

1998-1999-2000-2001

The Parliament of the
Commonwealth of Australia

THE SENATE

As read a third time

**Australia New Zealand Food Authority
Amendment Bill 2001**

No. , 2001

***A Bill for an Act to amend the *Australia New
Zealand Food Authority Act 1991*, and for other
purposes***

ISBN: 0642 458138

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1 THIS bill originated in the Senate; and,
2 having this day passed, is now ready for
3 presentation to the House of
4 Representatives for its concurrence.

5 HARRY EVANS
6 *Clerk of the Senate*

7 The Senate
8 23 May 2001

9 **A Bill for an Act to amend the *Australia New***
10 ***Zealand Food Authority Act 1991*, and for other**
11 **purposes**

12 The Parliament of Australia enacts:

13 **1 Short title**

14 This Act may be cited as the *Australia New Zealand Food*
15 *Authority Amendment Act 2001*.

16 **2 Commencement**

- 17 (1) The following provisions commence on the day on which this Act
18 receives the Royal Assent:
- 19 (a) sections 1, 2 and 3;
 - 20 (aa) item 120A of Part 1 of Schedule 1;
 - 21 (b) Part 3 of Schedule 1.

Schedule 1 Amendment of the Australia New Zealand Food Authority Act 1991
Part 1 General amendments

- 1 (2) Part 1 of Schedule 1 (other than item 120A), and Schedule 3,
2 commence on the first day after the commencement of this section
3 on which an amendment of the Australia New Zealand Joint Food
4 Standards Agreement comes into force in accordance with Article
5 10 of that Agreement.
- 6 (3) Part 2 of Schedule 1 is taken to have commenced on 23 December
7 1999, immediately after the commencement of item 10 of
8 Schedule 1 to the *Australia New Zealand Food Authority*
9 *Amendment Act 1999*.
- 10 (4) Schedule 2 is taken to have commenced on 16 December 1997,
11 immediately after the commencement of subsection 2(4) of the
12 *Australia New Zealand Food Authority Amendment Act (No. 2)*
13 *1997*.
- 14 (5) As soon as practicable after the commencement of the following
15 provisions:
16 (a) Part 1 of Schedule 1;
17 (b) Schedule 3;
18 the Minister must cause to be published in the *Gazette* a notice
19 specifying the day on which those provisions commenced.
- 20 (6) In this section:
21 *Australia New Zealand Joint Food Standards Agreement* means
22 the Agreement between the Government of Australia and the
23 Government of New Zealand Establishing a System for the
24 Development of Joint Food Standards, signed at Wellington on
25 5 December 1995.

26 **3 Schedule(s)**

27 Subject to section 2, each Act that is specified in a Schedule to this
28 Act is amended or repealed as set out in the applicable items in the
29 Schedule concerned, and any other item in a Schedule to this Act
30 has effect according to its terms.

1
2 **Schedule 1—Amendment of the Australia New**
3 **Zealand Food Authority Act 1991**

4 **Part 1—General amendments**

5 **1 Title**

6 Omit “an Australia New Zealand Food Authority”, substitute “a
7 body to be known as Food Standards Australia New Zealand”.

8 **2 Section 1**

9 Omit “Australia New Zealand Food Authority”, substitute “Food
10 Standards Australia New Zealand”.

11 **3 Section 2A**

12 Omit “Food Authority”, substitute “body to be known as Food
13 Standards Australia New Zealand”.

14 **4 Subsection 3(1) (paragraph (a) of the definition of *Australia***
15 ***New Zealand Food Standards Code*)**

16 Omit “the Council”, substitute “a former Council”.

17 **5 Subsection 3(1)**

18 Insert:

19 *Australia New Zealand Joint Food Standards Agreement* means
20 the Agreement between the Government of Australia and the
21 Government of New Zealand Establishing a System for the
22 Development of Joint Food Standards, signed at Wellington on
23 5 December 1995, as amended in accordance with Article 10 of
24 that Agreement.

25 **6 Subsection 3(1) (definition of *Authority*)**

26 Repeal the definition, substitute:

27 *Authority* means Food Standards Australia New Zealand.

28 **7 Subsection 3(1)**

29 Insert:

1 *Board* means the Board of the Authority.

2 **8 Subsection 3(1)**

3 Insert:

4 *business day* means a day that is not:

- 5 (a) a Saturday; or
6 (b) a Sunday; or
7 (c) a public holiday in the Australian Capital Territory or in
8 Wellington, New Zealand.

9 **9 Subsection 3(1) (definition of *Council*)**

10 Repeal the definition, substitute:

11 *Council* means the Australia and New Zealand Food Regulation
12 Ministerial Council that was established by the Food Regulation
13 Agreement 2000.

14 **10 Subsection 3(1)**

15 Insert:

16 *develop*, in relation to a food regulatory measure or a variation of a
17 food regulatory measure, includes:

- 18 (a) prepare a draft of the measure or variation; and
19 (b) approve a draft of the measure or variation.

20 **11 Subsection 3(1) (definition of *Food Advisory Committee*)**

21 Repeal the definition.

22 **12 Subsection 3(1)**

23 Insert:

24 *Food Regulation Agreement 2000* means the Food Regulation
25 Agreement that was entered into on 3 November 2000 between the
26 Commonwealth, the States, the Northern Territory and the
27 Australian Capital Territory.

28 **13 Subsection 3(1)**

29 Insert:

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former Council means:

- (a) the Council of Commonwealth, State and Territory Ministers that was established in 1986 by agreement between the Commonwealth, the States and the Northern Territory and is known as the National Food Standards Council; or
- (b) if that Council was reconstituted but continued in existence under that name by agreement between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory, whether entered into before or after this Act commences—that Council as so reconstituted and continued in existence; or
- (c) if that Council was reconstituted but continued in existence under the name Australia New Zealand Food Standards Council by agreement between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory—that Council as so reconstituted and continued in existence.

14 Subsection 3(1) (definition of *member*)

Omit “Authority”, substitute “Board”.

15 Subsection 3(1)

Insert:

New Zealand lead Minister on the Council means the Minister of the government of New Zealand who is:

- (a) a member of the Council; and
- (b) nominated by the government of New Zealand to be the New Zealand lead Minister on the Council.

16 Subsection 3(1) (before paragraph (a) of the definition of *standard*)

Insert:

- (aa) a standard made under this Act after the commencement of Part 1 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 2001*; or

17 Subsection 3(1) (paragraph (a) of the definition of *standard*)

1 Omit “the Council under this Act”, substitute “a former Council under
2 this Act before the commencement of Part 1 of Schedule 1 to the
3 *Australia New Zealand Food Authority Amendment Act 2001*”.

4 **18 Subsection 3(2)**

5 Repeal the subsection.

6 **19 Part 2 (heading)**

7 Repeal the heading, substitute:

8 **Part 2—Establishment, functions and powers of the**
9 **Authority**

10 **20 Subsection 6(1)**

11 Repeal the subsection, substitute:

12 (1) The body known immediately before the commencement of this
13 subsection as the Australia New Zealand Food Authority is
14 continued in existence as Food Standards Australia New Zealand.

15 Note: See also section 25B of the *Acts Interpretation Act 1901*.

16 **21 Paragraph 7(1)(a)**

17 Repeal the paragraph, substitute:

18 (a) in accordance with this Act, to develop standards and
19 variations of standards, and to review standards and
20 variations of standards; and

21 **22 Paragraph 7(1)(b)**

22 Omit “draft” (wherever occurring).

23 **23 After paragraph 7(1)(q)**

24 Insert:

25 (qa) such other functions as are conferred on the Authority by this
26 Act; and

27 **24 After subparagraph 9(1)(a)(i)**

28 Insert:

1 (ia) the maximum or minimum amounts of additives that
2 must or may be present in the food; and

3 **25 Paragraph 9(1)(b)**

4 Repeal the paragraph, substitute:
5 (b) the production of food;

6 **26 Paragraph 9(1)(c)**

7 Omit “packaging, storage or”.

8 **27 Paragraphs 9(1)(e), (f) and (g)**

9 Omit “dealing with” (wherever occurring), substitute “handling”.

10 **28 Subparagraph 9(1)(i)(i)**

11 Omit “dealt with”, substitute “handled”.

12 **29 Subparagraph 9(1)(i)(ii)**

13 Omit “deal with”, substitute “handle”.

14 **30 Paragraph 9(1)(j)**

15 Omit “deals with”, substitute “handles”.

16 **31 Paragraph 9(1)(m)**

17 Omit “dealt with”, substitute “handled”.

18 **32 Subsection 9(3)**

19 Repeal the subsection, substitute:

20 (3) In this section:

21 *handle*, in relation to food, includes produce, collect, receive,
22 store, serve, display, package, transport, dispose of or recall food.

23 Note: See also the definitions of *produce* and *prepare* in subsection 3(1).

24 **33 Transitional—validity of food regulatory measures**

25 To avoid doubt, the amendments of section 9 of the *Australia New*
26 *Zealand Food Authority Act 1991* made by this Part do not affect the
27 validity of a food regulatory measure in force immediately before the
28 commencement of this item.

1 **34 Section 10**

2 After “developing” (wherever occurring), insert “or reviewing”.

3 Note: The heading to section 10 is altered by inserting “**or reviewing**” after “**developing**”.

4 **35 Paragraph 10(2)(d)**

5 Omit “food.”, substitute “food;”.

6 **36 At the end of subsection 10(2)**

7 Add:

8 (e) any written policy principles formulated by the Council for
9 the purposes of this paragraph and notified to the Authority.

10 **37 At the end of section 10**

11 Add:

12 (3) If any policy principles formulated by the Council for the purposes
13 of paragraph (2)(e) are notified to the Authority, the Authority
14 must publish the principles on the Internet.

15 (4) Where the Authority considers that the best available scientific
16 evidence referred to in paragraph (2)(a) is insufficient, the
17 Authority may provisionally adopt sanitary or phytosanitary
18 measures on the basis of available pertinent scientific information.
19 In such cases, the Authority must take all reasonable steps to obtain
20 the information necessary for a more objective risk analysis and a
21 review of the sanitary and phytosanitary measures, to be
22 undertaken within a reasonable period of time.

23 (5) For the purposes of this section, a *sanitary or phytosanitary*
24 *measure* means any measure applied:

25 (a) to protect animal or plant life or health from risks arising
26 from the entry, establishment or spread of pests, diseases,
27 disease-carrying organisms or disease-causing organisms; or

28 (b) to protect human or animal life or health from risks arising
29 from additives, contaminants, toxins or disease-causing
30 organisms in foods, beverages or feedstuffs; or

31 (c) to protect human life or health from risks arising from
32 diseases carried by animals, plants or products thereof, or
33 from the entry, establishment or spread of pests; or

- 1 (d) to prevent or limit other damage from the entry,
2 establishment or spread of pests;
3 and includes:
4 (e) any relevant law, decree, regulation, requirement or
5 procedure, including end product criteria; and
6 (f) processes and production methods; and
7 (g) testing, inspection, certification and approval procedures; and
8 (h) quarantine treatments including relevant requirements
9 associated with the transport of animals or plants, or with the
10 materials necessary for their survival during transport; and
11 (i) provisions on relevant statistical methods, sampling
12 procedures and methods of risk assessment; and
13 (j) packaging and labelling requirements directly related to food
14 safety.

15 **37A After section 10**

16 Insert:

17 **10AA Council may issue policy principles**

- 18 (1) The Council may issue policy principles in relation to the
19 development of food standards.
20 (2) Before issuing a policy principle, the Council must be satisfied that
21 the principle is consistent with the objectives set out in subsection
22 10(1).
23 (3) Policy principles are disallowable instruments for the purposes of
24 section 46A of the *Acts Interpretation Act 1901*.

25 **38 Before Division 1 of Part 3**

26 Insert:

27 **Division 1—Introduction**

28 **11A Simplified explanation of the process for the development of 29 standards etc.**

30 The following is a simplified explanation of the process for the
31 development or variation of a standard:

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- The Authority may develop or vary a standard:
 - (a) in response to an **application** that has been accepted by the Authority after an **initial assessment**; or
 - (b) by preparing a **proposal** on its own initiative.
- After conducting a **draft assessment** of the application or proposal, the Authority must:
 - (a) prepare a draft; or
 - (b) reject the application or abandon the proposal.
- If the Authority prepares a draft, the Authority must conduct a **final assessment** in relation to the draft, and then:
 - (a) approve the draft and notify the Council; or
 - (b) reject the draft.
- If a draft is notified to the Council, the Council may request the Authority to **review** the draft.
- If the Council does not request a review, the draft comes into effect in accordance with a *Gazette* notice.
- If a review is conducted and the Council still has concerns about the draft, the Council may request a **second review**.
- If the Council does not request a second review, the draft comes into effect in accordance with a *Gazette* notice.
- If a second review is conducted and the Council still has concerns about the draft, the Council may **amend or reject** the draft.

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- If the Council does not amend or reject the draft, the draft comes into effect in accordance with a *Gazette* notice.
- If the Council amends the draft, the amended draft comes into effect in accordance with a *Gazette* notice.
- Special rules apply to urgent applications and urgent proposals.

7 **11B Definitions**

8 In this Part:

9 *application* means an application under section 12.

10 *proposal* means a proposal under section 12AA.

11 *urgent application* means an application declared to be an urgent
12 application under a declaration in force under subsection 24(1).

13 *urgent proposal* means a proposal declared to be an urgent
14 proposal under a declaration in force under subsection 24(1).

15 **39 Division 1 of Part 3 (heading)**

16 Repeal the heading, substitute:

17 **Division 2—Applications and proposals for the**
18 **development or variation of food regulatory**
19 **measures**

20 **40 Subparagraph 12(2)(c)(i)**

21 Omit “preliminary”, substitute “initial”.

22 **41 After section 12**

23 Insert:

1 **12AA Authority may prepare proposal for development or variation**
2 **of a food regulatory measure**

3 (1) The Authority may, on its own initiative, prepare a proposal for the
4 development or variation of a food regulatory measure.

5 (2) The proposal must be in writing.

6 **42 Subsection 12A(1)**

7 Omit “The applicant may withdraw the application”, substitute “An
8 applicant may withdraw the applicant’s application”.

9 **43 Paragraphs 12A(1)(a) and (b)**

10 Repeal the paragraphs, substitute:

11 (a) the Authority approves a draft food regulatory measure, or a
12 draft variation of a food regulatory measure, as a result of the
13 application; or

14 (b) the Authority rejects the application.

15 **44 Paragraph 12B(2)(a)**

16 Omit “full”, substitute “draft”.

17 **45 Paragraph 12B(2)(e)**

18 Omit “holding an inquiry”, substitute “making a final assessment”.

19 **46 Section 13**

20 Omit “a preliminary” (wherever occurring), substitute “an initial”.

21 Note: The heading to section 13 is altered by omitting “**preliminary**” and substituting
22 “**initial**”.

23 **47 Section 13A**

24 Omit “preliminary”, substitute “initial”.

25 Note: The heading to section 13A is altered by omitting “**preliminary**” and substituting
26 “**initial**”.

27 **48 Paragraph 13A(2)(b)**

28 Omit “full”, substitute “draft”.

29 **49 Paragraph 14(3)(b)**

1 Omit “a preliminary”, substitute “an initial”.

2 Note: The heading to section 14 is altered by adding at the end “**about application**”.

3 **50 Paragraph 14(3)(c)**

4 Omit “full”, substitute “draft”.

5 **51 After section 14**

6 Insert:

7 **14A Authority to invite submissions about proposal**

8 (1) After preparing a proposal for the development or variation of a
9 food regulatory measure, the Authority must:

10 (a) give public notice of the matters mentioned in subsection (3);
11 and

12 (b) give written notice of those matters to each appropriate
13 government agency.

14 (2) The Authority may give notice of the matters mentioned in
15 subsection (3) to another body or person.

16 (3) A notice under subsection (1) or (2) must:

17 (a) state that the Authority has prepared a proposal for the
18 development or variation of the measure; and

19 (b) state that the Authority will make a draft assessment of the
20 proposal; and

21 (c) state how to obtain information about the proposal; and

22 (d) invite written submissions on matters relevant to the proposal
23 to be made to the Authority within the period specified in the
24 notice.

25 **52 Section 15**

26 Omit “full” (wherever occurring), substitute “draft”.

27 Note: The heading to section 15 is altered by omitting “**Full**” and substituting “**Draft**”.

28 **53 After section 15**

29 Insert:

1 **15AA Draft assessment of proposal**

- 2 (1) The Authority must make a draft assessment of a proposal.
- 3 (2) In making a draft assessment of the proposal, the Authority must
4 have regard to:
- 5 (a) any submissions made to it within the specified period in
6 response to a notice sent or published under section 14A; and
7 (b) the objectives and matters listed in section 10; and
8 (c) any relevant New Zealand standards; and
9 (d) any other relevant matters.

10 **54 Subsection 15A(1)**

11 Omit “full”, substitute “draft”.

12 Note: The heading to section 15A is altered by omitting “full assessment” and substituting
13 “draft assessment of application”.

14 **55 After section 15A**

15 Insert:

16 **15B Outcome of draft assessment of proposal**

- 17 After making a draft assessment of a proposal, the Authority must:
- 18 (a) prepare in writing a draft food regulatory measure or a draft
19 variation of a food regulatory measure, as the case requires;
20 or
21 (b) abandon the proposal.

22 **56 Paragraph 16(1)(a)**

23 Before “the Authority”, insert “after making a draft assessment of an
24 application,”.

25 Note: The heading to section 16 is altered by inserting “resulting from an application” after
26 “variation”.

27 **57 Paragraph 16(1)(b)**

28 Omit “holding of an inquiry into”, substitute “making of a final
29 assessment in relation to”.

30 **58 Subsections 16(2) and (3)**

1 Omit “hold an inquiry to consider”, substitute “make a final assessment
2 in relation to”.

3 **59 Subsection 16(4)**

4 Omit “hold the inquiry”, substitute “make the final assessment”.

5 **60 Subsection 16(4)**

6 Omit “holding of the inquiry”, substitute “making of the final
7 assessment”.

8 **61 Paragraph 16(5)(a)**

9 Omit “inquiry”, substitute “final assessment”.

10 **62 Paragraph 16(6)(b)**

11 Omit “hold an inquiry to consider”, substitute “make a final assessment
12 in relation to”.

13 **63 Paragraph 16(6)(c)**

14 Omit “inquiry”, substitute “final assessment”.

15 **64 Paragraph 17(1)(a)**

16 Before “the Authority”, insert “after making a draft assessment of an
17 application,”.

18 Note: The heading to section 17 is altered by inserting “**resulting from an application**” after
19 “variation”.

20 **65 Paragraph 17(1)(b)**

21 Omit “holding of an inquiry into”, substitute “making of a final
22 assessment in relation to”.

23 **66 Paragraph 17(3)(b)**

24 Omit “hold an inquiry to consider”, substitute “make a final assessment
25 in relation to”.

26 **67 Paragraph 17(3)(c)**

27 Omit “inquiry”, substitute “final assessment”.

28 **68 After section 17**

29 Insert:

1 **17AA Notice following preparation of draft regulatory measure or**
2 **variation resulting from a proposal**

3 (1) If, after making a draft assessment of a proposal, the Authority
4 prepares a draft food regulatory measure, or a draft variation of a
5 food regulatory measure, the Authority must give written notice of
6 the matters mentioned in subsection (2) to:

- 7 (a) each appropriate government agency; and
8 (b) each other body or person who made a submission within the
9 specified period in response to a notice given under
10 section 14A.

11 (2) The notice must:

- 12 (a) state that the Authority has prepared the draft and how to
13 obtain further information about it; and
14 (b) state that the Authority will make a final assessment in
15 relation to the draft; and
16 (c) invite written submissions for the purpose of the final
17 assessment to be made to the Authority within the period
18 specified in the notice.

19 **69 After section 17A**

20 Insert:

21 **17AB Notice following abandonment of proposal**

22 (1) If the Authority abandons a proposal under section 15B, it must
23 give written notice of that decision to:

- 24 (a) each appropriate government agency; and
25 (b) each other body or person who made a submission within the
26 specified period in response to a notice given under
27 section 14A.

28 (2) The notice must state how to obtain further information about the
29 decision and the reasons for it.

30 **70 Subsection 17B(1)**

31 Omit “holds an inquiry to consider”, substitute “makes a final
32 assessment in relation to”.

1 **71 Paragraph 17B(3)(a)**

2 Before “the applicant”, insert “if the draft resulted from an
3 application—”.

4 **72 After paragraph 17B(3)(a)**

5 Insert:

6 (aa) the Council; and

7 **73 At the end of paragraph 17B(3)(c)**

8 Add “or 14A”.

9 **74 Section 18**

10 Repeal the section, substitute:

11 **18 Authority must approve or reject draft standards etc.**

12 (1) If the Authority makes a final assessment in relation to a draft
13 standard or a draft variation of a standard, the Authority must:

14 (a) approve the draft; or

15 (b) approve the draft subject to such amendments as the
16 Authority considers necessary; or

17 (c) reject the draft.

18 Note: The Board must not delegate its powers to act on behalf of the
19 Authority under this subsection—see section 67.

20 (2) To avoid doubt, the draft does not take effect except in accordance
21 with a notice under section 23A.

22 (3) If the Authority decides to reject the draft, the Authority must give
23 the Council a written notification of that decision.

24 **75 Subsection 19(1)**

25 Omit “holds an inquiry to consider”, substitute “makes a final
26 assessment in relation to”.

27 Note: The heading to section 19 is altered by omitting “**inquiry about**”, substitute “**final**
28 **assessment in relation to**”.

29 **76 Paragraph 19(1)(a)**

1 Before “the applicant”, insert “if the draft resulted from an
2 application—”.

3 **77 Paragraphs 19(1)(c) and (d)**

4 Omit “or 17”, substitute “, 17 or 17AA”.

5 **78 Paragraph 19(2)(a)**

6 Omit “recommendation made to the Council”, substitute “decision
7 made by the Authority”.

8 **79 Paragraph 19(2)(b)**

9 Omit “recommendation”, substitute “decision”.

10 **80 Section 20**

11 Repeal the section, substitute:

12 **20 Approved draft standards etc. to be notified to Council**

- 13 (1) If the Authority approves a draft standard or variation under
14 section 18 (with or without amendments), the Authority must,
15 within 14 days after the approval, give the Council:
16 (a) a written notification of the approval; and
17 (b) a copy of the approved draft; and
18 (c) a list of the written submissions that were made for the
19 purpose of the draft assessment and final assessment
20 concerned; and
21 (d) a statement analysing those submissions; and
22 (e) a summary of the Authority’s reasons for approving the draft;
23 and
24 (f) a Regulation Impact Statement.
- 25 (2) The things mentioned in paragraphs (1)(c), (d), (e) and (f) may be
26 set out in the same document.
- 27 (3) A failure to comply with paragraph (1)(c), (d), (e) or (f) does not
28 affect the validity of the draft.
- 29 (4) If the Authority approves a draft standard or variation under
30 section 18 (with or without amendments), the Authority must
31 publish on the Internet:

- 1 (a) a copy of the draft; and
2 (b) a notice setting out the matters mentioned in subsection (5).
- 3 (4A) As soon as practicable after complying with subsection (4), the
4 Authority must publish in a newspaper circulating in each State or
5 Territory and in New Zealand a copy of the notice mentioned in
6 paragraph (4)(b), together with information about where a copy of
7 the draft may be obtained.
- 8 (5) A notice under subsection (4) must:
9 (a) state that the Authority has approved the draft under
10 section 18; and
11 (b) state that the Authority has given, or is about to give, the
12 Council a written notification of the approval of the draft;
13 and
14 (c) summarise the effect of Divisions 3 and 4 in relation to the
15 notification.
- 16 (6) If the Authority has notified the Council under subsection (1) that
17 the Authority has approved a draft standard or variation (with or
18 without amendments), the Council may direct the Authority to give
19 the Council such information as the Council reasonably requires
20 for the purpose of assisting the Council to make a decision about
21 the draft under section 21, 22 or 23.

22 **81 Divisions 1A, 2 and 2A of Part 3**

23 Repeal the Divisions, substitute:

24 **Division 3—Council may request a review of approved** 25 **draft standard etc.**

26 **21 Council may request a first review**

- 27 (1) If the Authority notifies the Council under section 20 that the
28 Authority has approved a draft standard or variation (with or
29 without amendments), the Council must, within 60 days after the
30 notification:
31 (a) request the Authority to review the draft; or
32 (b) inform the Authority that the Council does not intend to
33 request the Authority to review the draft.

- 1 (2) If the Council requests the Authority to review a draft standard or
2 variation, the Council must inform the Authority of the Council's
3 concerns with the draft.
- 4 (3) The Council may give to the Authority such directions as it thinks
5 fit in relation to the conduct of a review of a draft standard or
6 variation.
- 7 (4) Subject to any directions under subsection (3), a review is to be
8 conducted in such manner as the Authority considers appropriate.
- 9 (5) If the Council requests the Authority to review a draft standard or
10 variation, the Authority must complete that review, and make a
11 decision under subsection (6):
12 (a) within 3 months after the request was made; or
13 (b) if the Council allows a longer period—within that longer
14 period.
- 15 (6) After completing a review under this section of a draft standard or
16 variation, the Authority must:
17 (a) decide to re-affirm its approval of the draft; or
18 (b) decide to re-affirm its approval of the draft, subject to such
19 amendments as the Authority considers necessary; or
20 (c) decide to withdraw its approval of the draft;
21 and give the Council:
22 (d) written notification of the terms of the Authority's decision;
23 and
24 (e) the Authority's reasons for making that decision.
- 25 Note: The Board must not delegate its powers to act on behalf of the
26 Authority under this subsection—see section 67.
- 27 (7) In exercising its powers under this section in relation to a draft
28 standard or variation, the Council must comply with:
29 (a) the Food Regulation Agreement 2000; and
30 (b) the Australia New Zealand Joint Food Standards Agreement.

31 **22 Council may request a second review**

- 32 (1) If the Authority notifies the Council that the Authority has:
33 (a) made a decision under paragraph 21(6)(a) to re-affirm the
34 Authority's approval of a draft standard or variation; or
-

- 1 (b) made a decision under paragraph 21(6)(b) to re-affirm the
2 Authority's approval of a draft standard or variation, subject
3 to amendments;
4 the Council must, within 60 days after the notification:
5 (c) request the Authority to review the draft; or
6 (d) inform the Authority that the Council does not intend to
7 request the Authority to review the draft.
- 8 (2) If the Council requests the Authority to review a draft standard or
9 variation, the Council must inform the Authority of the Council's
10 concerns with the draft.
- 11 (3) The Council may give to the Authority such directions as it thinks
12 fit in relation to the conduct of a review of a draft standard or
13 variation.
- 14 (4) Subject to any directions under subsection (3), a review is to be
15 conducted in such manner as the Authority considers appropriate.
- 16 (5) If the Council requests the Authority to review a draft standard or
17 variation, the Authority must complete that review, and make a
18 decision under subsection (6):
19 (a) within 3 months after the request was made; or
20 (b) if the Council allows a longer period—within that longer
21 period.
- 22 (6) After completing a review under this section of a draft standard or
23 variation, the Authority must:
24 (a) decide to re-affirm its approval of the draft; or
25 (b) decide to re-affirm its approval of the draft, subject to such
26 amendments as the Authority considers necessary; or
27 (c) decide to withdraw its approval of the draft;
28 and give the Council:
29 (d) written notification of the terms of the Authority's decision;
30 and
31 (e) the Authority's reasons for making that decision.
- 32 Note: The Board must not delegate its powers to act on behalf of the
33 Authority under this subsection—see section 67.

- 1 (7) In exercising its powers under this section in relation to a draft
2 standard or variation, the Council must comply with the Food
3 Regulation Agreement 2000.

4 **23 Council may amend or reject draft after second review**

- 5 (1) If the Authority notifies the Council that the Authority has:
6 (a) made a decision under paragraph 22(6)(a) to re-affirm the
7 Authority's approval of a draft standard or variation; or
8 (b) made a decision under paragraph 22(6)(b) to re-affirm the
9 Authority's approval of a draft standard or variation, subject
10 to amendments;
11 the Council must, within 60 days after the notification:
12 (c) inform the Authority that the Council does not intend to
13 amend or reject the draft; or
14 (ca) amend the draft; or
15 (d) reject the draft.
- 16 (1A) Before amending the draft standard or variation, the Council must
17 give the Authority an opportunity to submit to the Council a draft
18 of the text of the amendment.
- 19 (1B) As soon as practicable after the Council decides to amend a draft
20 standard or variation, the Council must give the Authority a copy
21 of the amended draft standard or variation.
- 22 (2) If the Council decides to reject the draft, the Council must:
23 (a) prepare a notice setting out that decision and the reasons for
24 that decision; and
25 (b) give the Authority a copy of the notice; and
26 (c) publish a copy of the notice on the Internet and in a
27 newspaper circulating in each State or Territory and in New
28 Zealand.

1 **Division 4—Publication of standard or variation**

2 **23A Publication of standard or variation**

3 *Standard or variation not subject to review at the request of the*
4 *Council*

5 (1) If:

6 (a) the Authority notifies the Council under section 20 that the
7 Authority has approved a draft standard or variation (with or
8 without amendments); and

9 (b) the Council informs the Authority that the Council does not
10 intend to request the Authority to review the draft;

11 then, as soon as practicable, the Authority must comply with the
12 publication requirements set out in subsection (4) in relation to the
13 draft or the draft as so amended.

14 *Standard or variation subject to a first review at the request of the*
15 *Council*

16 (2) If:

17 (a) the Authority notifies the Council under subsection 21(6) that
18 the Authority has:

19 (i) made a decision under paragraph 21(6)(a) to re-affirm
20 the Authority's approval of a draft standard or variation;
21 or

22 (ii) made a decision under paragraph 21(6)(b) to re-affirm
23 the Authority's approval of a draft standard or variation,
24 subject to amendments; and

25 (b) the Council informs the Authority that the Council does not
26 intend to request the Authority to review the draft;

27 then, as soon as practicable, the Authority must comply with the
28 publication requirements set out in subsection (4) in relation to the
29 draft or the draft as so amended.

30 *Standard or variation subject to a second review at the request of*
31 *the Council*

32 (3) If:

- 1 (a) the Authority notifies the Council under subsection 22(6) that
2 the Authority has:
3 (i) made a decision under paragraph 22(6)(a) to re-affirm
4 the Authority's approval of a draft standard or variation;
5 or
6 (ii) made a decision under paragraph 22(6)(b) to re-affirm
7 the Authority's approval of a draft standard or variation,
8 subject to amendments; and
9 (b) the Council informs the Authority that the Council does not
10 intend to amend or reject the draft;
11 then, as soon as practicable, the Authority must comply with the
12 publication requirements set out in subsection (4) in relation to the
13 draft or the draft as so amended.

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

16 (3A) If:

- 17 (a) the Authority notifies the Council under subsection 22(6) that
18 the Authority has:
19 (i) made a decision under paragraph 22(6)(a) to re-affirm
20 the Authority's approval of a draft standard or variation;
21 or
22 (ii) made a decision under paragraph 22(6)(b) to re-affirm
23 the Authority's approval of a draft standard or variation,
24 subject to amendments; and
25 (b) the Council informs the Authority that the Council has
26 amended the draft;
27 then, as soon as practicable, the Authority must comply with the
28 publication requirements set out in subsection (4) in relation to the
29 draft as so amended.

30 *Publication requirements*

- 31 (4) The publication requirements applicable to a draft or draft as
32 amended are as follows:
33 (a) the Authority must prepare a notice stating that the draft or
34 the draft as so amended is to come into effect on a date
35 specified in the notice;

- 1 (b) the Authority must cause a copy of the notice to be published
2 in the *Gazette* and in the New Zealand Gazette and in a
3 newspaper circulating in each State or Territory and in New
4 Zealand, together with information about where a copy of the
5 draft or draft as amended may be obtained or inspected;
6 (c) the Authority must make a copy of:
7 (i) the notice; and
8 (ii) the text of the draft or the draft as so amended;
9 available for inspection by the public;
10 (d) the Authority must publish on the Internet a copy of:
11 (i) the notice; and
12 (ii) the text of the draft or the draft as so amended.

13 *When standard or variation made under this Act*

- 14 (5) If a standard or variation is the subject of a notice under
15 subsection (4), the standard or variation is taken to have been ***made***
16 ***under this Act*** if and when the standard or variation comes into
17 effect in accordance with the notice.

18 *Draft as so amended*

- 19 (6) To avoid doubt, a reference in this section to a ***draft as so amended***
20 does not imply that a reference in another provision of this Act to a
21 draft does not include a reference to an amended draft.

22 **Division 5—Urgent applications and proposals**

23 **24 Declaration of urgency**

- 24 (1) If the Authority considers that it is appropriate to do so in order to
25 protect public health and safety, the Authority may:
26 (a) declare in writing that a specified application made under
27 section 12 is an ***urgent application*** for the purposes of this
28 Part; or
29 (b) declare in writing that a specified proposal prepared under
30 section 12AA is an ***urgent proposal*** for the purposes of this
31 Part;
32 so long as the application or proposal relates to the development or
33 variation of a standard.

- 1 (2) The Authority must publish a copy of a declaration under
2 subsection (1):
3 (a) on the Internet; and
4 (b) in a newspaper circulating in each State or Territory and in
5 New Zealand.
- 6 (2A) The Authority must take all reasonable steps to distribute copies of
7 the declaration to the print and electronic media in Australia and
8 New Zealand for the purpose of seeking media publicity about the
9 urgent application or proposal.
- 10 (3) The Authority must give a copy of a declaration under
11 subsection (1) to:
12 (a) each appropriate government agency; and
13 (b) the Council; and
14 (c) if the declaration relates to an application—the applicant.
- 15 (4) Division 2 (other than sections 12 and 12AA) and Divisions 3 and
16 4 do not apply to an urgent application or an urgent proposal.
- 17 (5) Paragraph 12(2)(c) does not apply to an urgent application.

18 **25 Preparation of draft standard or variation**

- 19 (1) After considering an urgent application, the Authority must:
20 (a) prepare in writing a draft standard or a draft variation of a
21 standard; or
22 (b) reject the application.
- 23 (2) After considering an urgent proposal, the Authority must:
24 (a) prepare in writing a draft standard or a draft variation of a
25 standard, as the case requires; or
26 (b) abandon the proposal.
- 27 (3) If, under this section, the Authority prepares a draft standard, or a
28 draft variation of a standard, the Authority must publish on the
29 Internet:
30 (a) a copy of the draft; and
31 (b) a notice inviting interested persons and appropriate
32 government agencies to give written submissions about the
33 draft to the Authority:

- 1 (i) within 10 business days after the publication of the
2 notice; or
3 (ii) if the Authority specifies a shorter period in the
4 notice—within that shorter period.
- 5 (4) As soon as practicable after complying with subsection (3), the
6 Authority must publish in a newspaper circulating in each State or
7 Territory and in New Zealand a copy of the notice mentioned in
8 paragraph (3)(b), together with information about where a copy of
9 the draft may be obtained.

10 **26 Approval and publication of standard or variation**

- 11 (1) After considering a draft standard, or a draft variation of a
12 standard, prepared under section 25, the Authority must:
13 (a) approve the draft; or
14 (b) approve the draft subject to such amendments as the
15 Authority considers necessary; or
16 (c) abandon the draft.
- 17 Note: The Board must not delegate its powers to act on behalf of the
18 Authority under this subsection—see section 67.
- 19 (2) If interested persons and/or appropriate government agencies have
20 made written submissions about the draft in accordance with the
21 notice under paragraph 25(3)(b), the Authority must have due
22 regard to those submissions in considering the draft.
- 23 (3) To avoid doubt, the draft does not take effect except in accordance
24 with a notice under subsection (4).

25 *Publication*

- 26 (4) If the Authority approves a draft standard or variation under this
27 section (with or without amendments), the Authority must:
28 (a) prepare a notice stating that the draft or the draft as so
29 amended is to come into effect on a date specified in the
30 notice; and
31 (b) cause a copy of the notice to be published in the *Gazette* and
32 in the *New Zealand Gazette* and in a newspaper circulating in
33 each State or Territory and in New Zealand, together with

- 1 information about where a copy of the draft or draft as
2 amended may be obtained or inspected; and
3 (c) make a copy of:
4 (i) the notice; and
5 (ii) the text of the draft or the draft as so amended;
6 available for inspection by the public; and
7 (d) publish on the Internet a copy of:
8 (i) the notice; and
9 (ii) the text of the draft or the draft as so amended.

10 *Draft as so amended*

- 11 (5) To avoid doubt, a reference in subsection (4) to a *draft as so*
12 *amended* does not imply that a reference in another provision of
13 this Act to a draft does not include a reference to an amended draft.

14 **27 Final assessment to be completed within 12 months after**
15 **standard or variation comes into effect**

- 16 (1) This section applies if the Authority approves a draft standard or
17 variation under section 26 (with or without amendments).
18 (2) The Authority must, as soon as practicable, and in any event within
19 12 months, after the draft comes into effect, complete a final
20 assessment under section 16, 17 or 17AA, whichever is
21 appropriate, in relation to the draft in the same manner as if that
22 draft:
23 (a) had been the subject of a draft assessment under section 15 or
24 15AA; and
25 (b) were a draft prepared under section 15A or 15B.

26 **28 Standard or variation to be notified to Council within 14 days**
27 **after completion of final assessment**

- 28 (1) If the Authority completes a final assessment under section 27 in
29 relation to a standard or variation, the Authority must, within 14
30 days after the completion of the final assessment:
31 (a) decide to re-affirm the standard or variation; or
32 (b) decide to prepare a proposal under section 12AA for the
33 development of:

- 1 (i) a variation, or further variation, of the standard; or
2 (ii) a replacement standard;
3 and give the Council:
4 (c) written notification of the terms of the Authority's decision;
5 and
6 (d) the Authority's reasons for making that decision.
- 7 Note 1: The Board must not delegate its powers to act on behalf of the
8 Authority under this subsection—see section 67.
- 9 Note 2: Section 28D deals with the consequences of a decision under
10 paragraph (b).
- 11 (2) If the Authority decides to re-affirm the standard or variation, the
12 Authority must also give the Council:
13 (a) a list of the submissions that were made for the purposes of
14 the final assessment; and
15 (b) a statement analysing those submissions; and
16 (c) a Regulation Impact Statement.
- 17 (3) The things mentioned in paragraphs (1)(d) and (2)(a), (b) and (c)
18 may be set out in the same document.
- 19 (4) If the Authority has notified the Council under subsection 28(1)
20 that the Authority has made a decision under paragraph 28(1)(a) to
21 re-affirm a standard or variation of a standard, the Council may
22 direct the Authority to give the Council such information as the
23 Council reasonably requires for the purpose of assisting the
24 Council to make a decision about the standard or variation under
25 section 28A, 28B or 28C.

26 **28A Council may request a first review**

- 27 (1) If the Authority notifies the Council under subsection 28(1) that the
28 Authority has made a decision under paragraph 28(1)(a) to
29 re-affirm a standard or variation of a standard, the Council may,
30 within 60 days after the notification:
31 (a) request the Authority to review the standard or variation; or
32 (b) inform the Authority that the Council does not intend to
33 request the Authority to review the standard or variation.

- 1 (2) If the Council requests the Authority to review a standard or
2 variation, the Council must inform the Authority of the Council's
3 concerns with the standard or variation.
- 4 (3) The Council may give to the Authority such directions as it thinks
5 fit in relation to the conduct of a review of a standard or variation.
- 6 (4) Subject to any directions under subsection (3), a review is to be
7 conducted in such manner as the Authority considers appropriate.
- 8 (5) If the Council requests the Authority to review a standard or
9 variation, the Authority must complete that review, and make a
10 decision under subsection (6):
11 (a) within 3 months after the request was made; or
12 (b) if the Council allows a longer period—within that longer
13 period.
- 14 (6) After completing a review under this section of a standard or
15 variation, the Authority must:
16 (a) decide to re-affirm the standard or variation; or
17 (b) decide to prepare a proposal under section 12AA for the
18 development of:
19 (i) a variation, or further variation, of the standard; or
20 (ii) a replacement standard;
21 and give the Council:
22 (c) written notification of the terms of the Authority's decision;
23 and
24 (d) the Authority's reasons for making that decision.
- 25 Note 1: The Board must not delegate its powers to act on behalf of the
26 Authority under this subsection—see section 67.
- 27 Note 2: Section 28D deals with the consequences of a decision under
28 paragraph (b).
- 29 (7) In exercising its powers under this section, the Council must
30 comply with:
31 (a) the Food Regulation Agreement 2000; and
32 (b) the Australia New Zealand Joint Food Standards Agreement.

1 **28B Council may request a second review**

- 2 (1) If the Authority notifies the Council under subsection 28A(6) that
3 the Authority has made a decision under paragraph 28A(6)(a) to
4 re-affirm a standard or variation of a standard, the Council may,
5 within 60 days after the notification:
6 (a) request the Authority to review the standard or variation; or
7 (b) inform the Authority that the Council does not intend to
8 request the Authority to review the standard or variation.
- 9 (2) If the Council requests the Authority to review a standard or
10 variation, the Council must inform the Authority of the Council's
11 concerns with the standard or variation.
- 12 (3) The Council may give to the Authority such directions as it thinks
13 fit in relation to the conduct of a review of a standard or variation.
- 14 (4) Subject to any directions under subsection (3), a review is to be
15 conducted in such manner as the Authority considers appropriate.
- 16 (5) If the Council requests the Authority to review a standard or
17 variation, the Authority must complete that review, and make a
18 decision under subsection (6):
19 (a) within 3 months after the request was made; or
20 (b) if the Council allows a longer period—within that longer
21 period.
- 22 (6) After completing a review under this section of a standard or
23 variation, the Authority must:
24 (a) decide to re-affirm the standard or variation; or
25 (b) decide to prepare a proposal under section 12AA for the
26 development of:
27 (i) a variation, or further variation, of the standard; or
28 (ii) a replacement standard;
29 and give the Council:
30 (c) written notification of the terms of the Authority's decision;
31 and
32 (d) the Authority's reasons for making that decision.

33 Note 1: The Board must not delegate its powers to act on behalf of the
34 Authority under this subsection—see section 67.

1 Note 2: Section 28D deals with the consequences of a decision under
2 paragraph (b).

3 (7) In exercising its powers under this section, the Council must
4 comply with the Food Regulation Agreement 2000.

5 **28C Council may revoke or amend standard or variation after**
6 **second review**

- 7 (1) If the Authority notifies the Council that the Authority has made a
8 decision under paragraph 28B(6)(a) to re-affirm a standard or
9 variation, the Council may, within 60 days after the notification:
10 (a) inform the Authority that the Council does not intend to
11 revoke or amend the standard or variation; or
12 (b) by written instrument, revoke or amend the standard or
13 variation with effect from a date specified in the instrument.
- 14 (2) If the Council decides to revoke or amend a standard or variation,
15 the Council must:
16 (a) prepare a notice setting out the reasons for that decision; and
17 (b) give the Authority a copy of the notice; and
18 (c) publish a copy of the notice on the Internet and in a
19 newspaper circulating in each State or Territory and in New
20 Zealand.
- 21 (3) Before amending the standard or variation, the Council must give
22 the Authority an opportunity to submit to the Council a draft of the
23 text of the amendment.
- 24 (4) As soon as practicable after the Council decides to revoke or
25 amend the standard or variation, the Authority must:
26 (a) prepare a notice stating that the revocation or amendment is
27 to come into effect on the date specified in the instrument of
28 revocation or amendment; and
29 (b) cause a copy of the notice to be published in the *Gazette* and
30 in the *New Zealand Gazette* and in a newspaper circulating in
31 each State or Territory and in New Zealand, together with
32 information about where the text of the revocation or
33 amendment may be obtained or inspected; and
34 (c) make a copy of:
35 (i) the notice; and

- 1 (ii) the text of the revocation or amendment;
2 available for inspection by the public; and
3 (d) publish on the Internet a copy of:
4 (i) the notice; and
5 (ii) the text of the instrument of revocation or amendment.
- 6 (5) If a standard or variation is the subject of a notice under
7 subsection (4), the standard or variation is taken to have been *made*
8 *under this Act* if and when the standard or variation comes into
9 effect in accordance with the notice.

10 **28D Procedure for dealing with alternative variations and** 11 **replacement standards**

- 12 (1) If:
13 (a) the Authority makes a decision under paragraph 28(1)(b),
14 28A(6)(b) or 28B(6)(b) to prepare a proposal under
15 section 12AA for the development of:
16 (i) a variation, or further variation, of a standard; or
17 (ii) a replacement standard; and
18 (b) the Authority decides that it is appropriate to apply this
19 section to the proposal in order to protect public health and
20 safety;
21 this Division applies in relation to the proposal as if:
22 (c) the proposal were the subject of a declaration under
23 subsection 24(1); and
24 (d) section 27 and subsection 28(2) (which deal with final
25 assessments) had not been enacted; and
26 (e) each reference in subsection 28(1) to the completion of a
27 final assessment in relation to a standard or variation were a
28 reference to the preparation of the notice under subsection
29 26(4) in relation to the standard or variation that results from
30 the proposal.
- 31 (2) The Authority must publish a notice setting out a decision under
32 paragraph (1)(b):
33 (a) on the Internet; and
34 (b) in a newspaper circulating in each State or Territory and in
35 New Zealand.

1 **82 Division 3 of Part 3 (heading)**

2 Repeal the heading, substitute:

3 **Division 6—Miscellaneous**

4 **83 Subsection 29(1)**

5 Omit “An inquiry”, substitute “A final assessment”.

6 Note: The heading to section 29 is altered by omitting “**Inquiries**” and substituting “**Final**
7 **assessments**”.

8 **84 Subsection 29(2)**

9 Omit “an inquiry”, substitute “a final assessment”.

10 **85 Subsection 29(3)**

11 Omit “at an inquiry” (wherever occurring), substitute “in the course of a
12 final assessment”.

13 **86 Section 30**

14 Omit “an inquiry”, substitute “a final assessment”.

15 Note: The heading to section 30 is altered by omitting “**inquiries**” and substituting “**final**
16 **assessments**”.

17 **87 At the end of section 30A**

18 Add:

19 (3) Subsection (1) does not apply to a notice under section 20.

20 **88 Section 31**

21 Repeal the section.

22 **89 Section 32**

23 Repeal the section.

24 **90 After subsection 33(1)**

25 Insert:

26 (1A) If the Council requests the Authority to review a standard:

27 (a) the Authority must review the standard; and

1 (b) subject to any directions under subsection (1B), the Authority
2 may conduct the review in such manner as the Authority
3 considers appropriate.

4 (1B) The Council may give to the Authority such directions as it thinks
5 fit in relation to the conduct of a review under subsection (1A).

6 (1C) If the Council requests the Authority to review a standard under
7 subsection (1A), the Authority must complete that review:

8 (a) within 3 months after the request was made; or

9 (b) if the Council allows a longer period—within that longer
10 period.

11 (1D) After completing a review under subsection (1A), the Authority
12 must notify the Council of the result of the review.

13 **91 Subsection 33(2)**

14 Omit “, it must”, substitute “under this section, it may”.

15 **92 Subsection 33(3)**

16 Omit “sections 22 to 28D apply in relation to that proposal”, substitute
17 “this Part has effect as if the proposal were a proposal under
18 section 12AA”.

19 **93 Paragraph 34(1)(a)**

20 Omit “a preliminary or full assessment”, substitute “an initial or draft
21 assessment”.

22 **94 Paragraph 34(1)(b)**

23 Omit “an inquiry to consider”, substitute “a final assessment in relation
24 to”.

25 **95 Subsections 35(1) and (1A)**

26 Omit “recommendation to the Council”, substitute “decision under
27 section 18”.

28 Note: The heading to section 35 is altered by omitting “**make recommendations to Council**”
29 and substituting “**decisions under section 18**”.

30 **96 Subsection 35(1A)**

1 Omit “of the beginning of the work plan year in which the application
2 was considered”, substitute “after the application was accepted”.

3 **97 Subsection 35(2)**

4 Omit “recommendation or”.

5 **98 Paragraph 35(5)(b)**

6 Omit “full”, substitute “draft”.

7 **99 Paragraph 35(5A)(b)**

8 Omit “holds an inquiry to consider”, substitute “makes a final
9 assessment in relation to”.

10 **100 Subsection 35(5A)**

11 Omit “the inquiry notice period”, substitute “the final assessment notice
12 period”.

13 **101 Subsection 35(7)**

14 Insert:

15 *final assessment notice period*, in relation to an application made
16 under section 12, means the period:

- 17 (a) beginning on the day on which notice is given to the
18 applicant under subsection 16(1); and
19 (b) ending at the end of the day when the applicant pays the
20 amount referred to in subsection 16(4) to the Authority.

21 **102 Subsection 35(7) (definition of *inquiry notice period*)**

22 Repeal the definition.

23 **103 Paragraph 36(1)(b)**

24 Omit “21”, substitute “12AA”.

25 **104 Subsection 36(1A)**

26 Omit “15, 15A and 23”, substitute “16, 17, 17AA and 19”.

27 **105 Paragraph 36(1C)(b)**

28 Omit “22 or 24”, substitute “14A or 17AA”.

1 **106 Paragraph 36(1C)(c)**

2 Omit “24”, substitute “17AA”.

3 **107 Subsection 36A(1)**

4 Omit “21”, substitute “12AA”.

5 **108 Paragraph 36A(2A)(b)**

6 Omit “22 or 24”, substitute “14A or 17AA”.

7 **109 Paragraph 36A(2A)(c)**

8 Omit “24”, substitute “17AA”.

9 **110 Section 37**

10 Repeal the section.

11 **111 Section 39**

12 Omit “member of the Authority” (wherever occurring), substitute
13 “member of the Board”.

14 **112 Paragraph 39(4)(c)**

15 After “person”, insert “or body”.

16 **113 Subsection 39(11) (definition of *committee*)**

17 Repeal the definition.

18 **114 Part 4 (heading)**

19 Repeal the heading, substitute:

20 **Part 4—The Board, the Chief Executive Officer**
21 **and the Authority’s staff**

22 **115 Division 1 of Part 4 (heading)**

23 Repeal the heading, substitute:

24 **Division 1—The Board**

25 **116 Before section 40**

1 Insert:

2 **39A Board**

- 3 (1) The affairs of the Authority are to be conducted by a Board to be
4 known as the Board of Food Standards Australia New Zealand.
- 5 (2) All acts and things done in the name of, or on behalf of, the
6 Authority by the Board or with the authority of the Board are taken
7 to have been done by the Authority.
- 8 (3) To avoid doubt, a reference in subsection (2) to a *thing done*
9 includes a reference to a state of mind attained or an opinion
10 formed.

11 **117 Subsection 40(1)**

12 Omit “Authority”, substitute “Board”.

13 Note: The heading to section 40 is altered by omitting “**Authority**” and substituting “**Board**”.

14 **118 Paragraphs 40(1)(aa), (b), (ba), (c), (d) and (e)**

15 Repeal the paragraphs, substitute:

- 16 (b) the Chief Executive Officer; and
17 (c) 2 members nominated by the New Zealand lead Minister on
18 the Council; and
19 (d) a member nominated by consumer organisations; and
20 (e) a member nominated by the National Health and Medical
21 Research Council; and
22 (f) 4 members nominated by scientific and public health
23 organisations; and
24 (g) 2 members nominated by food industry organisations or
25 public bodies.

26 **119 Subsection 40(2)**

27 Repeal the subsection, substitute:

- 28 (1B) The Minister may appoint a person as a member mentioned in
29 paragraph (1)(a), (d), (e), (f) or (g) only if the Council has agreed
30 to the appointment.

- 1 (2) Before appointing a person as a member mentioned in paragraph
2 (1)(c), the Minister must consult with the Council.

3 **120 Subsections 40(3) and (4)**

4 Repeal the subsections, substitute:

- 5 (3) The Minister may appoint a person as a member mentioned in
6 paragraph (1)(a), (c) or (f) only if:
7 (a) the Minister is satisfied that the person is suitably qualified
8 for appointment because of expertise in one or more of the
9 following fields:
10 (i) public health;
11 (ii) consumer affairs;
12 (iii) food science;
13 (iv) food allergy;
14 (v) human nutrition;
15 (vi) medical science;
16 (vii) microbiology;
17 (viii) food safety;
18 (ix) biotechnology;
19 (x) veterinary science; and
20 (b) the person has been nominated by a professional association
21 or public body prescribed by the regulations for the purposes
22 of each subparagraph in paragraph (a).
- 23 (4) The Minister may appoint a person as a member mentioned in
24 paragraph (1)(g) only if:
25 (a) the Minister is satisfied that the person is suitably qualified
26 for appointment because of expertise in one or more of the
27 following fields:
28 (i) the food industry;
29 (ii) food processing or retailing;
30 (iii) primary food production;
31 (iv) small business;
32 (v) international trade;
33 (vi) government;
34 (vii) food regulation; and

- 1 (b) the person has been nominated by a professional association
2 or public body prescribed by the regulations for the purposes
3 of each subparagraph in paragraph (a).

4 **120A Transitional—making of regulations for the nomination**
5 **of Board members**

- 6 (1) A power conferred by paragraph 40(3)(b) or 40(4)(b) of the *Australia*
7 *New Zealand Food Authority Act 1991* to make regulations in relation
8 to the nomination of persons for selection as members of the Board may
9 be exercised before the commencement of those provisions as if those
10 provisions had come into operation.
- 11 (2) Subitem (1) has effect despite anything in the *Acts Interpretation Act*
12 *1901*.

13 **121 Subsection 40(5)**

- 14 Omit “(1)(c)”, substitute “(1)(d)”.

15 **122 Subsection 40(6)**

- 16 Repeal the subsection.

17 **123 Subsection 40(9)**

- 18 Omit “Authority” (wherever occurring), substitute “Board”.

19 **124 Transitional—termination of existing appointments**

- 20 If a person held office as a member (other than the Chief Executive
21 Officer) immediately before the commencement of this item, the
22 member’s appointment is terminated at the commencement of this item.

23 **125 Subsection 41(1)**

- 24 Omit “, other than a special purpose member,”.

25 **126 Subsection 41(2)**

- 26 Repeal the subsection, substitute:

- 27 (2) A member holds office for a period of 4 years.

28 **127 Subsection 41(3)**

- 29 Repeal the subsection.

1 **127A At the end of subsection 41(4)**

2 Add “for a second term but must not be reappointed for a third or
3 subsequent term”.

4 **128 At the end of section 41**

5 Add:

6 (5) If:

7 (a) a member holds office for a particular period (the *original*
8 *period*); and

9 (b) the Minister does not make a decision before the end of the
10 original period to re-appoint, or not to re-appoint, the
11 member;

12 then, subject to this Part, the member continues to hold office on
13 the basis that the original period is extended until:

14 (c) the end of the period of 6 months beginning at the end of the
15 original period; or

16 (d) the Minister notifies the member that the Minister has
17 decided not to re-appoint the member; or

18 (e) the Minister signs an instrument re-appointing the member;
19 whichever first happens.

20 (6) As soon as practicable after subsection (5) begins to apply to a
21 member, the Authority must cause to be published in the *Gazette* a
22 notice describing the circumstances in which that subsection has
23 begun to apply to the member.

24 (7) As soon as practicable after subsection (5) ceases to apply to a
25 member, the Authority must cause to be published in the *Gazette* a
26 notice describing the circumstances in which that subsection has
27 ceased to apply to the member.

28 (8) The Minister must not appoint a person as the Chairperson if, at
29 any time during the period of 2 years immediately before the
30 proposed period of appointment, the person was employed by, or
31 had a pecuniary interest in, a body corporate whose primary
32 commercial activity relates directly to the production or
33 manufacture of food.

34 (9) The Minister must not appoint a person as a Chairperson if the
35 person has a pecuniary interest in a body corporate whose primary

1 commercial activity relates directly to the production or
2 manufacture of food.

3 **129 Section 42**

4 Repeal the section.

5 **130 Section 43**

6 Omit “Authority” (wherever occurring), substitute “Board”.

7 Note: The heading to section 43 is altered by omitting “**other than the Food Advisory**
8 **Committee**”.

9 **131 Subsection 43(1)**

10 Omit “other”.

11 **132 At the end of section 43**

12 Add:

13 (4) In exercising its powers under subsection (1), (2) or (3), the
14 Authority must comply with any directions given to it by the
15 Council.

16 (5) The Board must keep the Council informed of:

17 (a) the establishment or abolition of a committee; and

18 (b) any directions given by the Board to a committee.

19 **133 Transitional—abolition of existing committees**

20 If a committee established under section 43 of the *Australia New*
21 *Zealand Food Authority Act 1991* was in existence immediately before
22 the commencement of this item, the committee is abolished at the
23 commencement of this item.

24 **134 Subsection 44(1)**

25 Omit “Authority, of the Food Advisory Committee and of other”,
26 substitute “Board and of”.

27 **135 Subsection 46(2)**

28 Omit “other than a special purpose member”.

29 **136 Section 47**

1 Omit “Authority” (wherever occurring), substitute “Board”.

2 **137 Subsection 47(4)**

3 Omit “other than a special purpose member”.

4 **138 Section 48**

5 Omit “Authority” (wherever occurring), substitute “Board”.

6 **139 Section 49**

7 Omit “Authority” (wherever occurring), substitute “Board”.

8 **140 Section 50**

9 Omit “direct or indirect pecuniary interest”, substitute “material
10 personal interest, including an interest in relation to academic or
11 research associations of the member,”.

12 **141 Section 50**

13 Omit “Authority” (wherever occurring), substitute “Board”.

14 **141A At the end of section 50**

15 Add:

16 (5) The Board must establish and maintain a system for the declaration
17 and registration of material personal interests of its members.

18 (6) The entries recorded in the register of members’ interests must be
19 published by the Board on the Internet.

20 **142 Paragraph 52(2)(d)**

21 Omit “or a special purpose member”.

22 **143 Paragraph 52(2)(d)**

23 Omit “Authority”, substitute “Board”.

24 **144 Paragraph 52(2)(d)**

25 Omit “or” (last occurring).

26 **145 Paragraph 52(2)(e)**

27 Repeal the paragraph.

1 **146 Subsection 52A(2)**

2 Omit “Minister”, substitute “Board”.

3 **146A At the end of section 52A**

4 Add:

5 (3) The Minister must not appoint a person as the Chief Executive
6 Officer if, at any time immediately before the proposed period of
7 appointment, the person was employed by a body corporate whose
8 primary commercial activity relates directly to the production or
9 manufacture of food.

10 (4) The Minister must not appoint a person as the Chief Executive
11 Officer if the person has a pecuniary interest in a body corporate
12 whose primary commercial activity relates directly to the
13 production or manufacture of food.

14 **147 Transitional—appointment of Chief Executive Officer**

15 (1) This item applies if a person held office as the Chief Executive Officer
16 immediately before the commencement of this item because of an
17 appointment under subsection 52A(2) of the *Australia New Zealand*
18 *Food Authority Act 1991*.

19 (2) The person continues to hold that office, as if that appointment were an
20 appointment under the corresponding provision of the *Food Standards*
21 *Australia New Zealand Act 1991*, until:

- 22 (a) the end of the period of 6 months beginning at the
23 commencement of this item; or
24 (b) the Board re-appoints the person to that office; or
25 (c) the Board appoints another person to that office;

26 whichever first happens.

27 **148 Subsection 52B(2)**

28 Omit “Authority”, substitute “Board”.

29 **149 At the end of section 52B**

30 Add:

31 (3) The Chief Executive Officer is not authorised to act on behalf of
32 the Authority under:

- 1 (a) section 18; or
2 (b) subsection 21(6); or
3 (c) subsection 22(6); or
4 (d) subsection 26(1); or
5 (e) subsection 28(1); or
6 (f) subsection 28A(6); or
7 (g) subsection 28B(6).

8 **150 Section 52D**

9 Omit “Minister” (wherever occurring), substitute “Board”.

10 **151 Section 52E**

11 Omit “Minister”, substitute “Board”.

12 **152 Section 52F**

13 Omit “Minister”, substitute “Board”.

14 **153 Transitional—determination of terms and conditions for**
15 **Chief Executive Officer**

- 16 (1) This item applies if a determination was in force under section 52F of
17 the *Australia New Zealand Food Authority Act 1991* immediately
18 before the commencement of this item.
- 19 (2) The *Food Standards Australia New Zealand Act 1991* has effect, after
20 the commencement of this item, as if the determination had been made
21 by the Board under section 52F of that Act.

22 **154 Section 52G**

23 Omit “Minister”, substitute “Board”.

24 **155 Transitional—appointment of acting Chief Executive**
25 **Officer during a vacancy**

- 26 (1) This item applies if a person was acting as the Chief Executive Officer
27 immediately before the commencement of this item because of an
28 appointment under paragraph 52G(1)(a) of the *Australia New Zealand*
29 *Food Authority Act 1991*.

- 1 (2) The person continues to act as the Chief Executive Officer, as if that
2 appointment were an appointment under the corresponding provision of
3 the *Food Standards Australia New Zealand Act 1991*, until:
4 (a) the end of the period of 6 months beginning at the
5 commencement of this item; or
6 (b) the Board terminates the person’s appointment; or
7 (c) the Board appoints the person, or another person, to the
8 office of Chief Executive Officer under subsection 52A(2) of
9 the *Food Standards Australia New Zealand Act 1991*;
10 whichever first happens.

11 **156 Transitional—appointment of acting Chief Executive**
12 **Officer during temporary absence etc.**

- 13 (1) This item applies if a person was acting as the Chief Executive Officer
14 immediately before the commencement of this item because of an
15 appointment under paragraph 52G(1)(b) of the *Australia New Zealand*
16 *Food Authority Act 1991*.
- 17 (2) The person continues to act as the Chief Executive Officer, as if that
18 appointment were an appointment under the corresponding provision of
19 the *Food Standards Australia New Zealand Act 1991*, until:
20 (a) the end of the period of 6 months beginning at the
21 commencement of this item; or
22 (b) the Board terminates the person’s appointment; or
23 (c) the Chief Executive Officer returns to duty;
24 whichever first happens.

25 **157 Section 61**

26 Omit “at an inquiry” (wherever occurring), substitute “in the course of a
27 final assessment”.

28 **158 Subsection 62(1)**

29 Omit “at an inquiry”, substitute “in the course of a final assessment”.

30 **159 Subsection 62(2)**

31 Omit “member of the Authority”, substitute “member of the Board”.

32 **160 After subparagraph 63(1)(a)(ii)**

1 Insert:

2 (iii) a decision by the Authority under section 25 to reject
3 the application; or

4 **161 Subsection 65A(1)**

5 Omit “New Zealand Minister”, substitute “New Zealand lead Minister
6 on the Council”.

7 **162 Subsection 65A(2)**

8 Repeal the subsection.

9 **163 Transitional—agreement under section 65A of the**
10 ***Australia New Zealand Food Authority Act 1991***

11 (1) This item applies to an agreement in force under section 65A of the
12 *Australia New Zealand Food Authority Act 1991* immediately before
13 the commencement of this item.

14 (2) The agreement has effect, after the commencement of this item, as if it
15 had been entered into between the Authority and the lead New Zealand
16 Minister on the Council under section 65A of the *Food Standards*
17 *Australia New Zealand Act 1991*.

18 **164 Paragraph 66(9)(a)**

19 Omit “adoption”, substitute “coming into effect”.

20 **165 Section 67**

21 Repeal the section, substitute:

22 **67 Delegation by Board**

23 (1) The Board may, by resolution, delegate to a member of the Board,
24 or to a senior member of the staff of the Authority, all or any of its
25 powers under this Act, other than its powers to act on behalf of the
26 Authority under:

27 (a) section 18; or

28 (b) subsection 21(6); or

29 (c) subsection 22(6); or

30 (d) subsection 26(1); or

31 (e) subsection 28(1); or

- 1 (f) subsection 28A(6); or
2 (g) subsection 28B(6).
- 3 (2) A delegation of a power under this section:
4 (a) may be revoked by resolution of the Board (whether or not
5 constituted by the persons constituting the Board at the time
6 when the power was delegated); and
7 (b) continues in force notwithstanding a change in the
8 membership of the Board.
- 9 (3) Section 34A of the *Acts Interpretation Act 1901* applies in relation
10 to a delegation under this section as if the Board were a person.
- 11 (4) A certificate signed by the Chairperson of the Board stating any
12 matter with respect to a delegation of a power under this section is
13 prima facie evidence of that matter.
- 14 (5) A document purporting to be a certificate mentioned in
15 subsection (4) is, unless the contrary is established, taken to be
16 such a certificate and to have been duly given.
- 17 (6) A delegate under this section is, in the exercise of a power
18 delegated under this section, subject to any directions given by the
19 Board.
- 20 (7) In this section:
- 21 *senior member of the staff of the Authority* means:
22 (a) a person who holds or performs the duties of a Senior
23 Executive Service position in the Authority; or
24 (b) a person who holds or performs the duties of an APS
25 Executive Level 2 position, or an equivalent position, in the
26 Authority.

27 **166 Subsection 68(1)**

28 Omit “of the Authority”, substitute “of the Board”.

29 **167 Subsection 68(2)**

30 Omit “action that a standard has been adopted, or taken to have been
31 adopted, and published in respect of that food and that the food
32 complies with the standard.”, substitute:
33 action that:

- 1 (a) a standard has come into effect; or
2 (b) a standard has been adopted, or taken to have been adopted,
3 and published;
4 in respect of that food and that the food complies with the standard.

5 **168 Transitional—exemption from suit**

6 Despite the amendments of section 68 of the *Australia New Zealand*
7 *Food Authority Act 1991* made by this Part, that section continues to
8 apply, after the commencement of this item, in relation to a member of
9 the Authority, as if those amendments had not been made.

10 **169 Paragraph 69(c)**

11 Omit “21”, substitute “12AA”.

12 **170 Paragraph 69(e)**

13 Omit “a recommendation to the Council, or a decision under subsection
14 20A(2),”, substitute “decision under section 18”.

15 **171 At the end of section 69**

16 Add:

- 17 ; (i) the number of standards made under this Act during that
18 year; and
19 (j) the number of draft standards and draft variations approved
20 during that year under:
21 (i) section 18; or
22 (ii) subsection 26(1); and
23 (k) the number of occasions during that year when requests were
24 made under section 21 for a review of a draft standard or
25 draft variation; and
26 (l) the number of occasions during that year when requests were
27 made under section 22 for a review of a draft standard or
28 draft variation; and
29 (m) the number of occasions during that year when a draft
30 standard or draft variation was rejected under section 23; and
31 (n) the number of occasions during that year when requests were
32 made under section 28A for a review of a standard or
33 variation; and

- 1 (o) the number of occasions during that year when requests were
2 made under section 28B for a review of a standard or
3 variation; and
4 (p) the number of occasions during that year when a standard or
5 variation was revoked or amended under section 28C; and
6 (q) a summary of policy principles notified to the Authority
7 during that year under paragraph 10(2)(e); and
8 (r) such other matters (if any) as are specified in the regulations.

9 **172 Transitional—annual report in the course of preparation**
10 **immediately before this item commenced**

11 To avoid doubt, if, immediately before the commencement of this item,
12 the members of the Australia New Zealand Food Authority had not
13 completed the preparation of an annual report under section 9 of the
14 *Commonwealth Authorities and Companies Act 1997* for the last
15 financial year that ended before the commencement of this item, the
16 members of the Board are responsible, in accordance with that section,
17 for:

- 18 (a) completing the preparation of that report; and
19 (b) giving the report to the Minister by the relevant deadline for
20 the financial year.

21 **173 Transitional—annual report for the financial year in**
22 **which this item commenced**

- 23 (1) To avoid doubt, the obligations imposed on the members of the Board
24 by:
25 (a) section 9 of the *Commonwealth Authorities and Companies*
26 *Act 1997*; and
27 (b) section 69 of the *Food Standards Australia New Zealand Act*
28 *1991*;
29 to prepare an annual report on the Authority for the financial year in
30 which this item commenced extends to so much of the financial year as
31 occurred before this item commenced (when the Authority was known
32 as the Australia New Zealand Food Authority).
33 (2) Despite the amendments of section 69 of the *Australia New Zealand*
34 *Food Authority Act 1991* made by this Part, that section continues to
35 apply, after the commencement of this item, in relation to so much of

1 that financial year as occurred before this item commenced, as if those
2 amendments had not been made.

3 **174 Transitional—certain draft standards etc. deemed to be**
4 **notified to Council**

- 5 (1) This item applies if, before the commencement of this item:
- 6 (a) ANZFA made a recommendation to the old Council under
7 section 18 or 26 of the *Australia New Zealand Food*
8 *Authority Act 1991*:
- 9 (i) that the old Council adopt a draft standard or a draft
10 variation of a standard; or
- 11 (ii) that the old Council adopt a draft standard or a draft
12 variation of a standard subject to such amendments as
13 ANZFA considers necessary; and
- 14 (b) the old Council had not made a decision under section 20 or
15 28 of that Act in relation to that recommendation.
- 16 (2) The *Food Standards Australia New Zealand Act 1991* has effect after
17 the commencement of this item, in relation to the draft, as if:
- 18 (a) in a case where subparagraph (1)(a)(i) applies—FSANZ had
19 approved the draft under section 18 of that Act; and
- 20 (b) in a case where subparagraph (1)(a)(ii) applies—FSANZ had
21 approved the draft under section 18 of that Act subject to
22 those amendments; and
- 23 (c) in all cases—FSANZ had notified the new Council of the
24 approval under section 20 of that Act; and
- 25 (d) paragraphs 20(1)(b), (c), (d), (e) and (f) of that Act had not
26 been enacted.
- 27 (3) As soon as practicable after the commencement of this item, FSANZ
28 must:
- 29 (a) prepare a written list of the drafts covered by subitem (1);
30 and
- 31 (b) give a copy of that list to the new Council.
- 32 (4) In this item:
- 33 **ANZFA** means the Australia New Zealand Food Authority.
- 34 **FSANZ** means Food Standards Australia New Zealand.

1 *new Council* means the Australia and New Zealand Food Regulation
2 Ministerial Council.

3 *old Council* means the Australia New Zealand Food Standards Council.

4 **175 Transitional—applications pending immediately before**
5 **this item commenced**

- 6 (1) For the purposes of this item, an application for the development or
7 variation of a food regulatory measure is an *eligible application* if:
- 8 (a) the application was made under section 12 of the old Act
9 before the commencement of this item; and
 - 10 (b) the application was not withdrawn before that
11 commencement; and
 - 12 (c) the application was not rejected before that commencement;
13 and
 - 14 (d) in a case where the application was for the development or
15 variation of a standard and a draft standard or draft variation
16 was prepared as a result of the application—ANZFA neither:
 - 17 (i) made a recommendation to the old Council about the
18 draft; nor
 - 19 (ii) made a decision about the draft under section 20A of the
20 old Act;before that commencement; and
 - 22 (e) in a case where the application was for the development or
23 variation of a code of practice and a draft code of practice or
24 a draft variation was developed as a result of the
25 application—ANZFA neither:
 - 26 (i) approved the draft; nor
 - 27 (ii) rejected the draft;before that commencement.
- 29 (2) The eligible application lapses at the commencement of this item and,
30 except as provided by this item, FSANZ is not to take any action under
31 the new Act after that commencement in relation to:
- 32 (a) the eligible application; or
 - 33 (b) any draft prepared as a result of the eligible application.
- 34 (3) For the purposes of the new Act:

- 1 (a) the eligible applicant is taken to have made an application
2 (the *fresh application*) under section 12 of that Act in the
3 same terms as the eligible application; and
4 (b) the fresh application is taken to have been made immediately
5 after the commencement of this item; and
6 (c) if the eligible application was accompanied by information in
7 support of the eligible application—the fresh application is
8 taken to be accompanied by that information; and
9 (d) if, under subsection 12(3) of the old Act, the applicant had
10 provided a sample of the food to which the eligible
11 application relates—the applicant is taken to have provided
12 that sample in relation to the fresh application under
13 subsection 12(3) of the new Act.
- 14 (4) The applicant may, within 28 days after the commencement of this
15 item, request FSANZ, in writing, to defer making a decision under
16 section 13A of the new Act in relation to the application until the
17 applicant gives FSANZ additional information to support the
18 application. FSANZ must comply with that request.
- 19 (5) If the applicant makes a request under subitem (4), the time taken by the
20 applicant to provide the information is not to be included in the period
21 set or prescribed for the purpose of subsection 35(1) of the new Act or
22 set for the purposes of subsection 35(1A) or (3) of the new Act.
- 23 (6) Subsections 35(1) and (1A) of the new Act have effect, in relation to the
24 fresh application, as if a reference in those subsections to 12 months
25 were a reference to 15 months.
- 26 (7) If ANZFA made a preliminary assessment of the eligible application
27 before the commencement of this item, FSANZ is taken to have made
28 an initial assessment of the fresh application.
- 29 (8) If, before the commencement of this item, any submissions had been
30 made to ANZFA about the eligible application in response to a notice
31 given under section 13A or 14 of the old Act, those submissions have
32 effect as if they had been made to FSANZ about the fresh application in
33 response to a notice given under section 13A or 14 of the new Act.
- 34 (9) If notice is given under section 13A or 14 of the new Act in relation to
35 the fresh application, the notice must set out an explanation of the effect
36 of subitem (8).
-

- 1 (10) If:
- 2 (a) FSANZ accepts the fresh application under section 13A of
- 3 the new Act; and
- 4 (b) ANZFA had:
- 5 (i) made a full assessment of the eligible application before
- 6 the commencement of this item; and
- 7 (ii) prepared a draft food regulatory measure or a draft
- 8 variation of a food regulatory measure before the
- 9 commencement of this item;
- 10 FSANZ is taken to have made a draft assessment of the fresh
- 11 application if it reviews the full assessment having regard to:
- 12 (c) any submissions made to it in response to a notice given
- 13 under section 13A or 14 of the new Act in relation to the
- 14 fresh application, being submissions that were not considered
- 15 in making the full assessment; and
- 16 (d) the matter set out in paragraph 10(2)(e) of the new Act.
- 17 (11) If, before the commencement of this item, any submissions had been
- 18 made to ANZFA in response to a notice given under section 16 or 17 of
- 19 the old Act in relation to the eligible application, those submissions
- 20 have effect as if they had been made to FSANZ in response to a notice
- 21 given under section 16 or 17 of the new Act in relation to the fresh
- 22 application.
- 23 (12) If notice is given under section 16 or 17 of the new Act in relation to the
- 24 fresh application, the notice must set out an explanation of the effect of
- 25 subitem (11).
- 26 (13) If ANZFA held an inquiry in relation to the eligible application before
- 27 the commencement of this item, FSANZ is taken to have made a final
- 28 assessment in relation to the draft that resulted from the fresh
- 29 application if it reviews the inquiry having regard to:
- 30 (a) any submissions made to it in response to a notice given
- 31 under section 16 or 17 of the new Act in relation to the draft
- 32 that resulted from the fresh application, being submissions
- 33 that were not considered in holding the inquiry; and
- 34 (b) the matter set out in paragraph 10(2)(e) of the new Act.

- 1 (14) If, before the commencement of this item, the applicant paid ANZFA a
2 charge fixed under section 66 of the old Act for a service provided in
3 relation to the eligible application:
- 4 (a) if the service was provided before the commencement of this
5 item—the applicant is taken to have paid FSANZ the charge
6 fixed under section 66 of the new Act for the corresponding
7 service in relation to the fresh application; and
- 8 (b) if the service was not provided before the commencement of
9 this item—FSANZ must refund the charge unless the
10 applicant elects to treat the payment as fully discharging the
11 applicant’s liability to pay FSANZ the charge fixed under
12 section 66 of the new Act for the corresponding service in
13 relation to the fresh application.
- 14 (15) For the purposes of subitem (14):
- 15 (a) the service of making an initial assessment in relation to the
16 fresh application corresponds to the service of making a
17 preliminary assessment in relation to the eligible application;
18 and
- 19 (b) the service of making a draft assessment in relation to the
20 fresh application corresponds to the service of making a full
21 assessment in relation to the eligible application; and
- 22 (c) the service of making a final assessment in relation to the
23 fresh application corresponds to the service of holding an
24 inquiry in relation to the eligible application; and
- 25 (d) the service of the giving of notices under a provision of the
26 new Act in relation to the fresh application corresponds to the
27 service of the giving of notices under the corresponding
28 provision of the old Act in relation to the eligible application;
29 and
- 30 (e) the service of the preparation of a draft food regulatory
31 measure, or a draft variation of a food regulatory measure, in
32 relation to the fresh application corresponds to the service of
33 the preparation of a draft food regulatory measure, or a draft
34 variation of a food regulatory measure, as the case requires,
35 in relation to the eligible application.
- 36 (16) If, under subitem (14), the applicant is taken to have paid FSANZ a
37 charge referred to in subparagraph 12(2)(c)(i) or (ii) of the new Act in

1 relation to the fresh application, the requirements of paragraph 12(2)(c)
2 of the new Act are taken to have been met in relation to that charge.

3 (17) If, under subitem (14), the applicant elects to treat a payment as fully
4 discharging the applicant's liability to pay FSANZ a charge referred to
5 in subparagraph 12(2)(c)(i) or (ii) of the new Act in relation to the fresh
6 application, the requirements of paragraph 12(2)(c) of the new Act are
7 taken to have been met in relation to that charge.

8 (18) If the eligible application was made before 23 December 1999:
9 (a) the applicant is not liable to pay FSANZ a charge fixed under
10 section 66 of the new Act for a service in relation to the fresh
11 application; and
12 (b) the new Act has effect, in relation to the fresh application, as
13 if paragraph 12(2)(c) and subsections 15(2) and 16(4) had not
14 been enacted.

15 (19) If the eligible application was in a particular year of a 3 year plan, the
16 fresh application is taken to be in the same year of the plan.

17 (20) In this item:

18 *ANZFA* means the Australia New Zealand Food Authority.

19 *FSANZ* means Food Standards Australia New Zealand.

20 *new Act* means the *Food Standards Australia New Zealand Act 1991*, as
21 in force at or after the commencement of this item.

22 *old Act* means the *Australia New Zealand Food Authority Act 1991*, as
23 in force before the commencement of this item.

24 *old Council* means the Australia New Zealand Food Standards Council.

25 **176 Transitional—proposals pending immediately before this** 26 **item commenced**

27 (1) For the purposes of this item, a proposal for the development or
28 variation of a food regulatory measure is an *eligible proposal* if:

29 (a) the proposal was prepared under section 21 of the old Act
30 before the commencement of this item; and

31 (b) the proposal was not abandoned before that commencement;
32 and

- 1 (c) in a case where the proposal was for the development or
2 variation of a standard and a draft standard or draft variation
3 was prepared as a result of the proposal—ANZFA neither:
4 (i) made a recommendation to the old Council about the
5 draft; nor
6 (ii) made a decision about the draft under section 28A of the
7 old Act;
8 before that commencement; and
9 (d) in a case where the proposal was for the development or
10 variation of a code of practice and a draft code of practice or
11 a draft variation was developed as a result of the proposal—
12 ANZFA neither:
13 (i) approved the draft; nor
14 (ii) rejected the draft;
15 before that commencement.
- 16 (2) The eligible proposal lapses at the commencement of this item and,
17 except as provided by this item, FSANZ is not to take any action under
18 the new Act after that commencement in relation to:
19 (a) the eligible proposal; or
20 (b) any draft prepared as a result of the eligible proposal.
- 21 (3) For the purposes of the new Act:
22 (a) FSANZ is taken to have prepared a proposal (the *fresh*
23 *proposal*) under section 12AA of that Act in the same terms
24 as the eligible proposal; and
25 (b) the fresh proposal is taken to have been prepared
26 immediately after the commencement of this item.
- 27 (4) If, before the commencement of this item, any submissions had been
28 made to ANZFA about the eligible proposal in response to a notice
29 given under section 22 of the old Act, those submissions have effect as
30 if they had been made to FSANZ about the fresh proposal in response to
31 a notice given under section 14A of the new Act.
- 32 (5) If notice is given under section 14A of the new Act in relation to the
33 fresh proposal, the notice must set out an explanation of the effect of
34 subitem (4).
- 35 (6) If ANZFA had:
-

- 1 (a) made a full assessment of the eligible proposal before the
2 commencement of this item; and
- 3 (b) prepared a draft food regulatory measure or a draft variation
4 of a food regulatory measure before the commencement of
5 this item;
- 6 FSANZ is taken to have made a draft assessment of the fresh proposal if
7 it reviews the full assessment having regard to:
- 8 (c) any submissions made to it in response to a notice given
9 under section 14A of the new Act in relation to the fresh
10 proposal, being submissions that were not considered in
11 making the full assessment; and
- 12 (d) the matter set out in paragraph 10(2)(e) of the new Act.
- 13 (7) If, before the commencement of this item, any submissions had been
14 made to ANZFA in response to a notice given under section 24 of the
15 old Act in relation to the eligible proposal, those submissions have
16 effect as if they had been made to FSANZ in response to a notice given
17 under section 17AA of the new Act in relation to the fresh proposal.
- 18 (8) If notice is given under section 17AA of the new Act in relation to the
19 fresh proposal, the notice must set out an explanation of the effect of
20 subitem (7).
- 21 (9) If ANZFA held an inquiry in relation to the draft that resulted from the
22 eligible proposal before the commencement of this item, FSANZ is
23 taken to have made a final assessment of the fresh proposal if it reviews
24 the inquiry having regard to:
- 25 (a) any submissions made to it in response to a notice given
26 under section 17AA of the new Act in relation to the draft
27 that resulted from the fresh proposal, being submissions that
28 were not considered in holding the inquiry; and
- 29 (b) the matter set out in paragraph 10(2)(e) of the new Act.
- 30 (10) If the eligible proposal was in a particular year of a 3 year plan, the
31 fresh proposal is taken to be in the same year of the plan.
- 32 (11) In this item:
- 33 **ANZFA** means the Australia New Zealand Food Authority.
- 34 **FSANZ** means Food Standards Australia New Zealand.

1 *new Act* means the *Food Standards Australia New Zealand Act 1991*, as
2 in force at or after the commencement of this item.

3 *old Act* means the *Australia New Zealand Food Authority Act 1991*, as
4 in force before the commencement of this item.

5 *old Council* means the Australia New Zealand Food Standards Council.

6 **177 Transitional—regulations**

7 (1) The regulations may make provision for matters of a transitional nature
8 relating to the amendments made by this Part.

9 (2) The Governor-General may make regulations for the purposes of
10 subitem (1).

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2 **Part 2—Technical correction to section 7**

3 **178 Subsection 7(2)**

4 Omit “paragraph (1)(n)”, substitute “paragraph (1)(o)”.

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2 **Part 3—Other technical amendments**

3 **179 At the end of section 3**

4 Add:

5 (3) A reference in the definition of *Australia New Zealand Food*
6 *Standards Code* in subsection (1) to the *amendment of the*
7 *standards in that code* includes, and is taken always to have
8 included, a reference to an amendment by way of the insertion,
9 revocation or substitution of a standard in that code.

10 (4) A reference in this Act to the *variation* of a food regulatory
11 measure includes, and is taken always to have included, a reference
12 to the revocation of a food regulatory measure.

13 **180 Paragraph 12B(2)(b)**

14 Omit “15”, substitute “15A”.

15 **181 Paragraph 15(3)(b)**

16 After “objectives”, insert “and matters”.

17 **182 Subparagraph 16(5)(b)(iii)**

18 Omit “proposal” (wherever occurring), substitute “draft”.

19 **183 Paragraph 17(2)(d)**

20 Omit “proposal” (wherever occurring), substitute “draft”.

21 **184 Paragraph 23(2)(b)**

22 After “objectives”, insert “and matters”.

23 **185 Paragraph 19(2)(e)**

24 Omit “proposal” (wherever occurring), substitute “draft”.

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

1 Subsection 2(4)

Omit “*Public Service Act 1997*”, substitute “*Public Service Act 1999*”.

1
2 **Schedule 3—Amendment of other Acts**
3

4 ***Agricultural and Veterinary Chemicals Act 1994***

5 **1 Subsection 7(2)**

6 Omit “*Australia New Zealand Food Authority Act 1991*”, substitute
7 “*Food Standards Australia New Zealand Act 1991*”.

8 ***Gene Technology Act 2000***

9 **2 Paragraph 138(5)(b)**

10 Repeal the paragraph, substitute:

11 (b) the *Food Standards Australia New Zealand Act 1991*;

12 ***Imported Food Control Act 1992***

13 **3 Subsection 3(1) (definition of *Australia New Zealand Food***
14 ***Standards Code*)**

15 Repeal the definition, substitute:

16 *Australia New Zealand Food Standards Code* has the same
17 meaning as in the *Food Standards Australia New Zealand Act*
18 *1991*.

19 **4 Subparagraph 3(3)(a)(i)**

20 Repeal the subparagraph, substitute:

- 21 (i) made under the *Food Standards Australia New Zealand*
22 *Act 1991* after the commencement of Part 1 of
23 Schedule 1 to the *Australia New Zealand Food*
24 *Authority Amendment Act 2001*; or
25 (ia) adopted by the Australia New Zealand Food Standards
26 Council under *Australia New Zealand Food Authority*
27 *Act 1991* before the commencement of Part 1 of
28 Schedule 1 to the *Australia New Zealand Food*
29 *Authority Amendment Act 2001*; or

30 **5 Subparagraph 3(3)(a)(ii)**

1 Omit “within the meaning of that Act”.

2 ***Industrial Chemicals (Notification and Assessment) Act 1989***

3 **6 Subsection 7(2) (definition of *food additive*)**

4 After “under the”, insert “Australia New Zealand”.

5 **7 Subsection 7(2) (definition of *food additive*)**

6 Omit “*Australia New Zealand Food Authority Act 1991*”, substitute
7 “*Food Standards Australia New Zealand Act 1991*”.

8 ***Therapeutic Goods Act 1989***

9 **8 Subsection 3(1) (paragraph (e) of the definition of**
10 ***therapeutic goods*)**

11 Omit “*Australia New Zealand Food Authority Act 1991*”, substitute
12 “*Food Standards Australia New Zealand Act 1991*”.