by instalments in accordance with this regulation:
 - (a) a general procedure level 3 application, a general procedure level 4 application or a general procedure level 5 application;
 - (b) a major procedure application;
 - (c) a high level health claims level 3 application, a high level health claims level 4 application or a high level health claims level 5 application.

First instalment

- (2) The first instalment is:
 - (a) 75% of the charge; or
 - (b) for a major procedure application—25% of the charge.

Note: Sections 27, 28, 48, 49 and 109 of the Act deal with the timing of payment of the first instalment and the effects of not paying the instalment on time.

Second instalment

- (3) The second instalment is the rest of the charge.
- (4) The second instalment is due:
 - (a) at the end of the submission period described in paragraph 31(2)(c) of the Act (applying of its own force or because of section 43 of the Act) relating to the application; or
 - (b) if the application is for a high level health claims variation and the applicant has made an election under section 51 of the Act—at the end of the submission period described in paragraph 51(3)(c) of the Act; or
 - (c) if the application is for a high level health claims variation and the applicant has not made an election under section 51 of the Act—20 business days after a notice is given to the applicant under subregulation (5) in relation to the application.

Note: If the second instalment is not paid when it is due, the consideration period for completing the procedure under Subdivision D, F or G of Division 1 of Part 3 of the Act for considering the application stops running under subsection 109(7) of the Act while the instalment remains unpaid.

- (5) For the purposes of paragraph (4)(c), when the Authority considers that it is appropriate for the second instalment to be paid, given the stage that the process of dealing with the application has reached, the Authority must give the applicant written notice that the applicant must pay the second instalment.

8B Second instalment for certain withdrawn or rejected applications

- (1) For the purposes of subsection 146(1A) of the Act, this regulation applies, despite subregulations 8A(3) and (4), to an application described in subregulation 8A(1) that:
 - (a) is withdrawn under section 24 of the Act before the Authority makes a decision relating to the application under whichever of the following

subsections of the Act applies in relation to the application (of its own force or because of section 43 of the Act):

- (i) subsection 33(1);
 - (ii) subsection 35(1);
 - (iii) subsection 52(1); or
- (b) is rejected by the Authority under paragraph 30(1)(b) or subparagraph 52(1)(a)(ii) of the Act (applying of its own force or because of section 43 of the Act).
- (2) The second instalment is:
- (a) if the Authority personnel variable work cost for the application, immediately before notice of the withdrawal is given to the Authority or notice of the rejection is given to the applicant, exceeds the amount of the first instalment attributable to column 2 of the relevant item of the table in subregulation 8(2) (variable component)—the excess; or
 - (b) if paragraph (a) does not apply—nil.
- (3) The Authority must give the applicant a written notice that sets out the amount (if any) of the second instalment.
- (4) The second instalment is (if more than nil) due and payable 20 business days after the day the notice of withdrawal or rejection is given.

9 Refunds

- (1) This regulation:
- (a) specifies, for the purposes of subsection 149(2) of the Act, circumstances in which a refund of charge under section 146 of the Act paid by an applicant for an application is to be made; and
 - (b) provides, for the purposes of subsections 24(2), 110(3) and 149(2) of the Act, for the calculation of the amount of the refund.
- (2) The refund is to be made (whether or not subsection 24(2) or 110(3) of the Act applies) if either or both of the following apply:
- (a) the amount of the charge paid that is attributable to column 2 of the relevant item of the table in subregulation 8(2) (variable component) exceeds the Authority personnel variable work cost for the application;
 - (b) the amount of the charge paid that is attributable to column 3 of the relevant item of the table in subregulation 8(2) (administrative component) exceeds the administrative costs of the Authority for the application.
- (3) The refund is the total of the excess described in whichever of paragraphs (2)(a) and (b) apply.

Part 5—Time for considering applications

9 Before regulation 12

Insert:

Part 6—Application and transitional provisions

10 At the end of the instrument

Add:

13 Application of amendments made by the *Food Standards Australia New Zealand Amendment (Charges) Regulations 2019*

- (1) The amendments of these Regulations made by the *Food Standards Australia New Zealand Amendment (Charges) Regulations 2019* apply in relation to applications made on or after 1 July 2019.
- (2) Subregulation (1) does not apply to the amendments inserting the headings to Parts 1, 2, 3, 5 and 6.