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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

# AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 2001

## REVISED EXPLANATORY MEMORANDUM

Circulated by authority of the Parliamentary Secretary to the Minister for Health and Aged Care, Senator the Hon Grant Tambling

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE SENATE TO THE BILL AS INTRODUCED

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**AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 2001**

## OUTLINE

The Australia New Zealand Food Authority Amendment Bill 2001 amends the *Australia New Zealand Food Authority Act 1991* (the Act) to implement those aspects of the new food regulatory system agreed to by all Australian jurisdictions that require immediate Commonwealth legislative change. The Bill reflects many of the arrangements for the new system that are set out in the Inter-governmental Food Regulation Agreement agreed to by members of the Council of Australian Governments (COAG) on 3 November 2000.

The new food regulatory system was developed by a Senior Officials' Working Group of COAG, and is in response to recommendations of the Food Regulation Review Committee that was chaired by Dr Bill Blair, OAM, and reported in August 1998. This Committee was tasked with recommending to Government on how to reduce the regulatory burden on the food sector and improve the clarity, certainty and efficiency of the current food regulatory arrangements whilst, at the same time, protecting public health and safety.

The Agreement establishes a new Ministerial Council, the Australia and New Zealand Food Regulation Ministerial Council. The new Ministerial Council will develop domestic food regulation policy as well as policy guidance for setting domestic food standards. Recognising the primacy of public health and safety considerations in developing such policy, the Australia and New Zealand Food Regulation Ministerial Council will be based on the existing Council of Health Ministers (ANZFSC), but can be complemented by other Ministers nominated by individual jurisdictions covering portfolios such as primary or processed food production, or trade. Each jurisdiction will have only one vote on all resolutions.

The Bill will establish a new statutory authority, Food Standards Australia New Zealand (the Authority), to be based upon the existing Australia New Zealand Food Authority.

The prime function of the Authority will be to develop domestic food standards that are to be adopted nationally. These standards are to be developed based on scientific and technical criteria and in accordance with the objectives set out in section 10 of the Act. The standards will be approved by the Food Standards Australia New Zealand Board and notified to the Ministerial Council. The Council will be able to direct the Authority to review any standard, and can amend or reject any proposed draft standard that has been reviewed twice.

The Bill sets out the process for the development of food standards that takes into account the role of the Ministerial Council. The Bill also makes provision for the transition from the Australia New Zealand Food Authority (ANZFA) and other amendments that are consequential on the re-naming of the Act and the creation of the new Authority.

The new system provided for in this Bill strengthens the focus on public health and safety. The Authority will eventually be able to develop all domestic food standards that are to be adopted nationally and with New Zealand, including those that under current arrangements are or would be established by the (Ministerial) Agriculture and Resource Management Council of Australia and New Zealand. The arrangements for the development of these primary product standards will be developed by the new Ministerial Council and may require further legislation. New Zealand has indicated that it will not be adopting these primary product food standards because it has other systems in place for their development.

Regulation is an integral part of any system designed to achieve safe food in that it provides the overarching framework and legal obligation for food businesses to produce food that is safe and suitable for human consumption. To be effective, this framework must apply across the whole food supply chain.

The new food regulatory arrangements will strengthen Ministerial authority and accountability. The Food Regulation Agreement 2000 enables the Ministerial Council to develop policy guidelines to establish a national policy framework. However, amendments made to the Bill in the Senate will make the policy principles issued by the Council disallowable in either house of the Commonwealth Parliament. All policy principles determined by the Council must be consistent with the objectives of the Act, of which protection of public health and safety remains the highest priority. The Ministerial Council will also determine the arrangements to provide for high level consultation with key stakeholders.

New arrangements will apply to the approval of standards. A standard developed by FSANZ will commence if the Council informs the Authority that it does not intend to request it to review the standard. Any one member of the Council, however, can have the Council request a review. A standard that has been reviewed once will commence if a majority of the Council do not want a second review. A standard that has been reviewed twice can be rejected by the Council and is subject to amendment by the Council.

The Authority can only notify/gazette standards if it has been informed of decisions by the Council.

The Ministerial Council will have 60 days to request the Authority to review a standard, or to inform it that it will not request a review. The Council will also be able to amend standards, but only standards that have been reviewed twice. The requirement that the Council must always respond in relation to approved standards was included by Senate amendment.

The commencement of standards developed as a matter of urgency is an exception to the commencement procedures described above. They are still, however, subject to review by the Council after they have commenced.

Because of the proposed capacity of the Authority to eventually develop all domestic food standards to be adopted nationally, the Board will be able to have a wider range of expertise than does ANZFA (for example, the Bill enables the appointment of members with expertise in primary food production).

There are other key elements of the new food regulatory system that do not require legislative change. First, a Food Regulation Standing Committee will support the Council. The membership of this Committee consist of heads of health departments, and heads of other government departments that reflect the membership of the Council, as well as a senior representative from the Australian Local Government Association. The Committee is to be chaired by the Commonwealth Department of Health and Aged Care. Secondly, the Council will establish a mechanism for the provision of stakeholder advice by representatives of the interests of consumers, small business, industry and public health. It will be able to provide this advice to the Council itself, the Standing committee, the new Authority, and an implementation committee to be established by the Standing Committee to assist it in the performance of its functions.

## FINANCIAL IMPACT

The financial impact of this Bill will be low. The Department of Health and Aged Care will establish and fund a secretariat to provide administrative support for the Ministerial Council and related committees. There will be some expense associated with establishing the new standards setting process and the statutory authority Food Standards Australia New Zealand, as the FSANZ Board will have two more members than the ANZFA Board has at present.

## REGULATORY IMPACT STATEMENT

*BACKGROUND*

The current food regulatory system includes a number of food regulatory agencies. The Australian Quarantine and Inspection Service (AQIS) has responsibility for developing and enforcing export food regulations and standards. The Australia New Zealand Food Authority (ANZFA) develops domestic food standards for adoption by the Australia New Zealand Food Standards Council (ANZFSC). Other agencies, such as the National Registration Authority (NRA) and the Therapeutic Goods Administration (TGA) also have a role in relation to food standards development.

There are currently three Ministerial Councils with responsibility for food regulatory policy (Health, Agriculture and Fisheries). Under this arrangement, as noted above, national domestic food standards are developed by ANZFA and are considered for national approval by Commonwealth, State and Territory Health Ministers who constitute ANZFSC. However, food safety related standards in relation to the primary industry sector may also be developed by Agriculture and Fisheries Ministers. For example, national domestic meat food standards are developed and approved through processes established by the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ).

The Food Regulation Review (the Blair Review) was established by the Prime Minister in 1997 to make recommendations to government on how to reduce the regulatory burden on the food sector and improve the clarity, certainty and efficiency of the current food regulatory arrangements while, at the same time, protecting public health and safety. The Blair review found that, while the current system is effective at producing safe food, its efficiency could be improved.

State and Territory Governments have taken the Blair Report recommendations into account in rationalising their individual food regulatory arrangements in ways that accommodate their particular jurisdictional circumstances. Some of these arrangements are already in place.

*PROBLEMS*

The major concerns highlighted by industry during the course of the Review relate to the significant and unwarranted costs of:

- having to deal with the large number of food laws;
- inappropriate food laws and regulations, that is, they are too prescriptive, costly to comply with, unenforceable or ambiguous;
- duplication of effort between regulatory agencies;
- the inconsistency of regulatory approaches between States/Territories and local governments, not only in terms of the regulations, but also in their interpretation and enforcement.

These broader concerns include more specific concerns regarding:

- the lack of clarity and consistency in agency roles and responsibilities;
- inefficient food standards setting processes;

- inappropriate food standards and regulation; and
- insufficient consultation with industry in government decision making.

Decisions made by Health Ministers (ANZFSC) in relation to the adoption of food standards in the interests of public health and safety can have an adverse impact on industry if industry concerns or existing food safety related standards or regulations which are the responsibility of other areas of government (such as primary industry, trade and small business) have not been adequately taken into account in the standards development process. This has, in some cases, resulted in industry and governments both bearing the costs of meeting or enforcing duplicated and overlapping regulations/standards.

The requirement for ANZFSC to adopt food standards that are then to be adopted nationally means that the standards development process is sometimes influenced by factors other than those that are science-based. As a result, industry may have to bear the costs of meeting requirements that do not contribute to the improvement of the protection of public health and safety, while government may bear the cost of enforcing them.

ANZFSC approval of a food standard currently involves a formal and lengthy process. Industry may lose market advantage or suffer market disadvantage because of the time it takes for a standard to be approved.

It is not surprising that the Blair Report found that the food industry views the current food regulatory decision making arrangements as complex and fragmented, and that the general industry perception is that its views are not sufficiently represented in the decision making process.

These problems, noted by industry through the Blair Review process, result from inefficiencies in Government processes and structures related to the development, administration and enforcement of food laws, that is, institutional failure. For example, the costs to Government of maintaining separate and independent national food regulatory policy decision making and standards development processes may be avoidable. Similarly, a rationalisation and simplification of national food standards setting processes could provide cost savings to Government. Therefore, the problem will not be solved through the operation of the market alone and some kind of Government action will be necessary to address the problem.

*OBJECTIVES*

The Government's objectives are to improve the efficiency of the food regulatory system by ensuring that:

- the regulatory framework maintains public health and safety by ensuring the production of safe and suitable food;
- there is national consistency in the interpretation, administration and enforcement of food regulation:
- the regulatory framework is appropriate, is the minimum necessary to be effective and that it operates efficiently by reducing costs to industry, government and consumers; and
- consumers have sufficient information to make informed choices.

In particular, it seeks to improve the timeliness, responsiveness and transparency of food standards setting processes.

*OPTIONS*

Three possible options have been identified for achieving the government's objectives.

**Option 1 – Implement the food regulatory model recommended by the Blair Report**

The food regulatory model recommended by the Blair Report proposes amalgamation of at least the food export policy development function, and possibly the food export regulatory function, of AQIS with those of the current ANZFA. The functions of other Commonwealth agencies such as the National Registration Authority (for agricultural and veterinary chemicals) and the Therapeutic Goods Administration could also be amalgamated with ANZFA into a single national agency responsible for developing all food regulations/standards, operating within the Commonwealth Health portfolio.

ANZFA would continue to operate as a separate "unit" of the Health and Aged Care portfolio and would report to a new Council of Food Ministers. ANZFSC membership would be expanded to include representation from agriculture portfolios, that is, Agriculture and Fisheries Ministers. The Food Ministerial Council would make nationally agreed decisions on food regulatory policy proposals and proposals for the adoption of food regulations and standards developed by ANZFA.

**Option 2 – Implement the food regulatory model recommended by the Senior Officials Working Group on Food Regulation (SOWG) in its report to the Council of Australian Governments (COAG)**

The food regulatory model recommended by SOWG proposes a new, single Ministerial Council responsible for developing nationally agreed domestic food regulatory policy. The Ministerial Council would also develop policy guidelines for the setting of all domestic food standards. In addition to Health Ministers, jurisdictions would be able to nominate other Ministers with a portfolio responsibility for food regulation, for example, in the areas of primary industry, trade and small business, as members of the Ministerial Council. Local Government would also be represented on the Council. Formal, inclusive and cooperative consultative processes would be established by the Ministerial Council to facilitate coordination and streamlining of domestic and export food regulatory functions, including compliance and enforcement functions, and the harmonisation of export and domestic food standards.

Export food regulatory functions will remain with AQIS, in recognition of the different drivers for export regulation and standards and of the importance of the high international profile of AQIS. A single new, national domestic food standards development agency, Food Standards Australia New Zealand (FSANZ), based on the food standards development related functions of ANZFA and incorporating model best practice in food regulation, would replace ANZFA. COAG agreed that FSANZ would develop all domestic food standards, including those currently developed by ARMCANZ, in accordance with any developed Ministerial Council guidelines.

However, COAG did not specify details as to how these standards are to be developed. As primary production legislation is the responsibility of various State and Territory portfolios, there will need to be extensive discussions with Australian jurisdictions and relevant stakeholders including consumer and food industry representatives before the new Ministerial Council can decide upon a development process for these standards.

Accordingly, the expertise of the current members of ANZFA would be expanded to include expertise in the field of primary food production, small business, trade, government, and the administration of food In keeping with its whole-of-chain responsibility for the development of food standards, FSANZ would operate as an independent agency whilst remaining under the Commonwealth Health and Aged Care portfolio.

There would be no formal Ministerial Council approval process. Instead, in recognition of Ministerial accountability for public health and safety, the Ministerial Council would, within a set timeframe, request the review of existing or proposed standards and ultimately reject a proposed standard if a jurisdiction represented on the Council considers that it does not meet certain specified criteria. This would occur where the jurisdiction considers that the standard is not consistent with the Council's policy guidelines or the objectives of the legislation establishing FSANZ, or that the standard does not protect public health and safety, promote consistency between domestic and international food standards that are at variance, or provide adequate information to make informed choices. The Council would also request a standard be reviewed if a jurisdiction considers that it is difficult to enforce or comply with in practical or resource terms or places an unreasonable cost burden on industry or consumers.

In addition to existing consultative processes for food standards development, a new stakeholder consultative council or equivalent consultative mechanism established by the Council would provide the opportunity for stakeholder involvement in high level strategic decision making processes, including food regulatory policy and food standards development.

A formal, inclusive consultative and cooperative process (the Food Standards Implementation Sub-Committee) would be established under the new Council to progress the rationalisation of food regulatory functions, improvement of clarity and consistency of food regulatory approaches and harmonisation of domestic and export food standards and regulations.

**Option 3 – No change**

The current food regulatory system would continue to operate under the current inter-governmental agreement between the Commonwealth, States and Territories to develop nationally uniform food standards which is reflected in the 1996 Treaty with New Zealand to develop joint food standards. ANZFA and ANZFSC would continue to carry out their functions in accordance with the *Australia New Zealand Food Authority Act 1991* (the ANZFA Act). ANZFA would continue to develop and make recommendations to the Council on national domestic food standards and regulations for Australia and New Zealand and ANZFSC would continue to make decisions on the adoption of food standards and regulations. AQIS would continue to exercise its export food regulatory functions.

*IMPACT ANALYSIS*

*Impact group identification*

The groups likely to be significantly affected by the regulatory initiative include:

- government – Commonwealth, State and Territory and local and the Government of New Zealand

- food industry businesses – primary food producers, food manufacturers, food retailers, and food service providers supplying either the domestic or export market

- consumers/the general community.

*Assessment of costs and benefits*

**Option 1 – Implement the food regulatory model recommended by the Blair Report**

*Benefits*

The significant benefits to **government** relate to efficiencies achieved through improved coordination and interaction between Commonwealth, State and Territory and local government and the integration of food regulatory agency functions and food standards setting processes.

**Business** would benefit from cost savings and market advantages of a reduced food regulatory burden achieved by a simplified, integrated food regulatory system and food standards setting process.

**Consumers and the community in general** would also benefit from the passing down of these cost savings to business and from improved clarity and access to information on food regulation and food safety provided by a single national food regulatory agency.

*Costs*

The cost to **government** of making the necessary and fundamental changes to Commonwealth portfolio structures, functions and agencies to implement the system would be high. Once the new system is in place, the costs to government of retaining the formal Ministerial Council process of food standards approval would remain. Given the degree of change proposed by this option, implementation of the new system will take some time and will disrupt well established communication and operational networks between business, consumers and government, resulting in increased costs to government.

**Business** would bear increased costs and market disadvantage from the disruption of established information networks and to government operations. In moving the food export certification function from AQIS to ANZFA business would experience increased costs and market disadvantage due to uncertainty and delay caused by the disruption of the export certification arrangements. Overseas governments and business have a high level of confidence in AQIS export certification which could be undermined by this move. This would have a longer term impact on trade and therefore on food export businesses.

Given that export standards are developed to meet the requirements of overseas countries, integration of export and domestic food regulatory functions would not, of itself, reduce the costs of meeting different export and domestic food standards. Developing food standards could continue to involve the current costs and market disadvantages in relation to the time it takes for standards to be approved and the need to take into account broader considerations unrelated to public health and safety or economic impacts.

**Consumers and the community in general** would continue to bear the public health and safety impact of the time taken to set standards and the setting of inappropriate standards, as well as the impact of the costs of the standard setting process on business. The impact on government and business of the disruption of information networks and government operations during the transition period would therefore also be felt by consumers.

**Option 2 – Implement the food regulatory model recommended by SOWG in its report to COAG**

*Benefits*

The benefits to **government** relate to the efficiencies achieved through improved coordination and cooperation between Commonwealth, State/Territory and local government and industry and improved responsiveness delivered by the streamlining of the domestic food standards setting process.

Cost savings would also be derived from the simplification of food regulatory structures and increased transparency and improved decision making through the direct involvement of the proposed stakeholder consultative council in high level decision making processes and the greater focus on technical and economic factors in the standards development process achieved by the removal of the formal Ministerial Council approval process. The operation of the food standards development agency as an independent statutory authority would provide both business and government with further assurance that all interests are taken into account in the standards setting process.

**Business** would benefit directly from cost savings and market advantages achieved by a streamlined, more responsive food standards setting process. Cost benefits would also be gained from more appropriate food standards and regulations achieved by stakeholder input into high level food regulatory policy and standards development decision making processes, the cooperative and consultative process for rationalising food regulatory agency functions and harmonising export and domestic food standards, and the removal of the formal Ministerial Council approval of standards. An independent national domestic food standards agency would give primary producers more confidence that food standards relating to their operations will be reasonable and appropriate.

**Consumers and the community in general** would benefit from these cost savings to business and government and improved public health and safety outcomes delivered by a more responsive and technically focussed food standards setting process, the transparency provided by the increased involvement of consumers in high level strategic decision making processes and the increased clarity provided by a simplified food regulatory system.

*Costs*

Implementation of the SOWG model would be largely achieved by agreed formal and inclusive consultative and co-operative processes, together with some minimal structural changes. At Commonwealth level, **government** would bear the costs of establishing the secretariat and formal consultative processes supporting the operation of the Ministerial Council and the costs of establishing FSANZ as an independent authority with the increased responsibility for developing all domestic food standards.

**Business, consumers and the community in general** would bear to some extent the costs to government in effecting these changes. Those businesses which also export food would continue to bear the costs of dealing with two food regulatory agencies and different requirements for export and domestic product.

**Option 3 – no change**

*Benefits*

Retaining the current food regulatory system will not require any government action and will generate no additional costs to **government, business or the community in general**.

*Costs*

**Government, business and the community** will continue to bear the costs of the current inefficiencies of the current food regulatory system.

*CONSULTATION*

Extensive public consultation was undertaken with all stakeholders (government, industry, business, consumers and the community in general) in the process of developing the Food Regulation Review Report and its recommendations, which provide the basis for the development of the model for the new food regulatory system.
The model for the new food regulatory system referred to in option 2 was developed through a formal process established by COAG Senior Officials to develop a whole-of-government response to the Blair Report recommendations and involved consultation with all relevant Commonwealth and State/Territory Government Departments. This process included the consideration of submissions from the Agriculture, Fisheries and Health Ministerial Councils and from the Governments of all jurisdictions. The New Zealand Government was consulted in relation to New Zealand involvement in the new food regulatory system and implications for the Treaty between Australia and New Zealand. Key food industry organisations, representing all parts of the food supply, chain consumer and public health groups were informally consulted during the process of developing the model.

*CONCLUSION AND RECOMMENDED OPTION*

**Option 1** involves a high establishment cost to government. Its implementation will disrupt food regulatory arrangements that will generate further costs for government, as well as to business and consumers and the community in general. However, once it is in place, the new system would achieve a more efficient food standards setting process that would result in cost savings to government. In particular, it will increase the clarity and consistency in agency

roles and responsibilities and improve the efficiency of the food standard setting process by integrating all domestic and export food standards setting arrangements under a single agency and single Ministerial Council system.

It will reduce the duplication and overlap of food standards and regulations. It will not, however, keep food standards development focussed on economic and technical considerations. Because of this, option 1 will contribute to the inclusion of some inappropriate requirements in food standards which do nothing to enhance the protection of public health and safety. It depends on the simplified structure to ensure more inclusive consultation in government decision making, for example, by including primary industry Ministers on the Ministerial Council and by an industry-wide consultation network that ensures that all parts of the food supply chain will have the opportunity to provide their views in the development of food standards.

**Option 2** is the preferred option. It proposes an approach to food regulatory reform which will achieve a more efficient, transparent and responsive food standards setting process over time and, as such, it involves a small establishment cost to government compared with option 1 and will cause minimal disruption to food regulatory processes and hence to government, business and the community in general.

Like option 1, option 2 proposes a single Ministerial Council, but in this case it is more representative of food regulatory interests (it provides opportunity for primary industry, trade and small business interests to be included). It integrates domestic food standard development processes by incorporating primary industry food standard development under a single national domestic agency responsible for domestic food standards development across the whole food supply chain. In addition, it further improves the efficiency of the standards setting process by replacing the formal and lengthy Ministerial Council approval process with a review/reject mechanism that operates within a set timeframe.

Rather than integrate all food regulatory functions as a way of improving the efficiency of the food regulatory system, it proposes the establishment of formal and accountable consultative and co-operative mechanisms to improve the clarity, transparency and consistency of food regulatory approaches, progress the rationalisation of compliance and enforcement arrangements and facilitate the harmonisation of domestic and export food standards. In this way, for example, it recognises that the export food regulatory functions of AQIS are different and have different drivers and the importance to business and government of preserving the high international profile of AQIS. It also takes into account the rationalisation of food regulatory structures already being put in place by the States and Territories in their response to the Blair Report recommendations.

Option 2 includes a formal consultative process with all stakeholders in high level strategic decision making, in addition to the consultation process in relation to the development of standards, to ensure greater opportunity for involvement of industry, business and consumers in food regulatory policy, food standards development and enforcement and compliance decision making processes.

The proposals put forward in option 2 will improve the transparency, responsiveness and timeliness of the food standard setting process. They will do it over time and, therefore, with minimal disruption. By integrating domestic food standards setting processes, changing the role of the Ministerial Council in the standards setting process and introducing inclusive

consultative and co-operative mechanisms, option 2 would be more effective in improving the clarity and consistency in agency roles and responsibilities, the efficiency of the food standards setting process, ensuring appropriate food standards and regulations are made and increasing the transparency of decision making processes. Option 2 will, however, retain ministerial oversight of the standards-setting process as Ministers will be able to seek review of any standard that does not satisfy specified criteria and ultimately to reject such standards.

**Option 3** will not change the food regulatory system. It will, therefore, not achieve the efficiencies which would be achieved under options 1 or 2.

Option 2 will improve the transparency, timeliness and responsiveness of the food standards setting process with minimal cost impact and disruption and is, therefore, the recommended option.

*Implementation and review*

Option 2 will be implemented in four ways:

- by the Food Regulatory Agreement of 3 November 2000 between the Commonwealth, States and Territories under which COAG has agreed to the new food regulatory system developed in response to the Report of the Food Regulation (Blair) Review (the IGA);
- by this amending Bill that will establish the new statutory authority Food Standards Australia New Zealand and the new development process for standards other than primary product standards;
- by amendment of the Treaty between Australia and New Zealand establishing a System for the Development of Joint Food Standards made on 5 December 1995; and
- by the Ministerial Council developing the process for the development of standards relating to primary products in consultation with all relevant stakeholders. This may involve the need for further legislation.

Under the IGA, the Commonwealth has agreed to introduce legislation to make changes to the *Australia New Zealand Food Authority Act 1991*. The IGA includes provision for the Commonwealth, States and Territories to jointly conduct a review of the effectiveness of the agreement within 5 years of the agreement being signed.

**AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 2001**

**NOTES ON CLAUSES**

*Clause 1*

The first clause of the Bill provides a short title for the legislation.

*Clause 2*

Clause 2 provides for the commencement of the legislation. Clause 1 (the short title), clause 2 (the commencement provision itself), clause 3 (the commencement of the schedules to the Bill) and Part 3 of Schedule 1 (other technical corrections) will all commence on the day the Bill receives Royal Assent.

Part 2 of Schedule 2 makes a technical correction to fix up a minor incorrect reference to a provision of the Act that was made by the *Australia New Zealand Food Authority Amendment Act 1999*. It will be taken to have commenced immediately after that amending Act commenced.

The amendments to the Act (Part 1 of Schedule 1 to the Bill), and the consequential amendments to other Acts (Schedule 3 to the Bill), will commence on the day on which amendments to the Treaty between Australia and New Zealand made on 5 December 1995 establishing a system for the development of joint food standards ("the Treaty amendments") enter into force. As soon as possible thereafter, the Minister will notify the public of this date by a notice in the *Gazette*.

The amendments to the Act must be linked to the commencement of the Treaty amendments because The Treaty establishes an "Australia New Zealand Food Standards System" and under the Treaty both countries have agreed to adopt only food standards that have been developed under this system. The Treaty provides that the Australia New Zealand Food Standards System is "based on an extension of the existing Australian system". The "existing Australian system" is the current Australian food standards system. Under this system the Australia New Zealand Food Standards Council, upon the recommendation of the Australia New Zealand Food Authority, must adopt standards before they are adopted by all jurisdictions.

If the commencement of the legislation is not so linked, and the Treaty is not amended, both countries would be in breach of their obligations under the Treaty if they adopt standards developed under the new food regulatory system to be implemented by this legislation. COAG therefore agreed that those aspects of the new food regulatory system to be implemented under this legislation cannot commence until the Treaty is amended or replaced.

Australia and New Zealand have agreed that it would be preferable to amend the current Treaty to reflect the new food regulatory arrangements rather than replace the whole Treaty.

*Clause 3*

This clause provides that the *Australia New Zealand Food Authority Act 1991* and the other Acts specified are amended in accordance with their respective Schedules to the Bill.

## SCHEDULE 1 – AMENDMENT OF THE AUSTRALIA NEW ZEALAND FOOD AUTHORITY ACT 1991

### Schedule 1 – Part 1

*Item 1*

This item amends the long title of the Act to replace the reference to "an Australia New Zealand Food Authority" with "a body to be known as Food Standards Australia New Zealand". This is because the Bill establishes a new statutory authority, Food Standards Australia New Zealand, in place of the Australia New Zealand Food Authority (see item 20).

*Item 2*

This item amends the short title of the Act so that it will be cited in the future as the "Food Standards Australia New Zealand Act 1991".

*Item 3*

Section 2A specifies the object of the Act as being to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint Food Authority to achieve specified goals. This item replaces the reference to "a joint Food Authority" in section 2A with a reference to a "joint body to be known as Food Standards Australia New Zealand."

*Item 4*

This item replaces the reference to the "Council" in the definition of "Australia New Zealand Food Standards Code" ("the Code") with a reference to the term "former Council". This will ensure that a standard approved by the former National Food Standards Council or the Australia New Zealand Food Standards Council will still be a standard within the Code that may be amended in accordance with the procedure set out in the Act.

*Item 5*

This item inserts a definition of "Australia New Zealand Joint Food Standards Agreement" into the Act. It is defined to mean the Treaty (see item 2).

*Item 6*

This item substitutes a new definition of "Authority" into the Act. All references to "the Authority" in the Act will now mean Food Standards Australia New Zealand, not the Australia New Zealand Food Authority.

The name of the new Authority does not include the word 'authority' because the name Food Standards Australia New Zealand was specifically agreed to by COAG. There is precedent for this - other statutory bodies have been established that do not have the type of body included in their name, for example, Air Services Australia.

*Item 7*

This item inserts a new definition of "Board" into the Act. The Board will be defined to mean "the Board of the Authority".

Unlike ANZFA, the so-called "board members" of which are actually members of the Authority itself, FSANZ will have a formally established Board to conduct the affairs of the Authority. The arrangement is similar to that which applies to the Australian National Library and the Australian National Gallery. It implements the structure for FSANZ that was agreed to by COAG under the Food Regulation Agreement 2000.

*Item 8*

This item inserts a definition of "business day" into the Act. The term is used in section 25 regarding urgent applications and proposals (see item 81).

*Item 9*

This item inserts a new definition of "Council" into the Act. The "Council", for the purposes of the Act, will now mean the Australia and New Zealand Food Regulation Ministerial Council instead of the Australia New Zealand Food Standards Council. The Australia and New Zealand Food Regulation Ministerial Council is the new Council established by the Food Regulation Agreement 2000 (see Outline).

*Item 10*

This item inserts a definition of "develop" into the Act. A function of the new Authority is to develop standards and variations of standards. This definition explains what this means.

*Item 11*

This item deletes the definition of "Food Advisory Committee" from the Act. The Australia New Zealand Food Authority Advisory Committee will no longer exist under the new food regulatory arrangements. Under the new system, there will be a Standing Committee on Food Regulation to provide advice to the Ministerial Council in undertaking its policy development role. There will also be an implementation committee to assist the Food Regulation Standing Committee (see Outline). The implementation committee will develop guidelines on food regulations and standards enforcement activities aimed at achieving a consistent approach across jurisdictions to the way regulations and standards are interpreted and enforced.

Section 43 of the Act also provides the Authority with the capacity to establish other committees to assist it in carrying out its functions, to be exercised in accordance with any directions of the Ministerial Council (see item 132).

*Item 12*

This item inserts a definition of "Food Regulation Agreement 2000" into the Act. This is the Inter-Governmental Agreement signed by COAG on 3 November 2000 that sets out the framework for the new food regulatory system.

*Item 13*

This item inserts a definition of "former Council" into the Act. A "former Council" means either the former Australia New Zealand Food Standards Council or the former National Food Standards Council. The term is used in the definition of "Australia New Zealand Food Standards Code".

*Item 14*

This item substitutes the word "Board" for the word "Authority" in the definition of "member" in the Act. A reference to a "member" in the Act will now be to a member of the Food Standards Australia New Zealand Board, not to a member of ANZFA.

*Item 15*

This item inserts a definition of "New Zealand lead Minister on the Council" into the Act. This definition is necessary because it is this Minister who nominates the New Zealand members of the Board (see item 118).

*Item 16*

This item includes in the definition of "standard" a standard made under the Act after the commencement of this Schedule. This is necessary to include as "standards" within the meaning of the Act any standards that are made under the new food regulatory arrangements, that is, standards that are not adopted by a former Council, and standards that will not be included in the Australia New Zealand Food Standards Code.

*Item 17*

This item changes the reference to the "Council" in the definition of "standard" to a reference to the "former Council".

*Item 18*

This item substitutes a new subsection for subsection 3(2). It makes clear that the reference to the "amendment of the standards in (the Code)" in the definition of the "Australia New Zealand Food Standards Code" has always enabled the insertion, revocation or substitution of a standard in that Code. It also makes clear that the capacity to vary a food regulatory measure (that is, a standard or a code of practice) has always included the capacity to revoke such a food regulatory measure.

*Item 19*

This item makes a very minor change to the heading to Part 2.

*Item 20*

This item amends subsection 6(1) to deal with the transition from the current corporate governance arrangements to the new corporate governance arrangements. The body known as ANZFA will be continued in existence as Food Standards Australia New Zealand. This approach, which involves “recycling” the corporate shell of ANZFA, is much simpler to create legally than a new body corporate. It is also considerably less expensive. Food Standards Australia New Zealand will have a different corporate structure to ANZFA.

A note will also be inserted into the Bill referring to section 25B of the Acts Interpretation Act. That section sets out the effect of an alteration by an Act to the name of a body and to the constitution of a body.

*Item 21*

This item amends the function specified in paragraph 7(1)(a) of the Act to make clear that a function of the Authority is to develop standards and also to review standards. This amendment is necessary because under the new food regulatory arrangements the Authority is charged with developing food standards, not with the development of draft standards for adoption by a Ministerial Council as is ANZFA under the current system. The amendment also reflects the fact that the new Authority must review proposed or existing standards if requested by the new Council.

*Item 22*

This item omits the word “draft” wherever it occurs in paragraph 7(1)(b). The new Authority will not be developing ‘drafts’ of codes of practice; it will be developing codes of practice.

*Item 23*

This item provides the Authority with a new function: such other functions as are conferred upon it by the Act.

*Item 24*

This item inserts a new subparagraph 9(1)(a)(ia). That part of current paragraph 9(1)(b) that provides that a matter that may be included in standards and variations of standards is the maximum or minimum amounts of additives that must or may be used in the preparation of food fits better within subsection 9(1)(a), as that paragraph deals with the composition of food, and additives are components of food.

*Item 25*

This item amends paragraph 9(1)(b) to delete “additives” as a matter about which standards may be made, as that matter will be included in new subparagraph 9(1)(a)(ia).

*Item 26*

This item omits the references to packaging and storage of food as matters about which standards or variations of standards may be made. This is because they are included in the new definition of “handling” (see below).

*Item 27*

This item omits the references to “dealing with” in paragraphs 9(1)(e), (f) and (g) because the accepted terminology within the domestic food regulatory industry is that food is “handled”, not “dealt with”. The definition of “dealing” will therefore be deleted (see item 32 below). The current term “dealing” causes confusion as it is currently defined to incorporate matters that are usually thought of as part of the handling of food.

*Items 28 - 31*

These items replace all the references to dealing with food within paragraphs (i)(i), (i)(ii), (j) and (m) of subsection 9(1), with references to handling food, for the reason given in item 27 above.

*Item 32*

This item substitutes a new subsection for subsection 9(3). It replaces the definition of the term “dealing” with a definition of the term “handle”. “Handle” is defined to mean, in relation to food, as including produce, collect, receive, store, serve, display, package, transport, dispose or recall food. This definition captures the matters set out in the definition of “handle” in the Model Food Bill which was part of the Intergovernmental Agreement signed by COAG. An editorial note is also included under this definition to remind the reader that “produce” is defined in subsection 3(1) as including “prepare” and “prepare” as including “process, manufacture and treat”. The Macquarie Dictionary definition of the term “package” ensures that it includes “pack”.

This inclusive definition is designed to ensure that all aspects of handling food are matters about which the Authority may develop standards. The inclusion of the term “collect” in the definition does not exclude other similar activities being part of the “handling of food”, for example, harvesting, gathering or slaughtering. This term was chosen as representative of that aspect of the food supply chain. In addition, the inclusive nature of the term is also designed to ensure that the natural meaning of the term ‘handle’ is preserved.

*Item 33*

This item is a transitional provision that makes clear that the above amendments to the matters about which standards may be made do not affect the validity of standards or codes of practice in force immediately before the commencement of the transitional provision.

*Item 34*

This item amends the section that sets out the objectives of the Authority when developing or varying standards or codes of practice (section 10) to require the Authority to take the

objectives into account not only when developing or varying standards or codes of practice, but also when reviewing them.

The item also amends the heading to section 10 accordingly.

*Item 35*

This item makes a minor amendment by omitting “food.” in paragraph 10(1)(d) and substituting “food;”.

*Item 36*

This item includes in subsection 10(2) an additional matter to which the Authority must have regard when developing food regulatory measures and variations of food regulatory measures - any written policy principles formulated by the Council that it notifies to the Authority. This item was amended in the Senate. It previously provided that the Council would formulate policy guidelines, in accordance with the COAG decision that the Council was to develop policy guidelines for the guidance of FSANZ when it develops food standards. ANZFA currently does not have to have regard to ministerial guidelines.

Although the Food Regulation Agreement 2000 provides that Food Standards Australia New Zealand is to develop standards “in accordance with” any policy guidelines set down by the Council, the Bill as introduced provided that the Authority must “have regard to” such policy guidelines. This arrangement was retained in relation to policy principles. This is because policy principles are not directions as to how particular decisions are to be made, but principles to be taken into consideration when making decisions.

*Item 37*

This item inserts new subsections (3) to (5) into section 10. New subsection (3) provides that the Authority must publish any policy principles formulated by the Council for the purposes of paragraph 10(2)(e) on the Internet.

New subsections 10(4) and (5) were included by Senate amendment. They will enable the Authority to provisionally adopt sanitary and phytosanitary measures on the basis of available pertinent scientific information. These measures will be adopted by the Authority only where the Authority itself considers that the best available scientific evidence is insufficient. The wording of these new provisions is consistent with that of the World Trade Organisation’s Agreement on the Application of Sanitary and Phytosanitary Measures.

*Item 37A*

This item inserts a new section 10AA into the Act. This new section was a Senate amendment. It provides the Council with the authority to issue policy principles in relation to the development of food standards. It also provides that these policy principles will be disallowable instruments for the purposes of the Acts Interpretation Act 1901. This means that they will be disallowable by either the Senate or the House of Representatives.

*Item 38*

This item inserts a new Division 1 into the Act before current Division 1 of Part 3 (current Division 1 of Part 3 will become new Division 2 of Part 3 – see Item 39). New Division 1 consists of two sections only – sections 11A and 11B. Section 11A will set out a simplified explanation of the process for the development or variation of standards. Section 11B inserts relevant definitions of terms used in Part 3.

*Item 39*

This item substitutes a new heading for Division 1 of Part 3 of the Act.
The new heading indicates that this Division (to now be Division 2) sets out the process to be used for the development and variation of food regulatory measures as a result of both applications and proposals.

New Division 2 merges the processes currently used by ANZFA to develop food regulatory measures as a result of an application by a body or a person, or as a result of a proposal raised by ANZFA itself. At present, the processes are set out in separate Divisions in Part 3 – Division 1 and Division 2. Current Division 2 will be deleted (see item 81).

As the process is substantially the same, the current separation into two Divisions is not necessary. The new Authority will follow the process set out in the one Division (Division 2) for the development of these measures, whether or not the impetus for their development is an application or a proposal.

*Item 40*

This item omits the word “preliminary” from subparagraph 12(2)(c) and replaces it with the word “initial”. This has the effect of changing the reference to “the preliminary assessment” to a reference to “the initial assessment”. A number of similar changes have been made elsewhere to references in other sections to this and other stages of the food regulatory measure development process.

This is because the names of the three stages of development of food regulatory measures and variations of those measures will be changed. ANZFA has consulted with stakeholders and the result of that consultation is that the following terms more accurately describe the actual stages of the process:

- “Initial Assessment” instead of “Preliminary Assessment”
- “Draft Assessment” instead of “Full Assessment”
- “Final Assessment” instead of “Inquiry”.

*Item 41*

This item inserts a new section 12AA after section 12. The new section provides that the Authority may prepare a proposal for the development or variation of a food regulatory measure, and that the proposal must be in writing. This new section is similar to current section 21.

*Item 42*

This item amends section 12A to make clear that the application that an applicant may withdraw is the applicant's own application.

*Item 43*

This item repeals paragraphs 12A(1)(a) and (b) and substitutes new paragraphs. The changes are necessary because the Authority, unlike ANZFA, will not be making recommendations to the Council that it adopt, adopt with amendments, or reject a draft standard or variation. Instead, Food Standards Australia New Zealand will be approving standards itself, and the Council will be able to have them reviewed by the Authority, or reject them, if it considers they do not meet the criteria specified in the Food Regulation Agreement 2000.

*Item 44*

This item changes the reference to "the full assessment" in paragraph 12B(2)(a) to a reference to "the draft assessment" (see item 40).

*Item 45*

This item replaces the reference to "holding an inquiry" in paragraph 12B(2)(e) with a reference to "making a final assessment" (see item 40).

*Item 46*

This item replaces the references to "preliminary" in section 13 with references to "initial". A note is inserted also altering the heading in the same way (see item 40).

*Item 47*

This item amends section 13A by replacing the word "preliminary" with the word "initial", and makes similar changes to the heading to that section (see item 40).

*Item 48*

This item amends paragraph 13A(2)(b) by replacing the word "preliminary" with the word "initial" (see item 40).

*Item 49*

This item amends paragraph 14(3)(b) by replacing the words "a preliminary" with the word "an initial" and changes the heading to section 14 to make clear that it deals with the Authority inviting submissions about applications.

*Item 50*

This item amends paragraph 14(3)(c) to replace the word "full" with the word "draft" (see item 40).

*Item 51*

This item inserts a new section 14A after section 14. The new section is similar to current section 22 except that it refers to a “draft assessment” instead of to a “full assessment” (see item 40). It has been included in new Division 2 because that Division will set out the development process for food regulatory measures that are a result of both applications and proposals.

*Item 52*

This item replaces the word “full” wherever it occurs in section 15 with the word “draft” and makes similar changes to the heading to that section (see item 40).

*Item 53*

This item inserts new section 15AA after section 15. The new section is similar to section 23, except that it refers to a “draft assessment”, not a “full assessment” (see item 40), and does not include an equivalent to subsection 23(3), as that is positioned beneath the equivalent provision in relation to applications (see item 55 below).

*Item 54*

This item replaces the word “full” wherever it occurs in section 15A(1) with the word “draft” and makes similar changes to the heading to that section (see item 40).

*Item 55*

This item inserts a new subsection 15B after section 15A. The new section is equivalent to current subsection 23(3).

*Item 56*

This item amends paragraph 16(1)(a) to make clear that section 16 only applies to draft food regulatory measures prepared as a result of an application. It is necessary because new Division 2 will apply to both applications and proposals (see item 39) and a distinction needs to be made that the Authority can only charge for applications. A similar amendment is made to the heading to section 16.

*Items 57 - 63*

These items amend various paragraphs that refer to the holding of an inquiry so that they refer instead to the making of a final assessment (see item 40).

*Item 64*

This item amends paragraph 17(1)(a) in a similar way to the amendment made by item 56 to paragraph 16(1)(a) and for the same reasons.

*Items 65 – 67*

These items amend various paragraphs that refer to the holding of an inquiry so that they refer instead to the making of a final assessment (see item 40).

*Item 68*

This item inserts a new section 17AA after section 17. The new section is similar to current section 24. It is necessary because new Division 2 will now apply to both applications and proposals (see item 39).

*Item 69*

This item inserts a new section 17AB after section 17A that is equivalent to section 25 (see item 39).

*Item 70*

This item amends subsection 17B(1) so that it refers to the making of a final assessment instead of to holding an inquiry (see item 40).

*Item 71*

This item amends paragraph 17B(3)(a) to make clear that the Authority need only notify the applicant of its decision in relation to a code of practice if the relevant draft code of practice was the result of an application.

*Item 72*

This item inserts after paragraph 17B(3)(c) a new paragraph (aa) that ensures that the Authority must provide the Council with written notice of its decision to approve or reject a code of practice.

*Item 73*

This item inserts a reference to section 14A into paragraph 17B(3)(c). This insertion ensures that the Council, when approving or rejecting a code of practice, must also notify any body or person who made a submission in response to a notice inviting submissions about a proposal to develop such a code. Section 17 will now deal with notification in relation to decisions made about codes of practice developed as a result of both applications and proposals. This is necessary because the current section 25A will no longer exist as current Division 2 will be deleted (see item 81).

*Item 74*

This item repeals section 18 and substitutes a new section 18. The new section 18 provides that after the Authority has made a final assessment in relation to a draft standard or variation of a standard, it must approve the draft, approve it subject to amendments, or reject the draft.

This process is different to the current process whereby ANZFA recommends to the Council that it adopt a draft standard or variation that ANZFA has prepared, adopt it with amendments, or reject it. Under the new process, the Authority itself will develop and approve standards and variations of standards. The Council will be able to request up to two reviews of such a food regulatory measure, and will then be able to amend or reject it, provided it considers that the standard or variation as finally approved by the Authority still does not meet one or more of the criteria specified in clause 3(e) of the Food Regulation Agreement 2000.

The item also inserts a note that reminds readers that the Board cannot delegate its powers to act on behalf of the Authority under this important section.

*Item 75*

This item amends subsection 19(1) so that it refers to the making of a final assessment instead of the holding of an inquiry, and makes similar changes to the heading to that section (see item 40).

*Item 76*

This item amends paragraph 19(1)(a) to make clear that the Authority need only give notice of the outcome of a final assessment to an applicant if the relevant draft standard or variation was the result of an application by the applicant.

*Item 77*

This item amends paragraphs 19(1)(c) and (d) so that they refer to sections 16, 17 and 17AA. This amendment is necessary so that bodies or persons other than an applicant or appropriate government agencies who made submissions to final assessments made in relation to a draft standard or variation that was the result of a proposal are notified. Section 19 will now deal with notification in relation to the outcome of final assessments concerning standards and variations of standards developed as a result of both applications and proposals. This is necessary because the current section 27 (regarding notification of the outcome of proposals) will no longer exist as current Division 2 of Part 3 will be deleted (see item 81).

*Item 78*

This item amends paragraph 19(2)(a) to take account of the fact that the Authority will no longer be making recommendations to a Ministerial Council, but instead will be notifying the Council of decisions it makes in relation to the approval or rejection of draft standards.

*Item 79*

This item amends paragraph 19(2)(b) to refer to a “decision” of the Authority instead of a recommendation of the Authority (see reasoning at item 78).

*Item 80*

This item substitutes a new section for section 20. The new section lists the things that the Authority must provide to the Council if it approves a draft standard or variation when it notifies the Council of that approval.

The notification provided by the Authority to the Council will act as a 'trigger' for the Council to examine the draft to see if it wishes to request a review.
The Council may direct the Authority to provide it with additional information to enable it to make a decision about the draft. The direction does not have to be in writing but may only be made if the Council has made a resolution to make the direction.

The Authority must also publish on the internet a copy of all draft standards or variations that it has approved and has notified, or will shortly notify, to the Council together with an explanation of how the Council may deal with the approved standard. This will enable interested persons to follow the progress of the standard or variation through the Council process.

*Item 81*

This item repeals current Divisions 1A, 2 and 2A of Part 3 of the Act, and substitutes new Divisions 3, 4 and 5.

*New Division 3* sets out what is to happen if the Council requests a review of any draft standard or variation approved by the Authority.

New Section 21 sets out how the Council can request a first review of an approved draft standard or variation. It obliges the Council, within the stated timeframe, either to request a review or inform the Authority that it does not intend to request a review. In accordance with the Food Regulation Agreement 2000, the Council must request FSANZ to review a proposed standard (including a variation) or an existing standard if any jurisdiction represented on the Council considers that one or more of the criteria specified in item 3(e) of that Agreement applies to the standard. Under new subsection 21(5) (see below) the Authority must accede to the request.

A decision to notify the Authority that the Council does not propose to request a review of a standard would need, in accordance with the ordinary quorum for decisions by the Council, to be supported by a simple majority of all jurisdictions.

This arrangement was included by Senate amendment. It is different to the arrangement specified in the Food Regulation Agreement (and in section 21 as introduced) for such standards. The arrangement originally proposed was that the Authority could proceed to publish such a standard if 60 days had passed after Council was notified of the standard, even if all jurisdictions had not responded within those 60 days.

Any review requested by the Council (including a second review) is to be conducted by the Authority in any way it considers appropriate, subject to any directions provided by the Council, and within three months unless the Council specifies another longer period. The

Council could, for example, direct the Authority to consult in a particular way (for example, by holding a public hearing) or with certain stakeholders.

The Authority, after completing the review, can decide to re-affirm its approval of the draft, re-affirm it with amendments, or withdraw its approval.

Subsection 21(7) makes clear that the Council has to comply with the rules set out in the Food Regulation Agreement 2000 when making decisions in relation to standards.

The Council will also request a review if the New Zealand lead minister considers either those criteria, or the two additional criteria specified in the Treaty as amended, apply to the standard or variation.

New Section 22 specifies what happens if the Council requests a second review. The process is the same. However, the Council can only inform the Authority that it does not intend to request it to review a standard if a majority of the jurisdictions on the Council have responded to the effect that the Authority is not to review the draft. The Authority will only review a standard a second time if a majority of the jurisdictions represented on the Council indicate that they wish such a review.

New section 23 provides that the Council may amend or reject a standard that has been reviewed twice. However, if the Council wants to amend the standard, it is to provide the Authority with an opportunity to submit a draft of the text of any amendment to be made. The Council does not have to agree to the proposed text. The opportunity for the Authority to provide such text will ensure that any Council approved amendments to a standard or variation will be consistent with the language and style of the remainder of the Code. It will also enable the Council to take account of other relevant matters in the Code that may have an impact on the draft concerning which the Council may not be aware.

The section also provides that if the Council rejects a draft standard or variation after a second review, it must prepare a notice setting out its decision, and the reasons for that decision. It must then provide a copy of the notice to the Authority and publish it on the Internet.

*New Division 4* sets out how a standard or variation is to be published.

New section 23A provides that a standard or variation that the Council has informed the Authority it will not review, amend or reject, is to be published by the Authority as soon as practicable. It also provides that the Authority is to publish a standard that the Council has amended. Publication comprises publishing notice of the standard in the Gazettes of Australia and New Zealand and making the notice and the text of the standard available for inspection by the public and on the Internet.

New subsections 23(4) and 23(5) are explanatory provisions. The first explains what is meant by “made under this Act” and the second explains the effect of the use of the phrase “draft as so amended” on other sections. Subsection 23(5) is also replicated in subsection 26(5) in relation to standards developed urgently.

*New Division 5* sets out the procedure to be followed in relation to urgent applications and proposals. This procedure replaces the procedure currently followed by ANZFA in relation to the development of standards or variations to be developed as a matter of urgency (the "section 37 standards").

It was considered appropriate that the only type of standards or variations that should be able to be developed by the new Authority under the shortened process specified in Division 5 should be those that are necessary to be developed urgently in order to protect public health and safety. The wording of new section 24 therefore differs from the current section 37, which provides that standards developed under that section can be developed "in order to avoid compromising the objectives set out in section 10". Safeguards are built into the Division to ensure that adequate consultation is still to be undertaken in relation to these standards (see below).

New section 24 provides that if the Authority considers it appropriate to do so to protect public health and safety, it can declare that a specified application or proposal is urgent and therefore the provisions of Division 5, and not most of those of the other Divisions of Part 3, apply to its development. Such a declaration is to be published by the Authority on the Internet and, because of amendments made to this section in the Senate, also in a newspaper circulating in each State or Territory and in New Zealand.

New section 25 sets out how a draft standard or variation is to be prepared in relation to an urgent application or proposal. It also provides that the Authority must publish on the Internet a copy of the draft and a notice inviting interested persons to make written submissions to the Authority in relation to the draft.

The Internet is the primary source of information for industry and consumer bodies regarding the development of food standards by ANZFA. It is expected that this will continue to be the case for standards developed by FSANZ. The ANZFA website is visited regularly by these and other stakeholders. FSANZ is to conduct an information exercise to remind stakeholders that they should visit this website regularly, and to inform them that any declarations FSANZ makes in relation to urgency standards, and related notices inviting submissions, will be published on the Internet and in newspapers.

Interested persons will have 10 business days to make submissions, unless the Authority specifies a shorter period. The Authority would generally only specify a shorter period in circumstances where a shorter period is necessary to enable the standard to commence very quickly in order to protect public health and safety.

New section 26 provides that the Authority must give due regard to any written submissions it receives about the draft standard before approving, amending or rejecting it. It then specifies how the Authority is to gazette the standard and provide notice of the standard on the Internet and in newspapers.

New section 27 provides that the Authority, after preparing an urgent standard or variation, must complete a final assessment in relation to that draft as soon as practicable, and in any event within twelve months. This provision is similar to the current system under which ANZFA must complete an inquiry into a previously adopted standard that was developed as a matter of urgency. However, it differs from that system in that it mandates a timeframe for completion of that stage of consultation.

New section 28 provides that after completing a final assessment in relation to an urgent standard or variation, the Authority must decide to re-affirm the standard or variation, prepare a proposal for a variation, or further variation of the standard, or a replacement standard. In the meantime, the urgent standard or variation will remain in force, until it is varied or replaced following completion of the usual proposal process.

The Council may direct the Authority to provide it with additional information to enable it to make a decision about the draft. The direction does not have to be in writing but may only be made if the Council has made a resolution to make the direction.

New sections 28A and 28B deal with a request by the Council for a first review of a re-affirmed urgent standard or variation, and a second review of such a standard or variation, respectively. The normal processes for a first review request also apply to a second review request.

Two notes are inserted after both these sections that make it clear that the Board cannot delegate its powers under these subsections, and noting the existence of section 28D that deals with the situation where the Authority does not re-affirm the standard or variation but decides to raise a proposal instead.

New section 28C provides that the Council may revoke or amend an urgent standard or variation after a second review has been completed by the Authority. The process is the same as if the Council had decided to amend or reject a non-urgent standard or variation after a second review, except that the Council has the power to revoke, rather than to reject, as the standard (because it was developed as a matter of urgency) is already in force. The Council is to provide the Authority with an opportunity to submit to the council a draft of the text of any amendment to be made by the Council. The Council does not have to agree to that proposed text.

The opportunity for the Authority to provide such text will ensure that any Council approved amendments to the standard or variation will be consistent with the language and style of the remainder of the Code. It will also enable the Council to take account of other relevant matters in the Code that may have an impact on the draft concerning which the Council may not be aware.

Section 28C also provides that if the Council revokes or amends a draft standard or variation after a second review, it must prepare a notice setting out its decision, and the reasons for that decision. It must then provide a copy of the notice to the Authority and publish it on the Internet and in newspapers.

New section 28D sets out how the system is to operate for variations or replacements of standards developed as a matter of urgency. The full proposal process does not have to be followed. Instead, the Authority only has to conduct one round of consultation and and publish in newspapers and on the Internet a notice setting out its decision that it is appropriate to deal with the variation or replacement standard under the arrangements applicable to the development of urgency standards.

This shortened process may only to be followed if the Authority is still of the view that the variation or replacement standard needs to commence urgently in order to protect public health and safety.

*Item 82*

This item substitutes a new heading for Division 3 of Part 3: “Division 6 – Miscellaneous”.

*Items 83 - 86*

See discussion at item 40.

*Item 87*

This item inserts a new subsection (3) into section 30A to make it clear that the requirements of section 30A in relation to notification do not apply to notices that the Authority is to provide to the Council in relation to the approval of standards.

*Item 88*

This item repeals section 31. This is because under the new food regulatory system the Council will not be able to return a draft standard to the Authority for reconsideration. Instead, it may request the Authority to review a standard, or eventually reject a standard.

*Item 89*

This item repeals section 32. This is because under the new food regulatory system the Council will not be adopting draft standards or variations, and the procedure for publication of the standards and variations of standards approved by the Authority is dealt with in new Division 4 of Part 3.

*Items 90 – 92*

These items amend section 33, which deals with the review of food regulatory measures. The new section implements the requirement of the Food Regulatory Agreement 2000 that the Council can request the Authority to review an existing standard. An existing standard means a standard in the Code as at the time of the request.

The procedure for review of such a standard is the same as the procedure for a review requested by the Council of a proposed standard or variation. After completing the review, the Authority may decide to prepare a proposal for the development of a food standard or variation. The Council can only request one review of an existing standard.

*Items 93 -94*

See discussion at item 40.

*Item 95*

This item amends subsections 35(1) and (1A) so that they refer to decisions under section 18 instead of to “recommendation to the Council”. This is because, unlike ANZFA, the Authority will not be making recommendations to the Council.

*Item 96*

This item makes a minor amendment to the work plan arrangements for FSANZ in relation to the time limit for FSANZ to deal with certain applications allocated in the work plan. This amendment rectifies an unintended consequence made by the current wording of this section.

*Item 97*

This item omits the reference to making a recommendation in subsection 35(2) as the Authority, unlike ANZFA, will not be making recommendations to the Council.

*Items 98 -102*

See discussion at item 40.

*Item 103*

This item substitutes the reference to section 21 in paragraph 36(1)(b) with a reference to section 12AA. Proposals will now be prepared under that section as both applications and proposals will be prepared in accordance with the process specified in Division 2 of Part 3.

*Item 104*

This item amends subsection 36(1A) to enable the Authority to omit the draft assessment stage in relation to an application or proposal if it is satisfied that to do so will not have a significant adverse effect on the interest of anyone, or the application or proposal raises issues of minor significance or complexity only.

This differs from the current situation whereby ANZFA can omit to conduct the inquiry stage in relation to these types of applications and proposals. Under the new arrangements FSANZ will be conducting more thorough final assessments than the inquiries now conducted by ANZFA. The ability of the Authority to omit the final assessment (inquiry) stage should therefore be changed so that it can instead omit the less significant draft (full) assessment stage in the circumstances specified above.

*Items 105 - 109*

These items substitute references to certain sections that have been repealed with references to their equivalent sections under the new food regulatory system set out in the legislation.

*Item 110*

This section repeals section 37 that sets out how ANZFA develops “urgency standards”. A new system for the development of these standards is set out in new Division 5 (see item 81).

*Item 111*

This item substitutes references to members of the Authority with references to a "member of the Board" (see discussion at item 7).

*Item 112*

This item amends paragraph 39(4)(c) to enable the Chief Executive Officer of the Authority to disclose confidential commercial information to bodies as well as persons to whom he or she thinks is expressly or impliedly authorised to obtain that information. This would enable the CEO, for example, to disclose it to committees that may be established to assist ANZFA, but only if the CEO thinks that they are authorised to obtain it.

*Item 113*

This item repeals the definition of "committee" in subsection 39(11) because the Food Advisory Committee will no longer exist in the new food regulatory system (see discussion at item 11).

*Item 114*

This item substitutes a new heading for the heading to Part 4. The new heading refers to the Board instead of to the Authority. This reflects the structure of FSANZ, which has a different structure to ANZFA (see discussion at item 7 and item 20).

*Item 115*

This item substitutes a new heading for the heading to Division 1 of Part 4 to refer to the Board, not to meetings of the Authority (see discussion at item 7).

*Item 116*

This item inserts a new section 39 into the Act. The new section establishes a Board of the Authority. Unlike ANZFA, the "board members" of which are actually members of the Authority itself, FSANZ will have a formally established Board to conduct the affairs of the Authority. The arrangement is similar to that which applies to the Australian National Library and the Australian National Gallery. It implements the structure for FSANZ that was agreed to by COAG under the Food Regulation Agreement 2000.

*Item 117*

This item amends subsection 40(1) and the heading to section 40 to refer to the Board, not the Authority (see discussion at item 116).

*Item 118*

This item amends section 40 to provide that the Board will have twelve members. This item reflects amendments that were made in the Senate. The previous version of the item as introduced into the Senate implemented the COAG decision reflected in the Food Regulation Agreement 2000 that the Board was to have a maximum of ten members.

The Board of the Authority will have twelve members: the Chairperson, the Chief Executive Officer, two members nominated by the New Zealand lead Minister on the Council, a member nominated by consumer organisations, a member nominated by the National Health and Medical Resource Council, four members nominated by scientific and public health organisations and two members nominated by food industry organisations or public bodies. All members (other than the CEO) must have expertise in one or more of the areas specified in item 120 of the Bill (see below).

The current mandatory requirement that one of the members of the ANZFA Board be an officer of a State or Territory authority with responsibility for matters relating to public health has not been retained. The membership of the Food Regulation Standing Committee, and the Implementation Sub-Committee (see Outline), will ensure these authorities have adequate input into the new food regulatory system. The requirement for a member nominated by the NH&MRC will also ensure that public health views are adequately considered by the Ministerial Council and the Authority. The new Board will not have special purpose members.

Under the *Commonwealth Authorities and Companies Act 1997*, a "director" means, for a Commonwealth authority that has a council or other governing body, a member of the governing body. This definition would apply to the members of the Board. The Board members will therefore have to comply with all the obligations placed on directors by that Act.

*Item 119*

This item deletes subsection 40(2) and inserts new subsections into section 40. The new subsections provide that the Minister is to appoint all members of the Board except for the Chief Executive Officer, who is to be appointed by the Board (see item 146 below). The Minister is only to appoint these persons (except the two persons nominated by the New Zealand lead minister) with the agreement of the Council. The appointments of the two New Zealand members of the Board do not have to be agreed to by the Council. This is because New Zealand wished the current arrangements, whereby the New Zealand members of ANZFA are simply appointed by the Australian Minister on the nomination of the New Zealand Health Minister, to be reflected in the new arrangements.

New subsection 40(2) ensures, however, that the Minister must consult the Council in relation to the proposed appointments of the New Zealand members of the Board.

*Item 120*

This item repeals subsections 40(3) and 40(4) and inserts new subsection 40(3). New subsection 40(3) ensures that the Board of the new Authority will have a wider range of expertise than do the current members of ANZFA because over time it will be dealing with a wider range of food standards. Additional areas of expertise that currently do not have to be represented on ANZFA but that may be included on the new Board are consumer affairs (instead of "consumer rights"), food allergy, medical science, microbiology, food safety, biotechnology, veterinary science, the food industry, food processing, primary food production, small business, international trade, government and food regulation. The current

reference to “experience” has been removed because the Food Regulation Agreement 2000 only refers to “expertise”.

Amendments have been made to this item in the Senate. The areas of expertise originally proposed for Board members reflected the areas of expertise listed in the Food Regulation Agreement 2000.

*Item 120A*

This item is a transitional provision that enables the regulations that are needed to list the scientific, public health and food industry organisations, as well as the public bodies, that will nominate persons for selection to the Board to be made before the food regulatory reforms included in the Bill commence. This will enable the membership of the new Board to be decided upon before the new arrangements commence. This provision will commence when the Bill receives Royal Assent (see item 2).

*Item 121*

This item makes a minor amendment to subsection 40(5) to refer to a new paragraph.

*Item 122*

This item repeals subsection 40(6) as there will not be special purpose members on the Board.

*Item 123*

This item substitutes the word “Board” for the word “Authority” wherever it appears in subsections 40(9) (see discussion at item 116).

*Item 124*

This item is a transitional provision for the new Board. It terminates the appointments of the current members of ANZFA. Appointments will be made in accordance with the new requirements.

*Item 125*

This item deletes the reference in subsections 41(1) to special purpose members. The new Board will not have special purpose members.

*Item 126*

This item provides that a FSANZ Board member will hold office for a fixed period of four years. This is different to the current situation whereby ANZFA board members hold office for “the period, not exceeding five years, specified in the instrument of appointment”. In practice, most ANZFA Board members hold office for three years.

*Item 127*

This item repeals subsection 41(3) as it deals with the appointment of special purpose members and the new Board will not have special purpose members.

*Item 127A*

This item provides that a FSANZ Board member can only be appointed for two terms.

*Item 128*

This item adds a new subsection (5) at the end of section 41 that will allow the Board to have a full complement of members in cases where there may be a delay in appointing a new member, or extending the appointment of a current member. The provision enables a current member of the Board to continue in office for a maximum period of six months after his period of appointment is completed. The provision could be used, for example, if it takes some time for the Ministerial Council to agree to an appointment. The new subsection ensures that the member can only continue in office after the expiry of the period of his or her appointment for a maximum of six months, that is, until the Minister makes a decision regarding the reappointment of the member.

The item also ensures that the Minister cannot appoint a person as the Chairperson of the Authority if, in the two years prior to the appointment, the person has worked for or has had pecuniary interests in a body corporate whose primary commercial activity related directly to the production or manufacture of food.

*Item 129*

This item repeals section 42. Section 42 deals with the Australia New Zealand Food Authority Advisory Committee. This Committee will no longer exist under the new food regulatory arrangements (see discussion at item 11).

*Item 130*

This item substitutes the references in section 43 to the Authority with a reference to the Board. The Board will decide whether or not to establish committees to assist it in carrying out its functions.

*Item 131*

This item amends the heading to section 43 to no longer refer to the Food Advisory Committee (otherwise known as the Australia New Zealand Food Authority Advisory Committee).

*Item 132*

This item includes new subsections at the end of section 43. The effect of these subsections is that the Council may provide directions to the Authority in relation to its exercise of powers regarding the establishment of committees under section 43, and the directions it may give to those committees.

If the Ministerial Council directs the Authority to give a committee a certain direction, the Authority must comply with that direction. For example, the Ministerial Council may direct the Authority not to establish, or to abolish, a particular committee. It may also direct it to direct a committee as to the meeting procedure it is to follow, or the particular matters it is to deal with. The purpose of this section is to enable the Council to ensure the integrity of the new food regulatory committee system is retained.

*Item 133*

This item abolishes any existing committees established by the Authority under section 43. This means that ANZFAAC will be abolished (see item 11).

*Item 134*

This item amends subsection 44(1) so that it applies only to members of the Board and of other committees, but not to members of the Food Advisory Committee. That Committee will no longer exist (see item 11).

*Item 135*

This item omits the reference in subsection 46(2) to special purpose members. The new Board will not have special purpose members.

*Item 136*

This item amends section 47 to substitute the references to the Authority with references to the Board. The section as amended will refer to meetings of the Board.

*Item 137*

This item omits the reference in subsection 47(4) to special purpose members. The new Board will not have special purpose members.

*Items 138 -139*

These items amend sections 47 and 48 respectively to substitute for the references to the Authority references to the Board. The section as amended will refer to meetings of the Board.

*Item 140*

At present, section 50 of the Act obliges members of ANZFA to notify the Minister of any “direct or indirect pecuniary interest” they have in a matter being considered, or about to be considered, by ANZFA. Under the *Commonwealth Authorities and Companies Act 1997* they are also obliged to notify of “material personal interest” they have in a matter. The current requirement of the Act that they notify of any “direct or indirect pecuniary interest” they may have was placed upon them before the *Commonwealth Authorities and Companies Act 1997* commenced, and the two obligations causes some confusion. To clarify the obligations of the new Board, this item amends section 50 so that Board members need only notify of any

“material personal interest” that they have in a matter. This would include pecuniary interests. They would then be subject to the same obligations as directors of other Commonwealth authorities.

The item also makes clear that the obligation of Board members to declare their material personal interests also obliges them to declare any such interests they may have in relation to their academic or research associations.

*Item 141*

This item amends section 50 to refer to the “Board” and not to the Authority.

*Item 141A*

This item inserts two additional subsections into section 50. They provide that the Board has to develop and maintain a system for the declaration and registration of the material personal interests of its members, and publish the entries on that register on the Internet.

*Item 142*

This item amends paragraph 52(2)(d) to omit the mention of a special purpose member.

*Item 143*

This item substitutes the reference to the Authority in paragraph 52(2)(d) with a reference to the Board.

*Items 144 - 145*

These items amend subsection 52(2) to omit the reference to special purpose members.

*Item 146*

This item replaces the reference to the Minister with a reference to the Board in subsection 52A(2) as, in accordance with the Food Regulation Agreement 2000, it will be the Board who appoints the Chief Executive Officer under the new arrangements.

*Item 146A*

This item ensures that the Minister cannot appoint a person as the Chief Executive Office of FSANZ if, “at any time immediately before the proposed period of appointment”, the person has worked for or has had pecuniary interests in a body corporate whose primary commercial activity related directly to the production or manufacture of food. This differs from the arrangement for the Chairperson of the Board who, if he or she had such a pecuniary interest before the two years immediately before the proposed period of appointment, could be so appointed.

*Item 147*

This item is a transitional provision. It provides that the person who is Chief Executive Officer of ANZFA when Part 1 of Schedule 1 of the Bill commences will remain as Chief Executive Officer of FSANZ for six months, or until the Board re-appoints that person to that office, or until the Board appoints another person to that office, whichever first happens. This is to ensure an orderly transition to the new arrangements. It may take some time for the Board to make a decision regarding the Chief Executive Officer appointment.

*Item 148*

This item substitutes the reference to the Authority in subsection 52B(2) with a reference to the Board. It means that the Chief Executive Officer of the Authority is subject to the direction of the Board when administering the Authority and controlling its operations.

*Item 149*

This item adds a new subsection (3) to section 52B. The new subsection lists matters that the Board cannot delegate to the Chief Executive Officer.

*Items 150 - 152*

These items amend sections 52D, 52E and 52F respectively to refer to the Board and not to the Minister. This is because the new Board will be responsible for determining the remuneration of the Chief Executive Officer (in the absence of a determination by the Remuneration Tribunal), as well as any other terms and conditions of that office. It will also accept any resignation by the Chief Executive Officer.

*Item 153*

This item is a transitional provision. It carries over the terms and conditions of the current CEO for the CEO of FSANZ, until the Board makes a new determination in respect of these matters.

*Item 154*

This item substitutes the reference to the Minister in section 52G with a reference to the Board. The Board, and not the Minister, is to appoint any acting Chief Executive Officer of the Board.

*Item 155*

This item is a transitional provision. It ensures that if someone is acting as Chief Executive Officer of ANZFA during a vacancy immediately before the commencement of Part 1 of Schedule 1 of the Bill, that person will continue as acting Chief Executive Officer of FSANZ for six months, or until the Board terminates that person’s appointment, or the Board appoints that person or another person to the office of Chief Executive Officer, whichever first happens. This is to ensure an orderly transition to the new arrangements.

*Item 156*

This item is also a transitional provision. It makes parallel arrangements to those referred to in item 155 for persons acting as CEO during the absence of the CEO, or because for any reason, the CEO is unable to perform the duties of this office. This is to ensure an orderly transition to the new arrangements.

*Items 157 - 158*

These items substitute the references to “an inquiry” in section 61 and 62(1) with a reference to a final assessment (see discussion at Item 40).

*Item 159*

This item substitutes the reference to a “member of the Authority” in subsection 62(2) with a reference to a “member of the Board” (see discussion at item 116).

*Item 160*

This item amends subparagraph 63(1)(a)(ii) to provide that a decision by the Authority to reject an application for a standard to be developed urgently is a decision that is reviewable by the Administrative Appeals Tribunal.

*Item 161*

This item substitutes the reference to the New Zealand Minister in section 65A(1) with a reference to the New Zealand lead Minister on the Council. This means that the New Zealand lead Minister on the Council is the minister who is to agree to the fees the Authority may charge for services provided to New Zealand.

*Item 162*

This item repeals subsection 65A(2). The definition of New Zealand Minister is no longer necessary.

*Item 163*

This item is a transitional provision. It ensures the continuation of the latest agreement made under section 65A in relation to the fees for services provided to New Zealand, until a new agreement is agreed to by the Authority and the New Zealand lead Minister on the Council.

*Item 164*

This item substitutes the reference to “adoption” in paragraph 66(9)(a) with a reference to “coming into effect”. This is because under the new regulatory arrangements standards will no longer be adopted by a Ministerial Council.

*Item 165*

This item repeals section 67. It substitutes a new section 67 that lists the matters that the Board cannot delegate to a member of the Board or to a member of the staff of the Authority. The amendment ensures that all the important decisions that the Act provides must be made by the Authority (for example, to approve standards) are to be made by the Board itself. If the Board decides to delegate any of its remaining delegable powers to an Authority staff member, it can only delegate it to a person who is performing the duties of an Executive Level 2 position, or a more senior position.

*Item 166*

These item amends section 68 to provide that an action or proceeding may not be taken against a member of the Board, rather than of the Authority, in relation to the performance of its functions.

*Item 167*

This item amends subsection 68(2) to take account of the new arrangements whereby standards will no longer be adopted by a Ministerial Council, but instead will be approved by the Authority.

*Item 168*

This item is a transitional provision. It ensures that members of FSANZ are still exempt from suit after the new arrangements commence.

*Item 169*

This item changes the reference to a particular section to refer to the new, equivalent section.

*Item 170*

This item amends paragraph 69(e) to reflect the new arrangements whereby recommendations will not be made to the Council, but instead the Authority will notify the Council of decisions it makes under section 18 in relation to the approval of standards or variations.

*Item 171*

This item includes a number of new matters about which particulars must be included in the Annual Report, including policy guidelines formulated by the Council and notified to the Authority. Also to be included is information regarding the numbers of reviews requested by the Council, and the numbers of occasions when a standard or variation was revoked or amended by the Council. Additional matters that are specified in the regulations may also be included. This will enable additional matters to be included as necessary, to take account of the new regulatory arrangements.

*Items 172 and 173*

These items are transitional provisions. They make it clear that the new Board is responsible for completing the Annual Report of ANZFA if it is not completed by ANZFA before the commencement of the new arrangements.

*Item 174*

This item is a transitional provision. It deals with how FSANZ is to deal with the situation where ANZFA has made a recommendation to the Australia New Zealand Food Standards Council (ANZFSC) in relation to a standard or variation, but ANZFSC has not yet made a decision in relation to that recommendation before FSANZ commences operation.

Such standards or variations are to be dealt with as if the Authority had approved the draft, or approved it with any amendments it had recommended the Council make to it, and had notified the Council that it had approved the draft, or draft as amended. The Council may then either notify the Authority that it does not intend to request that the approved draft be reviewed, or request that the Authority review the draft, or reject the draft, in accordance with the usual Council review procedures set out in the new Act.

If 60 days pass after Part 1 of Schedule 1 to the Bill commences, and the Council has does none of these things, the Authority is to publish the standard or variation in accordance with the usual publication requirements. Under those requirements, it will commence on the date specified in the gazettal notice.

FSANZ is to provide a list of these outstanding draft standards or variations for the Council as soon as item 174 commences so that the Council will be made aware of these transitional arrangements.

*Item 175*

This item is a transitional provision. It deals with applications pending immediately before Part 1 of Schedule 1 to the Bill commences. The transitional arrangements for these applications are “start over” arrangements. However, the Authority will be able to omit to redo those stages in the standards development process that have already been done by ANZFA, provided it reviews them having regard to any new submissions it receives and any new policy guidelines made by the Ministerial Council for the purposes of section 10(2)(e).

This transitional arrangements are for “live” applications, that is, applications received by ANZFA that have not been withdrawn, and if in relation to which a draft has been prepared, a recommendation relating to that draft has not been made to ANZFSC.

Such applications will lapse at the time Part 1 of Schedule 1 to the Bill commences, and the Authority is not to action them except in accordance with item 175. This means that even if, for example, the application was at the inquiry stage, it is to be dealt with as “fresh application” in accordance with item 175 as if it had just been received. However, item 175 makes provision for the new Authority to still have regard to all submissions that had been made in relation to the application under the current Act, and provides the applicant with an opportunity to give the Authority additional information to support the application. The

additional time allowed for the applicant to provide such information (28 days) will not be included in the time period for processing of the application.

The normal timeframe of 12 months for the processing of an application from the receipt of the application to the time of making a recommendation to Council will be extended a further three months for such “fresh applications”. This additional time applies whether or not the applicant has requested the Authority to defer making a decision whether or not to accept the application to enable the applicant to provide more information.

Notices seeking submissions at the draft and final assessment stages for the processing of “fresh applications” will explain that the Authority will have regard to submissions previously received by ANZFA.

This item also sets out what is to happen in relation to charges paid for services that have already been paid by applicants under the Act as in force before the commencement of this item. If the charge was in relation to a service that has already been provided, the applicant will be deemed to have paid the Authority the charge for the corresponding service in relation to the fresh application. If the service has not already been provided, the Authority is to refund the amount paid unless the applicant elects to treat the payment as fully discharging the applicant’s liability to pay the Authority the charge fixed for the corresponding service in relation to the fresh application.

*Item 176*

This item is a transitional provision. It parallels item 175 except that it deals with proposals.

*Item 177*

This item enables regulations to be made for matters of a transitional nature relating to any of the amendments made by Part 1 of Schedule 1.

**Schedule 1 – Part 2**

*Item 178*

This item makes a technical correction to subsection 7(2) to remedy an incorrect reference made by the last amending Bill. The reference to paragraph (1)(n) in that paragraph will now correctly refer to “paragraph (1)(o).”

**Schedule 1 – Part 3**

*Item 179*

This item makes a technical correction by adding at the end of section 3 an explanation of what is meant by an “amendment” of the standards in the Australia New Zealand Food Standards Code, and clarifies that a “variation of a food regulatory measure” includes, and always has included, the revocation of a food regulatory measure.

*Item 180*

This item substitutes the correct reference in paragraph 12B(2)(b) to the section under which a draft assessment is made.

*Items 181-185*

These items make five minor technical corrections to remedy some minor drafting errors.

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

*Item 1*

This item inserts the correct reference to the date of the Public Service Act (1999) in subsection 2(4) of that amending Bill.

**Schedule 3 – Amendment of other Acts**

*Item 1*

This item substitutes the reference in subsection 7(2) of the Agricultural and Veterinary Chemicals Act 1994 to the Australia New Zealand Food Authority Act 1991 with a reference to the new name of that Act, the Food Standards Australia New Zealand Act 1991 (see item 2 of Part 1 of Schedule 1).

*Item 2*

This item repeals paragraph 138(5)(b) of the Gene Technology Act 2000 and substitutes a new paragraph that refers to the new name of the Act, the Food Standards Australia New Zealand 1991(see item 2 of Part 1 of Schedule 1).

*Item 3*

This item substitutes the definition of "Australia New Zealand Food Standards Code" in subsection 3(1) of the Imported Food Control Act 1992 with a new definition that provides that it has the same meaning as in the Food Standards Australia New Zealand Act 1991. Item 4 of Part 1 of Schedule 1 amends the definition of the Australia New Zealand Food Standards Code in that Act. This amendment will ensure that the Imported Food Control Act 1992 picks up that change.

*Item 4*

This item substitutes a new subparagraph 3(3)(a)(i) in the Imported Food Control Act 1992 so that it refers to standards made under the new food regulatory reforms as well as those adopted by the Australia New Zealand Food Standards Council.

*Item 5*

This item makes a minor amendment to subparagraph 3(3)(a)(ii) of the Imported Food Control Act 1991 to omit an unnecessary reference.

*Item 6*

This item amends the definition of “food additive” in subsection 7(1) of the Industrial Chemicals (Notification and Assessment) Act 1989 to update the current reference to the Food Standards Code so that it refers to the Australia New Zealand Food Standards Code.

*Item 7*

This item substitutes the reference to the Australia New Zealand Food Authority Act 1991 in the definition of “food additive” in subsection 7(1) of the Industrial Chemicals (Notification and Assessment) Act 1989 with a reference to the new name of the Act, the Food Standards Australia New Zealand Act 1991 (see item 2 of Part 1 of Schedule 1).

*Item 8*

This item substitutes the reference to the Australia New Zealand Food Authority Act 1991 in the definition of “therapeutic goods” in subsection 3(1) of the Therapeutic Goods Act 1989 with a reference to the new name of the Act, the Food Standards Australia New Zealand Act 1991 (see item 2 of Part 1 of Schedule 1).