

EXPLANATORY STATEMENT

Food Standards Australia New Zealand Regulations 1994

Food Standards Australia New Zealand Amendment (Charges) Regulations 2024

Purpose and operation

The purpose of the *Food Standards Australia New Zealand Amendment (Charges) Regulations 2024* (Regulations) is to implement the outcomes of the latest review of the Authority's Cost Recovery Implementation Statement (CRIS) and cost recovery arrangements. The review recommends updates to the charges imposed to accurately reflect the cost to the Authority of processing applications. It was found that the estimated hours required to process an application, which is the Authority's only cost recovered activity, exceeded the actual time required resulting in lower costs overall to process an application. This is slightly offset by increases in hourly rates applied reflecting current wage costs.

The Regulations will:

- reduce the variable hours associated with each application classification increased;
- reduce the amount of the administrative charge payable by an applicant;
- charges for fixed fees and variable hourly rates; and
- provide that these amendments apply to applications made on or after 1 July 2024.

The impact of the Regulations is to:

- amend the charges payable by applicants seeking the development or variation of a standard to align the charge payable by these applicants with the actual costs incurred by the Authority in undertaking the application consideration process; and
- increase the accuracy of estimates of the number of hours required to undertake an assessment of an application and, thereby, minimise the potential for excessive upfront payments by applicants and for large refunds to be made by the Authority.

Background

Food Standards Australia New Zealand (the Authority) is a body corporate continued in existence by section 12 of the *Foods Standards Australia New Zealand Act 1991* (the FSANZ Act). The primary function of the Authority is to develop, vary and review food regulatory measures, being food standards and codes of practice for industry. Food regulatory measures are developed or varied by the Authority, either as a result of an application from a body or person, or as a result of a proposal prepared by the Authority on its own initiative.

Section 153 of the FSANZ Act provides that the Governor-General may make regulations, not inconsistent with the FSANZ Act, prescribing all matters required or permitted by the FSANZ Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the FSANZ Act.

Section 146 of the FSANZ Act provides that the *Food Standards Australia New Zealand Regulations 1994* (the Principal Regulations) may fix charges to be paid by a body or person

for services and facilities the Authority provides to the body or person. A charge may be fixed in relation to an application if: the applicant has elected to have the consideration of the application expedited or to develop; or 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.

The mechanism for setting charge amounts is through the preparation of a CRIS that meets the requirements of the Australian Government Cost Recovery Guidelines. The Authority conducts regular reviews of its CRIS to ensure that cost recovery arrangements are adequate and that it can continue to effectively discharge its statutory functions.

Authority

Section 146 of the FSANZ Act provides that the *Food Standards Australia New Zealand Regulations 1994* (the Principal Regulations) may fix charges to be paid by a body or person for services and facilities the Authority provides to the body or person.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

This instrument commences 1 July 2024.

Consultation

In September 2023, the Authority conducted public consultation over a four week period utilising existing stakeholder engagement channels, no comments were received at the time. Further consultation occurred with members of the Binational Food Industry Dialogue which consists of retailers, manufacturers and peak bodies in January 2024. Correspondence received from the respondents was considered by the Authority.

General

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in **Attachment A**.

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the [Legislative Instrument]

Section 1 – Name

Section 1 provides that the name of the instrument is the *Food Standards Australia New Zealand Amendment (Charges) Regulations 2024*.

Section 2 – Commencement

Section 2 provides that the instrument commences on 1 July 2024.

Section 3 – Authority

Section 3 provides that the instrument is made under section 146 of the *Food Standards Australia New Zealand Act 1991*.

Section 4 - Schedule(s)

This section would provide that 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

Item 1 – Regulations 2, definition of Authority personnel variable work cost

The existing table identifies the positions and their hourly charge of authority personnel whom spend variable work time on the application. The amendment increase the hourly rates to align with the current efficient cost of the personnel.

Item 2 – Paragraph 7(1)(c)

The paragraph establishes the process in which the Authority estimates the hours required to process an application and classifies each application within available classification levels. For applications estimated to exceeded the upper limit of the classification levels, which is proposed to decrease from 680 hours to 520 hours through this amendment, then the person-hours need to be estimated for each kind of office, position or classification.

Item 3 – Subregulation 7(1)

The existing table identifies the procedural level applied when considering an application, the estimated total number of person hours or variable work and the classification applied. The amendments to the table reduce the variable person hours to reflect up to date levels of effort for each classification level.

Item 4 – Paragraph 8(2)(b)

The paragraph identifies the basic charge for each application including the fixed amount applied, the amendment increases the fixed charge from \$19,470 to \$22,608 to reflect the current efficient costs of this activity.

Item 5 – Subregulation 8(2)

The existing table sets out the rates of charge for assessing applications at varying procedural levels, including the variable component and the administrative component. Overall the amendment reduces application charges by taking into account the reduced variable hours required to undertake an application assessment as detailed in Item 3 and the increase in hourly rates per Item 1.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Food Standards Australia New Zealand Amendment (Charges) Regulations 2024

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Food Standards Australia New Zealand Amendment (Charges) Regulations 2024* amend the *Food Standards Australia New Zealand Regulations 1994* to:

- amend the charges payable by a person who applies to Food Standards Australia New Zealand (the Authority) for the development or variation of a food standard that will confer an exclusive capturable commercial benefit on them or who wish to expedite their application;
- align the charge payable by these applicants with the actual costs incurred by the Authority in undertaking the application consideration process; and
- increase the accuracy of the Authority's estimate of the number of hours required to undertake an assessment of an application and, thereby, minimise the potential for excessive upfront payments by applicants and for large refunds to be made by the Authority.

The Regulations will:

- increased charges for fixed fees and variable hourly rates;
- reduce the amount of the administrative charge payable by an applicant;
- reduce the variable hours associated with each application classification; and
- provide that these amendments apply to applications made on or after 1 July 2024.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.