

2004-2005-2006-2007

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Food Standards Australia New Zealand
Amendment Bill 2007**

No. , 2007

(Health and Ageing)

**A Bill for an Act to amend the law relating to food
regulatory measures, and for related purposes**

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1 **A Bill for an Act to amend the law relating to food**
2 **regulatory measures, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Food Standards Australia New*
6 *Zealand Amendment Act 2007*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 and 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, items 64 to 67	Immediately after the commencement of the provision(s) covered by table item 2.	
4. Schedule 1, items 68 to 70	Immediately after the commencement of the provisions covered by table item 3.	
5. Schedule 1, item 71	Immediately after the commencement of the provision(s) covered by table item 4.	
6. Schedule 1, Parts 4 and 5	Immediately after the commencement of the provision(s) covered by table item 5.	
7. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 18 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
8. Schedule 3, Part 1	The day on which an amendment of the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards, signed at Wellington on 5 December 1995, enters into force to reduce from two to one the number of occasions on which the Council may request the Authority to review a draft standard or a draft variation of a standard.	

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	However, if no such amendment of the Agreement is made, the provision(s) do not commence at all.	
9. Schedule 3, Part 2	Immediately after the commencement of Part 1 of Schedule 3. However, if Part 1 of Schedule 3 does not commence before Schedule 2, the provision(s) do not commence at all.	

- 1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not
3 be expanded to deal with provisions inserted in this Act after assent.
- 4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.
- 7 (3) The Minister must announce by notice in the *Gazette* the day on
8 which the amendment of the Agreement between the Government
9 of Australia and the Government of New Zealand Establishing a
10 System for the Development of Joint Food Standards, signed at
11 Wellington on 5 December 1995 (mentioned in item 8 of the table
12 in subsection (1)) enters into force.

3 Schedule(s)

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

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Schedule 1—New application and proposal procedures

Part 1—Amendments consequential on new application and proposal procedures

Food Standards Australia New Zealand Act 1991

1 Subsection 3(1)

Insert:

Agvet Code means the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth.

2 Subsection 3(1)

Insert:

APVMA means the Australian Pesticides and Veterinary Medicines Authority continued in existence by section 6 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

3 Subsection 3(1) (definition of *committee*)

Repeal the definition.

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

Omit “Food Regulation Agreement 2000”, substitute “Food Regulation Agreement”.

5 Subsection 3(1)

Insert:

exclusive capturable commercial benefit has the meaning given by section 8.

Note: After the Act is renumbered by Part 3 of this Schedule, section 3D will become section 8.

6 Subsection 3(1)

1 Insert:

2 ***Food Regulation Agreement*** means the Food Regulation
3 Agreement, as amended from time to time:

- 4 (a) that is between the Commonwealth, the States, the Northern
5 Territory and the Australian Capital Territory; and
6 (b) that was first made on 3 November 2000 or that was made:
7 (i) in substitution for that agreement; or
8 (ii) in substitution for a prior substituted agreement.

9 **7 Subsection 3(1) (definition of *Food Regulation Agreement***
10 **2000)**

11 Repeal the definition.

12 **8 Subsection 3(1)**

13 Insert:

14 ***Food Regulation Standing Committee*** means the Committee
15 established under the Food Regulation Agreement.

16 **9 Subsection 3(1)**

17 Insert:

18 ***general procedure*** means:

- 19 (a) in relation to the consideration of an application—the
20 procedure set out in Subdivision D of Division 1 of Part 3;
21 and
22 (b) in relation to the consideration of a proposal—the procedure
23 set out in Subdivision D of Division 2 of Part 3.

24 **10 Subsection 3(1)**

25 Insert:

26 ***Maximum Residue Limits Standard*** means the Maximum Residue
27 Limits Standard as in force from time to time, or any standard in
28 force in substitution for that standard.

29 **11 Subsection 3(1)**

30 Insert:

Schedule 1 New application and proposal procedures

Part 1 Amendments consequential on new application and proposal procedures

1 *policy guideline* means a guideline formulated by the Council for
2 the purposes of paragraph 18(2)(e).

3 Note: After the Act is renumbered by Part 3 of this Schedule, section 10 will become
4 section 18.

5 **12 Subsection 3(1)**

6 Insert:

7 *public notice* has the meaning given by section 7.

8 Note: After the Act is renumbered by Part 3 of this Schedule, section 3C will become
9 section 7.

10 **13 Subsection 3(1) (at the end of the definition of *standard*)**

11 Add:

12 However, neither of the following is taken to be part of a standard:

13 (c) boxed text identified as an editorial note;

14 (d) boxed text identified as an example.

15 **14 Subsection 3B(1)**

16 Omit “make a written declaration”, substitute “, by legislative
17 instrument, declare”.

18 **15 Subsection 3B(2)**

19 Repeal the subsection, substitute:

20 (2) The Minister must cause a copy of the declaration to be published
21 in the New Zealand Gazette.

22 **16 Subsection 3B(4)**

23 Repeal the subsection, substitute:

24 *Declaration not subject to disallowance or sunseting*

25 (4) Section 42 and Part 6 of the *Legislative Instruments Act 2003* do
26 not apply to the declaration.

27 **17 After section 3B**

28 Insert:

1 **3C How is *public notice* given?**

2 The Authority satisfies a requirement under this Act to give *public*
3 *notice* of a particular matter by:

- 4 (a) publishing notice of the matter on the Authority's Internet
5 site; and
6 (b) giving written notice of the matter to each appropriate
7 government agency; and
8 (c) if the requirement to give notice arises in the course of
9 considering an application to develop or vary a food
10 regulatory measure—giving written notice of the matter to
11 the applicant; and
12 (d) if the Authority has called for submissions in the course of
13 considering an application or proposal for the development or
14 variation of a food regulatory measure—giving written notice
15 of the matter to each of the persons invited to make a
16 submission who made a submission within the relevant
17 submission period; and
18 (e) giving written notice to any other person or body whom the
19 Authority considers appropriate.

20 **3D When is an *exclusive capturable commercial benefit* conferred on**
21 **an applicant?**

22 An *exclusive capturable commercial benefit* is conferred upon a
23 person who applies for the development of a food regulatory
24 measure or the variation of a food regulatory measure under
25 section 22 if:

- 26 (a) the applicant can be identified as a person or body that may
27 derive a financial gain from the coming into effect of the
28 draft standard or draft variation of the standard that would be
29 prepared in relation to the application; and
30 (b) any other unrelated persons or bodies, including unrelated
31 commercial entities, would require the agreement of the
32 applicant in order to benefit financially from the approval of
33 the application.

34 **18 After paragraph 7(1)(i)**

35 Insert:

Schedule 1 New application and proposal procedures

Part 1 Amendments consequential on new application and proposal procedures

1 (ia) to provide information, on request by a member of the public,
2 about the Australia New Zealand Food Standards Code; and

3 **19 Subsection 10(3)**

4 Omit “on the Internet”, substitute “on the Authority’s Internet site”.

5 **20 At the end of section 10**

6 Add:

7 (6) A policy guideline formulated by the Council for the purposes of
8 paragraph (2)(e) is not a legislative instrument.

9 **21 At the end of section 10A**

10 Add:

11 (3) The Authority must review and update the plan at least every 3
12 months.

13 **22 At the end of section 11**

14 Add:

15 (5) A direction given under subsection (1) is not a legislative
16 instrument.

17 **23 Subsection 39(3)**

18 Repeal the subsection, substitute:

19 (3) Subsection (1) does not preclude the disclosure of confidential
20 information in respect of food to any court in any proceeding.
21 However, the Authority must apply to the court for an order
22 preventing disclosure of that information to any other person
23 otherwise than for the purpose of the proceedings, if it is within the
24 jurisdiction of the court to make such an order.

25 **24 Paragraph 39(7)(a)**

26 Omit “paragraph 38(a)”, substitute “paragraph 137(a)”.

27 Note: The existing section 38 is repealed and a new section to the same effect added at the
28 end of Division 3 of Part 4 under Part 4 of this Schedule. The new section is numbered
29 section 137.

30 **25 Paragraph 39(7)(b)**

1 Omit “paragraph 38(b)”, substitute “paragraph 137(b)”.

2 **26 Paragraph 39(7)(ba)**

3 Omit “paragraph 38(ba)”, substitute “paragraph 137(c)”.

4 **27 Paragraph 39(7)(c)**

5 Omit “paragraph 38(c)”, substitute “paragraph 137(d)”.

6 **28 Subsection 39(8)**

7 Omit “section 38”, substitute “section 137”.

8 **29 Subsection 50(6)**

9 Omit “the Internet”, substitute “the Authority’s Internet site”.

10 **30 Subsection 52B(3)**

11 Repeal the subsection, substitute:

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

- 14 (a) paragraph 33(1)(a); or
15 (b) subsection 35(1); or
16 (c) paragraph 41(2)(a); or
17 (e) paragraph 63(1)(a); or
18 (f) subsection 65(1); or
19 (g) paragraph 69(2)(a); or
20 (i) subsection 84(6) or 85(6); or
21 (j) subsection 97(1); or
22 (k) subsection 101(1); or
23 (l) subsection 104(2).

24 Note: The cross-references are to new sections inserted under Part 4 of this Schedule.

25 **31 Division 3 of Part 4 (heading)**

26 Repeal the heading, substitute:

27 **Division 3—Staff, consultants and assistance from other**
28 **agencies**

29 **32 At the end of Division 3 of Part 4**

1 Add:

2 **137 Arrangements with Commonwealth Departments etc.**

3 The Authority may make arrangements:

- 4 (a) with an Agency Head (within the meaning of the *Public*
5 *Service Act 1999*) or the Chief Officer of any Commonwealth
6 authority; or
7 (b) with the Secretary of a Department of the Public Service of a
8 State or Territory, or the Chief Officer of a State or Territory
9 authority; or
10 (c) with the chief executive of a Department of State of New
11 Zealand or the Chief Officer of a New Zealand authority; or
12 (d) with the Chief Officer of any other authority or body;
13 for:
14 (e) the services of officers or employees in those Agencies,
15 Departments, authorities or bodies to be made available to
16 the Authority; or
17 (f) officers or employees in those Agencies, Departments,
18 authorities or bodies to give advice to the Authority.

19 **33 Section 61**

20 Repeal the section.

21 **34 Subsection 62(1)**

22 Omit “in the course of a final assessment”, substitute “to assist the
23 Authority in the consideration of an application or proposal, or in the
24 assessment or review of a resulting food regulatory measure.”.

25 **35 Subsection 63(1)**

26 Repeal the subsection, substitute:

- 27 (1) Subject to the *Administrative Appeals Tribunal Act 1975*,
28 application may be made to the Administrative Appeals Tribunal:
29 (a) by an applicant for the development or variation of a
30 standard, for a review of:
31 (i) a decision by the Authority under paragraph 26(1)(b) to
32 reject an application, other than a decision to reject the
33 application because it does not comply with subsection
34 22(2); or

- 1 (ii) a decision by the Authority under paragraph 30(1)(b) to
2 reject an application; or
3 (iv) a decision by the Authority under paragraph 96(1)(b) to
4 reject an application; or
5 (b) by a person whose interests are affected by one of the
6 following decisions, for a review of that decision:
7 (i) a decision by the Authority under subsection 56(1) to
8 abandon a proposal;
9 (ii) a decision by the Authority under paragraph 60(b) to
10 abandon a proposal;
11 (iii) a decision by the Authority under paragraph 96(2)(b); or
12 (c) for review of a decision under section 112 not to do
13 something.

14 Note: The cross-references are to new sections inserted by Part 4 of this Schedule.

15 **36 Subsection 66(1)**

16 Omit “The regulations may also deal with the time for payment of
17 charge.”.

18 **37 After subsection 66(1)**

19 Insert:

20 (1A) The regulations may also:

- 21 (a) provide for the charge to be paid by instalments; and
22 (b) fix the times at which instalments are due to be paid.

23 **38 Subsections 66(6) to (10)**

24 Repeal the subsections, substitute:

25 (6) A charge may only be fixed if:

- 26 (a) it relates to an application to develop or vary a standard; and
27 (b) either of the following apply:
28 (i) the development or variation of the standard would
29 confer an exclusive capturable commercial benefit on
30 the applicant;
31 (ii) the applicant has elected to have the consideration of the
32 application expedited.

Schedule 1 New application and proposal procedures

Part 1 Amendments consequential on new application and proposal procedures

1 (7) The consideration of an application in relation to which a charge is
2 fixed under subsection (6) must not displace the development of, or
3 variation to, any other food regulatory measure in a three year plan.

4 (8) For the purposes of subsection (7), a *three year plan* means a three
5 year forward plan of the Authority developed under section 20.

6 **39 Subsection 66C(1)**

7 Omit “subsection 12B(1)”, substitute “subsection 24(2)”.

8 Note: The cross-reference is to a new section inserted by Part 4 of this Schedule.

9 **40 Subsection 67(1)**

10 Repeal the subsection, substitute:

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

- 15 (a) paragraph 33(1)(a); or
16 (b) subsection 35(1); or
17 (c) paragraph 41(2)(a); or
18 (e) paragraph 63(1)(a); or
19 (f) subsection 65(1); or
20 (g) paragraph 69(2)(a); or
21 (i) paragraphs 84(6)(a), (b) or (c) or 85(6)(a), (b) or (c); or
22 (j) subsection 97(1); or
23 (k) subsection 101(1); or
24 (l) subsection 104(2).

25 Note: The cross-references are to new sections inserted by Part 4 of this Schedule.

26 **41 Subsection 68(1)**

27 Repeal the subsection, substitute:

28 (1) No civil or criminal proceeding, and no action or suit of any other
29 kind, lies against any of the following:

- 30 (a) the Commonwealth;
31 (b) a member of the Board;
32 (c) a person assisting the Authority in the performance of its
33 functions;

1 in relation to any loss or injury directly or indirectly sustained by a
2 person because of the consumption of, or other dealing with, food.

3 (1A) No civil or criminal proceeding, and no action or suit of any other
4 kind, lies against any of the following:

- 5 (a) the Commonwealth;
6 (b) a member of the Board;
7 (c) a person assisting the Authority in the performance of its
8 functions;

9 in relation to anything done, or not done, by the Authority or the
10 person in the performance of functions or the exercise of powers
11 under this Act, provided that the Authority or the person (as the
12 case requires) acts honestly and reasonably in doing, or not doing,
13 that thing.

14 **42 Section 69**

15 Repeal the section, substitute:

16 **69 Annual report**

17 The members must include in each report on the Authority under
18 section 9 of the *Commonwealth Authorities and Companies Act*
19 *1997* for a financial year particulars of:

- 20 (a) the number of applications that were considered under
21 Subdivision D of Division 1 of Part 3 during that year; and
22 (b) the number of applications that were considered under
23 Subdivision E of Division 1 of Part 3 during that year; and
24 (c) the number of applications that were considered under
25 Subdivision F of Division 1 of Part 3 during that year; and
26 (e) for each of those Subdivisions, the number of applications
27 considered under that Subdivision that were disposed of
28 during that year and the manner of their disposal; and
29 (f) for each of those Subdivisions, the average time taken to
30 dispose of applications during that year; and
31 (g) the number of applications made during that year in relation
32 to which a charge fixed under section 146 was payable; and
33 (h) the number of applications made during that year in relation
34 to which no charge fixed under section 146 was payable; and
35 (i) the average number of days that elapsed between the
36 acceptance or rejection under section 26 of an application

Schedule 1 New application and proposal procedures

Part 1 Amendments consequential on new application and proposal procedures

- 1 made during that year in relation to which no charge fixed
2 under section 146 was payable, and the commencement of
3 the assessment of the application under section 29; and
4 (j) each occasion during that year on which the consideration
5 period under section 109 elapsed without the Authority
6 completing the procedure that the Authority must, under
7 Subdivision C of Division 1, adopt in considering the
8 application; and
9 (k) each occasion during that year on which the Authority
10 extended the consideration period under subsection 109(4),
11 and the reasons for that extension; and
12 (l) the number of proposals made by the Authority under
13 section 55 during that year; and
14 (m) the number of proposals made by the Authority under
15 section 81 during that year; and
16 (n) the number of proposals so made that were disposed of
17 during that year and the manner of their disposal; and
18 (o) the average time taken to dispose of proposals under each of
19 Subdivisions D, E, F and H of Division 2 of Part 3 during
20 that year; and
21 (p) the average number of days that elapsed between the
22 preparation of a proposal during that year under each of
23 sections 55 and 81 and the commencement of the assessment
24 of the proposal under section 59; and
25 (q) the number of applications made to the Administrative
26 Appeals Tribunal during that year for review of decisions of
27 the Authority; and
28 (r) the results of the applications made to the Administrative
29 Appeals Tribunal that were determined during that year; and
30 (s) the number of standards made during that year; and
31 (t) the number of draft standards and draft variations approved
32 during that year under each of the following:
33 (i) section 33;
34 (ii) section 41; and
35 (u) the number of occasions during that year when requests were
36 made by the Council under Division 3 of Part 3 for a review
37 of a draft standard or draft variation; and

- 1 (v) the number of occasions during that year when a draft
2 standard or draft variation was rejected by the Council under
3 Division 3 of Part 3; and
4 (w) the number of occasions during that year when requests were
5 made by the Council under Division 3 of Part 3 for a review
6 of a standard or variation; and
7 (x) the number of occasions during that year when a standard or
8 variation was revoked or amended by the Council under
9 Division 3 of Part 3; and
10 (y) a summary of policy guidelines notified to the Authority
11 during that year; and
12 (z) such other matters (if any) as are specified in the regulations.

13 Note: The cross-references are to new sections inserted by Part 4 of this Schedule, or sections
14 as renumbered by Part 3 of this Schedule.

1

2 **Part 2—Aligning cross-references to provisions**
3 **renumbered by Part 3 of this Schedule**

4 *Food Standards Australia New Zealand Act 1991*

5 **43 Subsection 3(1) (definition of food)**

6 Omit “3A”, substitute “5”.

7 **44 Paragraph 3A(1)(e)**

8 Omit “3B”, substitute “6”.

9 **45 Subsection 9(3) (note)**

10 Omit “3(1)”, substitute “4(1)”.

11 **46 Subsections 39(1) and (4)**

12 Omit “54”, substitute “136”.

13 **47 Paragraphs 40(2A)(b) to (g)**

14 Repeal the paragraphs, substitute:

15 (b) section 117;

16 (c) section 119;

17 (d) section 120;

18 (e) section 121;

19 (f) section 126;

20 (g) section 127.

21 **48 Paragraph 49(b)**

22 Omit “47(5)”, substitute “122(5)”.

23 **49 Subsection 50(4)**

24 Omit “49”, substitute “124”.

25 **50 Paragraph 52(2)(b)**

26 Omit “50”, substitute “125”.

27 **51 Subparagraph 52(2)(d)(ii)**

1 Omit “45(2)”, substitute “120(2)”.

2 **52 Paragraph 57(1)(a)**

3 Omit “55”, substitute “138”.

4 **53 Paragraph 57(1)(ab)**

5 Omit “65A”, substitute “145”.

6 **54 Paragraph 57(1)(ac)**

7 Omit “66 or 66A”, substitute “146 or 147”.

8 **55 Subsection 62(1)**

9 Omit “39”, substitute “114”.

10 **56 Paragraph 64(1)(a)**

11 Omit “63(1)(a)”, substitute “143(1)(a)”.

12 **57 Paragraph 64(1)(b)**

13 Omit “63(1)(b)”, substitute “143(1)(b)”.

14 **58 Subparagraph 64(1)(c)(i)**

15 Omit “63(1)(a)”, substitute “143(1)(a)”.

16 **59 Subparagraph 64(1)(c)(ii)**

17 Omit “63(1)(b)”, substitute “143(1)(b)”.

18 **60 Subsection 66A(1)**

19 Omit “66”, substitute “146”.

20 **61 Subsection 66B**

21 Omit “66”, substitute “146”.

22 **62 Paragraph 66C(2)(a)**

23 Omit “66”, substitute “146”.

24 **63 Paragraph 66C(2)(b)**

25 Omit “66A”, substitute “147”.

1

2

**Part 3—Restructuring and renumbering the Food
Standards Australia New Zealand Act 1991**

3

4

Food Standards Australia New Zealand Act 1991

5

64 Part 2 (heading)

6

Repeal the heading, substitute:

7

Part 2—The Authority

8

65 Section 10A

9

Move the section to the end of Part 2 and renumber as section 10B.

10

66 Section 11

11

Move the section to immediately after section 8 and renumber as section 8A.

12

13

67 Section 11A (first occurring)

14

Renumber as section 10A.

15

68 Before section 6

16

Insert:

17

**Division 1—Establishment, functions and powers of the
Authority**

18

19

69 After section 8A

20

Insert:

21

Division 2—Food regulatory measures

22

70 After section 10A

23

Insert:

1 **Division 3—Forward planning**

2 **71 Renumbering sections**

- 3 (1) The sections of the *Food Standards Australia New Zealand Act 1991*
4 are renumbered in accordance with the following table:

5

Section renumbering in the *Food Standards Australia New Zealand Act 1991*

Item	This section ...	is renumbered as ..
1	1	1
2	2	2
3	2A	3
4	3	4
5	3A	5
6	3B	6
7	3C	7
8	3D	8
9	4	9
10	5	10
11	5A	11
12	6	12
13	7	13
14	8	14
15	8A	15
16	9	16
17	9A	17
18	10	18
19	10A	19
20	10B	20
21	39	114
22	39A	115
23	40	116
24	41	117
25	43	118

Schedule 1 New application and proposal procedures

Part 3 Restructuring and renumbering the Food Standards Australia New Zealand Act 1991

Section renumbering in the *Food Standards Australia New Zealand Act 1991*

Item	This section ...	is renumbered as ..
26	44	119
27	45	120
28	46	121
29	47	122
30	48	123
31	49	124
32	50	125
33	51	126
34	52	127
35	52A	128
36	52B	129
37	52C	130
38	52D	131
39	52E	132
40	52F	133
41	52G	134
42	53	135
43	54	136
44	55	138
45	57	139
46	58	140
47	60	141
48	62	142
49	63	143
50	64	144
51	65A	145
52	66	146
53	66A	147
54	66B	148
55	66C	149
56	67	150

Section renumbering in the *Food Standards Australia New Zealand Act 1991*

Item	This section ...	is renumbered as ..
57	68	151
58	69	152
59	70	153

- 1 (2) A reference in an instrument or document made before the
2 commencement of this item to a provision of the *Food Standards*
3 *Australia New Zealand Act 1991* that has been renumbered under this
4 item is to be construed as a reference to that provision as so
5 renumbered.

1

2 **Part 4—New application and proposal procedures**

3 *Agricultural and Veterinary Chemicals Code Act 1994*

4 **72 Section 3 of the Code set out in the Schedule**

5 Insert:

6 *Maximum Residue Limits Standard* means the Maximum Residue
7 Limits Standard, made under the *Food Standards Australia New*
8 *Zealand Act 1991*, as in force from time to time, or any standard in
9 force in substitution for that standard.

10 **73 After section 13 of the Code set out in the Schedule**

11 Insert:

12 **13A Notifying Food Standards Australia New Zealand**

- 13 (1) If it is likely that a chemical product in relation to which an
14 application for registration is made would, if used, be present in
15 foods (as defined for the purposes of the *Food Standards Australia*
16 *New Zealand Act 1991*) at a level that is not already permitted
17 under the Maximum Residue Limits Standard, the APVMA must
18 notify Food Standards Australia New Zealand of the application.
- 19 (2) The notice must:
- 20 (a) be in writing; and
- 21 (b) set out:
- 22 (i) particulars of the product and its active constituents
23 other than confidential commercial information; and
- 24 (ii) any other matters that the APVMA thinks appropriate;
25 and
- 26 (c) be given to Food Standards Australia New Zealand at least
27 30 working days before notice of the application and public
28 invitation for submissions is published in the *Gazette* under
29 section 13 or otherwise.

30 *Food Standards Australia New Zealand Act 1991*

1 **74 Divisions 1 to 5 of Part 3**

2 Repeal the Divisions, substitute:

3 **Division 1—Applications for the development or variation**
4 **of food regulatory measures**

5 **Subdivision A—Overview**

6 **21 Steps in the consideration of an application**

7 The following is a simplified outline of the procedure for
8 considering an application for the development of a food
9 regulatory measure, or the variation of a food regulatory measure,
10 other than a high level health claims variation.

11 *Step 1.* An application is made.

12 *Step 2.* The Authority decides whether to accept or reject the
13 application. If the application is accepted, the Authority
14 proceeds to step 3.

15 *Step 3.* The Authority notifies the applicant of acceptance.

16 *Step 4.* The Authority gives public notice of the application,
17 indicating when the Authority proposes to undertake key
18 steps in considering it.

19 *Step 5.* The Authority assesses the application.

20 The Authority may, after assessing the application, either
21 reject it or proceed to the next step.

22 If the application is for a new food regulatory measure or
23 a major variation of a food regulatory measure, the next
24 step is step 6.

25 In any other case, it is step 7.

26 *Step 6.* The Authority calls for public submissions.

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Step 7. The Authority prepares a draft food regulatory measure or a draft variation of a food regulatory measure, as the case requires. If the Authority has called for submissions under step 6, the Authority must have regard to the submissions in doing so.

Step 8. If the application is for a minor variation, the Authority calls for submissions from the applicant and appropriate government agencies.

In any other case, the Authority calls for public submissions.

Step 9. If the draft is a draft standard or a draft variation of a standard, the Authority must decide whether to approve or reject it and prepare a report, having regard to any submissions made. If approved, the Authority notifies the Council and the public of the approval and proceeds to step 10.

If the draft is a draft code of practice or a draft variation of a code of practice, the Authority must revoke or vary any existing code or practice and give public notice of its decision. No further steps are taken in relation to measures of this kind.

Step 10. The standard or variation comes into effect after it has been considered by the Council and published.

Subdivision B—Applications

22 Applications

- (1) A body or person may apply to the Authority for the development of a food regulatory measure or the variation of a food regulatory measure.
- (2) The application must:
 - (a) be in writing; and

- 1 (b) if the form in which the application is to be made is specified
- 2 in guidelines made under section 23—be in the form
- 3 specified; and
- 4 (c) include all of the information that, under guidelines made
- 5 under section 23, is to be included with the application; and
- 6 (d) include each thing that, under guidelines made under
- 7 section 23, is to be included with the application; and
- 8 (e) identify the procedure that, in the applicant’s view, applies to
- 9 the consideration of the application.

10 **23 Application guidelines**

11 *Authority may make guidelines*

- 12 (1) The Authority may, by legislative instrument, make guidelines:
- 13 (a) specifying the form in which applications for the
- 14 development of a food regulatory measure, or the variation of
- 15 a food regulatory measure, are to be made; and
- 16 (b) specifying the information, or the kinds of information, to be
- 17 included with such applications; and
- 18 (c) specifying any thing, or kind of thing, to be included with
- 19 such applications.

- 20 (2) The Authority may only specify information, or kinds of
- 21 information, under paragraph (1)(b) in relation to an application if
- 22 the inclusion of that information, or information of those kinds:
- 23 (a) would enable the Authority to assess the application and
- 24 develop the relevant food regulatory measure, or the relevant
- 25 variation of a food regulatory measure; or
- 26 (b) would enable the Authority to determine whether a charge
- 27 fixed under section 146 is payable to the Authority in relation
- 28 to the application.

- 29 (3) The Authority may only specify a thing, or a kind of thing, under
- 30 paragraph (1)(c) in relation to an application, if the inclusion of
- 31 that thing, or things of those kinds, would enable the Authority to
- 32 assess the application and develop the relevant food regulatory
- 33 measure, or the relevant variation of a food regulatory measure.

1 *Guidelines not subject to disallowance or sunseting*

- 2 (4) Section 42 and Part 6 of the *Legislative Instruments Act 2003* do
3 not apply to guidelines made under subsection (1).

4 **24 Withdrawal of applications**

- 5 (1) An applicant may withdraw the applicant's application by giving
6 written notice of the withdrawal to the Authority at any time after
7 the Authority has accepted the application under paragraph
8 26(1)(a), but before:
9 (a) the Authority approves a draft food regulatory measure, or a
10 draft variation of a food regulatory measure, as a result of the
11 application; or
12 (b) the Authority notifies the applicant that the Authority has
13 rejected the application.
- 14 (2) If the Authority receives notice of the withdrawal of an application
15 after the applicant pays a charge fixed under section 146, the
16 Authority must refund to the applicant so much of the charge as is
17 equivalent to the sum paid by the applicant but not expended from
18 the charge, calculated in accordance with the regulations.
- 19 (3) If the Authority receives notice of the withdrawal of an application
20 after public notice of the application has been given under
21 section 28, the Authority must give public notice that the
22 application has been withdrawn.

23 **Subdivision C—Procedures for considering applications**

24 **25 Which procedure is appropriate?**

- 25 The Authority must adopt the general procedure in considering an
26 application for the development of a food regulatory measure or
27 the variation of a food regulatory measure, unless:
28 (a) the application is one to which Subdivision E applies
29 (application for a minor variation of a food regulatory
30 measure); or
31 (b) the application is one to which Subdivision F applies
32 (application for the development of a new food regulatory
33 measure or a major variation of a food regulatory measure);
34 or

- 1 (d) the application is declared to be an urgent application for the
2 purposes of this Part under section 95.

3 **Subdivision D—General procedure**

4 **26 Accepting an application**

- 5 (1) The Authority must, within 15 business days after an application is
6 given to the Authority:
7 (a) accept the application; or
8 (b) reject the application.
- 9 (2) In determining whether to accept or reject the application, the
10 Authority must have regard to the following matters:
11 (a) whether the application complies with subsection 22(2);
12 (b) whether the application relates to a matter that may be
13 developed as a food regulatory measure, or that warrants the
14 variation of a food regulatory measure;
15 (c) whether the application is so similar to a previous application
16 or proposal for the development or variation of a food
17 regulatory measure that it ought to be rejected;
18 (d) any other relevant matter.
- 19 (3) If an application is rejected because it does not comply with
20 subsection 22(2), the application must be disregarded for the
21 purposes of determining whether a later application or proposal for
22 the development or variation of a food regulatory measure is so
23 similar to a previous application that the later application or
24 proposal ought to be rejected.

25 **27 Notice of acceptance**

- 26 If the Authority accepts an application, the Authority must notify
27 the applicant immediately in writing:
28 (a) that the application has been accepted; and
29 (b) of the procedure the Authority will adopt in considering the
30 application; and
31 (c) in the case of an applicant who has applied for the
32 development or variation of a standard and on whom an
33 exclusive capturable commercial benefit would be conferred

- 1 if the standard were made or varied in the manner sought in
2 the application:
- 3 (i) that the applicant must pay the charge fixed under
4 subparagraph 146(6)(b)(i) or, if the charge is payable in
5 instalments, the first instalment of the charge, within 20
6 business days after the notification is given; and
- 7 (ii) that the application will be rejected if the charge, or the
8 first instalment of the charge, is not paid within that
9 period; and
- 10 (d) in any other case—that the applicant may, if the applicant
11 elects to have the consideration of the application expedited,
12 pay the charge fixed under subparagraph 146(6)(b)(ii) or, if
13 the charge is payable in instalments, the first instalment of
14 the charge.

15 **28 Public notice of the application**

- 16 (1) If the Authority accepts an application, the Authority must also
17 give public notice of the matters mentioned in subsection (2).

18 *Content of notice*

- 19 (2) The notice must:
- 20 (a) state that the Authority has received an application for the
21 development of a food regulatory measure or the variation of
22 a food regulatory measure, as the case requires; and
- 23 (b) state the date on which the application was received by the
24 Authority; and
- 25 (c) state the name of the applicant; and
- 26 (d) give a summary of the application; and
- 27 (e) state that the Authority has accepted the application; and
- 28 (f) identify the procedure that the Authority will adopt in
29 considering the application; and
- 30 (g) indicate when the Authority proposes to undertake the key
31 steps in that procedure; and
- 32 (h) state how to obtain further information about the application.

33 *Period within which notice must be given*

- 34 (3) The notice must be given:

- 1 (a) if the applicant pays a charge, or the first instalment of a
2 charge, mentioned in subparagraph 27(c)(i) within the period
3 mentioned in that paragraph—within 5 business days after
4 that payment; or
5 (b) if the applicant pays a charge, or the first instalment of a
6 charge, mentioned in paragraph 27(d) within 20 business
7 days after notice is given to the applicant under section 27
8 (the *early payment period*)—within 5 business days after that
9 payment; or
10 (c) in any other case—within 25 business days after notice is
11 given to the applicant under section 27.

12 *Exclusive capturable commercial benefit—fee not paid*

- 13 (4) If an applicant:
14 (a) who applies for the development or variation of a standard;
15 and
16 (b) on whom an exclusive capturable commercial benefit would
17 be conferred if the standard were made or varied in the
18 manner sought in the application;
19 does not pay the charge, or the first instalment of the charge,
20 mentioned in subparagraph 27(c)(i) within the period mentioned in
21 that subparagraph:
22 (c) the Authority must reject the application; and
23 (d) the Authority need not give notice under this section.

24 *Fee to expedite consideration paid after early payment period*

- 25 (5) If an applicant pays a charge, or the first instalment of a charge,
26 mentioned in paragraph 27(d) after the end of the early payment
27 period, the Authority must, within 5 business days after that
28 payment, again give public notice of the matters mentioned in
29 subsection (2), including an update on when the Authority now
30 proposes to undertake the key steps in the procedure.

31 **29 Assessing the application**

- 32 (1) If the Authority accepts an application, the Authority must assess
33 the application.
34 (2) In assessing the application, the Authority must have regard to the
35 following matters:

- 1 (a) whether costs that would arise from a food regulatory
2 measure developed or varied as a result of the application
3 outweigh the direct and indirect benefits to the community,
4 Government or industry that would arise from the
5 development or variation of the food regulatory measure;
6 (b) whether other measures (available to the Authority or not)
7 would be more cost-effective than a food regulatory measure
8 developed or varied as a result of the application;
9 (c) any relevant New Zealand standards;
10 (d) any other relevant matters.

11 Note: See also section 18, which sets out the objectives of the Authority in
12 developing food regulatory measures and variations of those
13 measures.

14 **30 Preparing a draft variation**

- 15 (1) After assessing an application, the Authority must:
16 (a) prepare in writing a draft food regulatory measure or a draft
17 variation of a food regulatory measure; or
18 (b) reject the application.
- 19 (2) If:
20 (a) the Authority prepares a draft food regulatory measure or a
21 draft variation of a food regulatory measure as a result of an
22 application; and
23 (b) the draft measure or draft variation differs from that sought in
24 the application, or was not sought in the application at all;
25 the Authority must give the applicant notice in writing of that fact
26 and state in the notice that the Authority will call for submissions
27 for the purpose of assessing the draft measure or draft variation.
- 28 (3) The Authority must not give public notice under section 31 within
29 10 business days immediately after notice is given to the applicant
30 under subsection (2) of this section.

31 **31 Calling for submissions**

- 32 (1) After preparing a draft food regulatory measure or a draft variation
33 of a food regulatory measure as a result of an application, the
34 Authority must give public notice of the matters mentioned in
35 subsection (2).

- 1 (2) The notice must:
2 (a) state that the Authority has prepared a draft food regulatory
3 measure or a draft variation of a food regulatory measure, as
4 the case requires; and
5 (b) include:
6 (i) a copy of the draft food regulatory measure or draft
7 variation; and
8 (ii) a summary of the results of the Authority's assessment
9 of the application;
10 or state how a copy of those documents can be obtained; and
11 (c) call for written submissions, for the purpose of the
12 Authority's consideration of the draft measure or draft
13 variation, to be given to the Authority within the period
14 specified in the notice (the *submission period*).

15 **32 Alternative steps to be followed**

- 16 (1) If an application results in the development or variation of a
17 standard, the Authority must follow the steps set out in sections 33
18 and 34.
19 (2) However, if an application results in the development or variation
20 of a code of practice, the Authority must follow the steps set out in
21 section 35.

22 **33 Approving the draft standard or draft variation**

- 23 (1) After the submission period, the Authority must:
24 (a) do one of the following:
25 (i) approve the draft standard or draft variation;
26 (ii) approve the draft standard or draft variation subject to
27 such amendments as the Authority considers necessary;
28 (iii) reject the draft standard or draft variation; and
29 (b) prepare a report under this section.

30 Note: The Board must not delegate its powers to act on behalf of the
31 Authority under paragraph (a)—see section 150.

- 32 (2) The Authority must have regard to all submissions made during the
33 submission period in making a decision under subsection (1).
34 (3) The report must include each of the following:

- 1 (a) the reasons for initially accepting the application;
2 (b) a summary of the results of the Authority's assessment of the
3 application;
4 (c) a summary of the submissions received by the Authority in
5 relation to the draft standard or draft variation;
6 (d) the Authority's response to the issues raised in those
7 submissions;
8 (e) whether the draft standard or draft variation was amended
9 after submissions were made and, if so, the reasons for those
10 amendments;
11 (f) the Authority's reasons for approving or rejecting the draft
12 standard or draft variation;
13 (g) a copy of the draft standard or draft variation on which
14 submissions were received;
15 (h) if the draft standard or draft variation was amended after
16 submissions were made—a copy of the draft standard or draft
17 variation as amended;
18 (i) a Regulation Impact Statement.

19 **34 Notifying the Council**

- 20 (1) If the Authority approves a draft standard or a draft variation of a
21 standard, the Authority must, within 10 business days after the
22 approval:
23 (a) give the Council:
24 (i) a written notification of the approval; and
25 (ii) a copy of the report prepared by the Authority under
26 section 33; and
27 (b) give public notice of the approval, together with information
28 about where further information about the draft standard or
29 draft variation may be obtained; and
30 (c) publish in a generally circulating newspaper, in each State or
31 Territory and in New Zealand, a notice:
32 (i) stating that the draft standard or draft variation has been
33 approved; and
34 (ii) stating that the Council has been notified that the draft
35 standard or draft variation has been approved; and

1 (iii) stating that the Council may request the Authority to
2 review the draft standard or draft variation under
3 Division 3; and

4 (iv) stating where further information about the draft
5 standard or draft variation may be obtained.

6 (2) If the Authority has notified the Council under subsection (1), the
7 Council may direct the Authority to give the Council such
8 information as the Council reasonably requires for the purpose of
9 assisting the Council to make a decision about the draft under
10 Division 3.

11 Note: The process followed by the Council after receiving notification under
12 this section is set out in Division 3.

13 **35 Alternative to steps set out in sections 33 and 34—approving the**
14 **draft code of practice or draft variation**

15 (1) After the submission period, the Authority must:
16 (a) approve the draft code of practice or draft variation; or
17 (b) reject the draft code of practice or draft variation.

18 Note: The Board must not delegate its powers to act on behalf of the
19 Authority under this subsection—see section 150.

20 (2) If another code of practice would be superseded, in whole or in
21 part, by the Authority's decision under subsection (1), the
22 Authority must:

23 (a) revoke the other code of practice (if it would be wholly
24 superseded); or

25 (b) vary the other code of practice (if it would be partly
26 superseded).

27 (3) The Authority must give public notice of its decision.

28 (4) The notice must:

29 (a) specify the date of effect of the decision; and

30 (b) state how to obtain further information about the decision
31 and the reasons for it.

32 (5) The Authority must also give written notice of its decision to the
33 Council.

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- (2) However, after preparing a draft variation of the food regulatory measure as a result of an application, the Authority must give written notice to the applicant and appropriate government agencies:
- (a) stating that the Authority has prepared a draft variation of a food regulatory measure; and
 - (b) including:
 - (i) a copy of the draft variation; and
 - (ii) a summary of the results of the Authority's assessment of the application;
- or stating how a copy of those documents can be obtained; and
- (c) calling for written submissions, for the purpose of the Authority's consideration of the draft variation, to be made to the Authority within the period specified in the notice (the *submission period*).

17 **41 Modification of steps set out in sections 32, 33, 34 and 35**

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- (1) Sections 32, 33, 34 and 35 do not apply.
- (2) However, after the submission period, the Authority must:
- (a) do one of the following:
 - (i) approve the draft variation;
 - (ii) approve the draft variation subject to such amendments as the Authority considers necessary;
 - (iii) reject the draft variation; and
 - (b) prepare a report under this section.
- Note: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.
- (3) The report must include each of the following:
- (a) the reasons for initially accepting the application;
 - (b) a summary of the results of the Authority's assessment of the application;
 - (c) the Authority's reasons for approving or rejecting the draft variation;
 - (d) a copy of the draft variation.

- 1 (4) If the draft variation is of a standard and the Authority approves the
2 draft variation, the Authority must, within 10 business days after
3 the approval:
4 (a) give the Council:
5 (i) a written notification of the approval; and
6 (ii) a copy of the report prepared by the Authority under
7 this section; and
8 (b) give public notice of the approval, together with information
9 about where further information about the draft variation may
10 be obtained; and
11 (c) publish in a generally circulating newspaper, in each State or
12 Territory and in New Zealand, a notice:
13 (i) stating that the draft variation has been approved; and
14 (ii) stating that the Council has been notified that the draft
15 variation has been approved; and
16 (iii) stating that the Council may request the Authority to
17 review the draft variation under Division 3; and
18 (iv) stating where further information about the draft
19 variation may be obtained.
- 20 (5) If the Authority has notified the Council under subsection (4), the
21 Council may direct the Authority to give the Council such
22 information as the Council reasonably requires for the purpose of
23 assisting the Council to make a decision about the draft under
24 Division 3.
- 25 Note: The process followed by the Council after receiving notification under
26 this section is set out in Division 3.

27 **Subdivision F—Modification of general procedure for**
28 **developing new food regulatory measures and major**
29 **variations**

30 **42 Application of Subdivision**

- 31 This Subdivision applies to:
32 (a) an application for the development of a new food regulatory
33 measure; and
34 (b) an application for the variation of a food regulatory measure
35 that:
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- 1 (i) involves such scientific or technical complexity that it is
2 necessary to adopt this procedure in considering it; or
3 (ii) involves such a significant change to the scope of the
4 food regulatory measure that it is necessary to adopt this
5 procedure in considering it.

6 **43 Adopt the general procedure with the modifications set out in this**
7 **Subdivision**

8 The Authority must adopt the general procedure in considering the
9 application, with the modifications set out in this Subdivision.

10 **44 Additional step after step set out in section 29**

- 11 (1) The Authority must, after assessing the application under
12 section 29 but before undertaking the step set out in section 30,
13 give public notice of the matters set out in subsection (2).
14 (2) The notice must:
15 (a) state that the Authority has assessed the application; and
16 (b) include a summary of the results of the Authority's
17 assessment of the application, or state how a copy of the
18 summary can be obtained; and
19 (c) call for written submissions on matters relevant to the
20 application to be given to the Authority within the period
21 specified in the notice (the *submission period*).

22 **45 Matters to which Authority must have regard in making a**
23 **decision under section 30**

24 The Authority must have regard to all submissions made during the
25 submission period in making a decision under section 30.

26 Note: This does not limit the other matters to which the Authority must have
27 regard in making a decision under section 30.

1 **Division 2—Proposals for the development or variation of**
2 **food regulatory measures**

3 **Subdivision A—Overview**

4 **54 Steps in the consideration of a proposal**

5 The following is a simplified outline of the procedure for
6 considering a proposal for the development of a food regulatory
7 measure, or the variation of a food regulatory measure, other than a
8 high level health claims variation.

9 *Step 1.* A proposal is prepared.

10 *Step 2.* As the Authority prepares the proposal, there is no
11 equivalent to step 2 of the applications procedure in
12 which the application is accepted or rejected.

13 *Step 3.* As the Authority prepares the proposal, there is no
14 equivalent to step 3 of the applications procedure in
15 which the Authority notifies the applicant of acceptance.

16 *Step 4.* The Authority gives public notice of the proposal,
17 indicating when the Authority proposes to undertake key
18 steps in considering it.

19 *Step 5.* The Authority assesses the proposal.

20 The Authority may, after assessing the proposal, either
21 abandon it or proceed to the next step.

22 If the proposal is for a new food regulatory measure or a
23 major variation of a food regulatory measure, the next
24 step is step 6.

25 In any other case, it is step 7.

26 *Step 6.* The Authority calls for public submissions.

27 *Step 7.* The Authority prepares a draft food regulatory measure
28 or a draft variation of a food regulatory measure, as the

1 case requires. If the Authority has called for submissions
2 under step 6, the Authority must have regard to the
3 submissions in doing so.

4 *Step 8.* If the proposal is for a minor variation, the Authority
5 calls for submissions from the applicant and appropriate
6 government agencies.

7 In any other case, the Authority calls for public
8 submissions.

9 *Step 9.* If the draft is a draft standard or a draft variation of a
10 standard, the Authority must decide whether to approve
11 or reject it and prepare a report, having regard to any
12 submissions made. If approved, the Authority notifies the
13 Council and the public of the approval and proceeds to
14 step 10.

15 If the draft is a draft code of practice or a draft variation
16 of a code of practice, the Authority must revoke or vary
17 any existing code of practice and give public notice of its
18 decision. No further steps are taken in relation to
19 measures of this kind.

20 *Step 10.* The standard or variation comes into effect after it has
21 been considered by the Council and published.

22 **Subdivision B—Proposals**

23 **55 Proposals**

- 24 (1) The Authority may, on its own initiative, prepare a proposal for the
25 development or variation of a food regulatory measure.
- 26 (2) The proposal must be in writing.

27 **56 Abandonment of proposals**

- 28 (1) The Authority may abandon a proposal at any time.

- 1 (2) However, if the Authority abandons a proposal after public notice
2 has been given under section 58, the Authority must give public
3 notice of the matters mentioned in subsection (3).
- 4 (3) The notice must:
- 5 (a) state that the Authority has decided to abandon the proposal;
6 and
7 (b) state how to obtain further information about the decision
8 and the reasons for it.

9 **Subdivision C—Procedures for considering proposals**

10 **57 Which procedure is appropriate?**

- 11 The Authority must adopt the general procedure in considering a
12 proposal for the development of a food regulatory measure or the
13 variation of a food regulatory measure, unless:
- 14 (a) the proposal is one to which Subdivision E applies (proposal
15 for a minor variation of a food regulatory measure); or
16 (b) the proposal is one to which Subdivision F applies (proposal
17 for the development of a new food regulatory measure, or a
18 major variation of a food regulatory measure); or
19 (d) the proposal is one to which Subdivision H applies (proposal
20 for a variation of the Maximum Residue Limits Standard); or
21 (e) the proposal is declared to be an urgent proposal for the
22 purposes of this Part under section 95.

23 **Subdivision D—General procedure**

24 **58 Public notice of a proposal**

- 25 (1) If the Authority prepares a proposal, the Authority must give
26 public notice of the matters mentioned in subsection (2).
- 27 (2) The notice must:
- 28 (a) state that the Authority has prepared a proposal for the
29 development or variation of a food regulatory measure, as the
30 case requires; and
31 (b) state the date on which the proposal was made; and
32 (c) give a summary of the proposal; and

- 1 (d) identify the procedure that the Authority will adopt in
2 considering the proposal; and
3 (e) indicate when the Authority proposes to undertake the key
4 steps in that procedure; and
5 (f) state how to obtain further information about the proposal.

6 **59 Assessing a proposal**

- 7 (1) If the Authority prepares a proposal, the Authority must assess the
8 proposal.
9 (2) In assessing the proposal, the Authority must have regard to the
10 following matters:
11 (a) whether costs that would arise from a food regulatory
12 measure developed or varied as a result of the proposal
13 outweigh the direct and indirect benefits to the community,
14 Government or industry that would arise from the
15 development or variation of the food regulatory measure;
16 (b) whether other measures (available to the Authority or not)
17 would be more cost-effective than a food regulatory measure
18 developed or varied as a result of the proposal;
19 (c) any relevant New Zealand standards;
20 (d) any other relevant matters.

21 Note: See also section 18, which sets out the objectives of the Authority in
22 developing food regulatory measures and variations of those
23 measures.

24 **60 Preparing a draft food regulatory measure or draft variation**

- 25 After assessing a proposal, the Authority must:
26 (a) prepare in writing a draft food regulatory measure or a draft
27 variation of a food regulatory measure; or
28 (b) abandon the proposal.

29 **61 Calling for submissions**

- 30 (1) After preparing a draft food regulatory measure or a draft variation
31 of a food regulatory measure as a result of a proposal, the
32 Authority must give public notice of the matters mentioned in
33 subsection (2).

- 1 (2) The notice must:
- 2 (a) state that the Authority has prepared a draft food regulatory
- 3 measure or a draft variation of a food regulatory measure, as
- 4 the case requires; and
- 5 (b) include:
- 6 (i) a copy of the draft food regulatory measure or draft
- 7 variation; and
- 8 (ii) a summary of the results of the Authority's assessment
- 9 of the proposal;
- 10 or state how a copy of those documents can be obtained; and
- 11 (c) call for written submissions, for the purpose of the
- 12 Authority's consideration of the draft measure or draft
- 13 variation, to be given to the Authority within the period
- 14 specified in the notice (the *submission period*).

15 **62 Alternative steps to be followed**

- 16 (1) If a proposal results in the development or variation of a standard,
- 17 the Authority must follow the steps set out in sections 63 and 64.
- 18 (2) However, if a proposal results in the development or variation of a
- 19 code of practice, the Authority must follow the step set out in
- 20 section 65.

21 **63 Approving the draft standard or draft variation**

- 22 (1) After the submission period, the Authority must:
- 23 (a) do one of the following:
- 24 (i) approve the draft standard or draft variation;
- 25 (ii) approve the draft standard or draft variation subject to
- 26 such amendments as the Authority considers necessary;
- 27 (iii) reject the draft standard or draft variation; and
- 28 (b) prepare a report under this section.
- 29 Note: The Board must not delegate its powers to act on behalf of the
- 30 Authority under paragraph (a)—see section 150.
- 31 (2) The Authority must have regard to all submissions made during the
- 32 submission period in making a decision under subsection (1).
- 33 (3) The report must include each of the following:
- 34 (a) the reasons for initially preparing the proposal;

- 1 (b) a summary of the results of the Authority's assessment of the
2 proposal;
- 3 (c) a summary of the submissions received by the Authority in
4 relation to the draft standard or draft variation;
- 5 (d) the Authority's response to the issues raised in those
6 submissions;
- 7 (e) whether the draft standard or draft variation was amended
8 after submissions were made and, if so, the reasons for those
9 amendments;
- 10 (f) the Authority's reasons for approving or rejecting the draft
11 standard or draft variation;
- 12 (g) a copy of the draft standard or draft variation on which
13 submissions were received;
- 14 (h) if the draft standard or draft variation was amended after
15 submissions were made—a copy of the draft standard or draft
16 variation as amended;
- 17 (i) a Regulation Impact Statement.

18 **64 Notifying the Council**

- 19 (1) If the Authority approves a draft standard or a draft variation of a
20 standard, the Authority must, within 10 business days after the
21 approval:
 - 22 (a) give the Council:
 - 23 (i) a written notification of the approval; and
 - 24 (ii) a copy of the report prepared by the Authority under
25 section 63; and
 - 26 (b) give public notice of the approval, together with information
27 about where further information about the draft standard or
28 draft variation may be obtained; and
 - 29 (c) publish in a generally circulating newspaper, in each State or
30 Territory and in New Zealand, a notice:
 - 31 (i) stating that the draft standard or draft variation has been
32 approved; and
 - 33 (ii) stating that the Council has been notified that the draft
34 standard or draft variation has been approved; and
 - 35 (iii) stating that the Council may request the Authority to
36 review the draft standard or draft variation under
37 Division 3; and

1 (iv) stating where further information about the draft
2 standard or draft variation may be obtained.

3 (2) If the Authority has notified the Council under subsection (1), the
4 Council may direct the Authority to give the Council such
5 information as the Council reasonably requires for the purpose of
6 assisting the Council to make a decision about the draft under
7 Division 3.

8 Note: The process followed by the Council after receiving notification under
9 this section is set out in Division 3.

10 **65 Alternative to steps set out in sections 63 and 64—approving the**
11 **draft code of practice or draft variation**

12 (1) After the submission period, the Authority must:
13 (a) approve the draft code of practice or draft variation; or
14 (b) reject the draft code of practice or draft variation.

15 Note: The Board must not delegate its powers to act on behalf of the
16 Authority under this subsection—see section 150.

17 (2) If another code of practice would be superseded, in whole or in
18 part, by the Authority's decision under subsection (1), the
19 Authority must:

20 (a) revoke the other code of practice (if it would be wholly
21 superseded); or
22 (b) vary the other code of practice (if it would be partly
23 superseded).

24 (3) The Authority must give public notice of its decision.

25 (4) The notice must:

26 (a) specify the date of effect of the decision; and
27 (b) state how to obtain further information about the decision
28 and the reasons for it.

29 (5) The Authority must also give written notice of its decision to the
30 Council.

1 **Subdivision E—Modification of general procedure for minor**
2 **variations**

3 **66 Application of Subdivision**

4 (1) Subject to subsection (2), this Subdivision applies to a proposal for
5 the variation of a food regulatory measure that, if made, would not
6 directly or indirectly:

7 (a) impose, vary or remove an obligation on a person; or

8 (b) create, vary or remove a right of any person; or

9 (c) otherwise alter the legal effect of the measure.

10 Note: For example, a variation would fall within this class if its only effect
11 would be:

12 (a) to correct a typographical error; or

13 (b) to update a reference to another document; or

14 (c) to change a cross-reference within a food regulatory measure; or

15 (d) to omit provisions of a food regulatory measure that have ceased
16 to have effect.

17 (2) This Subdivision does not apply to a proposal made in compliance
18 with Subdivision H.

19 Note: Subdivision H requires the Authority to propose a variation of the
20 Maximum Residue Limits Standard if the APVMA notifies the
21 Authority that it is considering the registration of a chemical product
22 and the product is likely to be present in food at a level that is not
23 already permitted under the Maximum Residue Limits Standard.

24 **67 Adopt the general procedure with the modifications set out in this**
25 **Subdivision**

26 The Authority must adopt the general procedure in considering the
27 proposal, with the modifications set out in this Subdivision.

28 **68 Modification of step set out in section 61**

29 (1) Section 61 does not apply.

30 (2) However, after preparing a draft variation of the food regulatory
31 measure as a result of a proposal, the Authority must give written
32 notice to appropriate government agencies:

- 1 (a) stating that the Authority has prepared a draft variation of a
2 food regulatory measure; and
3 (b) including:
4 (i) a copy of the draft variation; and
5 (ii) a summary of the results of the Authority's assessment
6 of the proposal;
7 or stating how a copy of those documents can be obtained;
8 and
9 (c) calling for written submissions, for the purpose of the
10 Authority's consideration of the draft variation, to be made to
11 the Authority within the period specified in the notice (the
12 *submission period*).

13 **69 Modification of steps set out in sections 62, 63, 64 and 65**

- 14 (1) Sections 62, 63, 64 and 65 do not apply.
15 (2) However, after the submission period, the Authority must:
16 (a) do one of the following:
17 (i) approve the draft variation;
18 (ii) approve the draft variation subject to such amendments
19 as the Authority considers necessary;
20 (iii) reject the draft variation; and
21 (b) prepare a report under this section.
22 Note: The Board must not delegate its powers to act on behalf of the
23 Authority under paragraph (a)—see section 150.
24 (3) The report must include each of the following:
25 (a) the reasons for initially preparing the proposal;
26 (b) a summary of the results of the Authority's assessment of the
27 proposal;
28 (c) the Authority's reasons for approving or rejecting the draft
29 variation;
30 (d) a copy of the draft variation.
31 (4) If the draft variation is of a standard and the Authority approves the
32 draft variation, the Authority must, within 10 business days after
33 the approval:
34 (a) give the Council:
35 (i) a written notification of the approval; and

- 1 (ii) a copy of the report prepared by the Authority under
2 this section; and
- 3 (b) give public notice of the approval, together with information
4 about where further information about the draft variation may
5 be obtained; and
- 6 (c) publish in a generally circulating newspaper, in each State or
7 Territory and in New Zealand, a notice:
- 8 (i) stating that the draft variation has been approved; and
9 (ii) stating that the Council has been notified that the draft
10 variation has been approved; and
- 11 (iii) stating that the Council may request the Authority to
12 review the draft variation under Division 3; and
- 13 (iv) stating where further information about the draft
14 variation may be obtained.
- 15 (5) If the Authority has notified the Council under subsection (4), the
16 Council may direct the Authority to give the Council such
17 information as the Council reasonably requires for the purpose of
18 assisting the Council to make a decision about the draft under
19 Division 3.
- 20 Note: The process followed by the Council after receiving notification under
21 this section is set out in Division 3.

22 **Subdivision F—Modification of general procedure for**
23 **developing new food regulatory measures and major**
24 **variations**

25 **70 Application of Subdivision**

- 26 (1) Subject to subsection (2), this Subdivision applies to:
- 27 (a) a proposal for the development of a new food regulatory
28 measure; and
- 29 (b) a proposal for the variation of a food regulatory measure that:
- 30 (i) involves such scientific or technical complexity that it is
31 necessary to adopt this procedure in considering it; or
- 32 (ii) involves such a significant change to the scope of the
33 food regulatory measure that it is necessary to adopt this
34 procedure in considering it.

1 (2) This Subdivision does not apply to a proposal made in compliance
2 with Subdivision H.

3 Note: Subdivision H requires the Authority to propose a variation of the
4 Maximum Residue Limits Standard if the APVMA notifies the
5 Authority that it is considering the registration of a chemical product
6 and the product is likely to be present in food at a level that is not
7 already permitted under the Maximum Residue Limits Standard.

8 **71 Adopt the general procedure with the modifications set out in this**
9 **Subdivision**

10 The Authority must adopt the general procedure in considering the
11 proposal, with the modifications set out in this Subdivision.

12 **72 Additional step after step set out in section 59**

13 (1) The Authority must, after assessing the proposal under section 59
14 but before undertaking the step set out in section 60, give public
15 notice of the matters set out in subsection (2).

16 (2) The notice must:

- 17 (a) state that the Authority has assessed the proposal; and
18 (b) include a summary of the results of the Authority's
19 assessment of the proposal, or state how a copy of the
20 summary can be obtained; and
21 (c) call for written submissions on matters relevant to the
22 proposal to be given to the Authority within the period
23 specified in the notice (the *submission period*).

24 **73 Matters to which Authority must have regard in making a**
25 **decision under section 60**

26 The Authority must have regard to all submissions made during the
27 submission period in making a decision under section 60.

28 Note: This does not limit the other matters to which the Authority must have
29 regard in making a decision under section 60.

1 **Subdivision H—Variations of the Maximum Residue Limits**
2 **Standard**

3 **80 Application of Subdivision**

4 This Subdivision applies if:

- 5 (a) the APVMA notifies the Authority under section 13A of the
6 Agvet Code of an application to register a chemical product;
7 and
8 (b) it is likely that the chemical product would, if used, be
9 present in foods at a level that is not already permitted under
10 the Maximum Residue Limits Standard.

11 **81 Authority must prepare a proposal to vary the Maximum**
12 **Residue Limits Standard and adopt the general**
13 **procedure to consider it**

14 The Authority must:

- 15 (a) prepare a proposal to vary the Maximum Residue Limits
16 Standard to include or change a permitted maximum residue
17 limit to cover the chemical product; and
18 (b) adopt the general procedure in considering the proposal, with
19 the modifications set out in this Subdivision.

20 **82 Section 58 notice to be given within 10 business days**

21 The Authority must give notice in compliance with section 58
22 within 10 business days after receiving the notice from the
23 APVMA mentioned in paragraph 80(a).

24 **83 Authority to complete its consideration of the proposal within**
25 **prescribed period**

26 The Authority must complete the general procedure within the
27 prescribed period.

1 **Division 3—Council may request a review of approved**
2 **draft standard etc.**

3 **84 Council may request a first review**

- 4 (1) If the Authority notifies the Council under section 34, 41, 64 or 69
5 that the Authority has approved a draft standard or variation (with
6 or without amendments), the Council must, within 60 days after the
7 notification:
8 (a) request the Authority to review the draft; or
9 (b) inform the Authority that the Council does not intend to
10 request the Authority to review the draft.
- 11 (2) If the Council requests the Authority to review a draft standard or
12 variation, the Council must inform the Authority of the Council's
13 concerns with the draft.
- 14 (3) The Council may give to the Authority such directions as it thinks
15 fit in relation to the conduct of a review of a draft standard or
16 variation. A direction given under this subsection is not a
17 legislative instrument.
- 18 (4) Subject to any directions under subsection (3), a review is to be
19 conducted in such manner as the Authority considers appropriate.
- 20 (5) If the Council requests the Authority to review a draft standard or
21 variation, the Authority must complete that review, and make a
22 decision under subsection (6):
23 (a) within 3 months after the request was made; or
24 (b) if the Council allows a longer period—within that longer
25 period.
- 26 (6) After completing a review under this section of a draft standard or
27 variation, the Authority must:
28 (a) decide to re-affirm its approval of the draft; or
29 (b) decide to re-affirm its approval of the draft, subject to such
30 amendments as the Authority considers necessary; or
31 (c) decide to withdraw its approval of the draft;
32 and give the Council, within 10 business days after making its
33 decision:

1 (d) written notification of the terms of the Authority's decision;
2 and

3 (e) the Authority's reasons for making that decision.

4 Note: The Board must not delegate its powers to act on behalf of the
5 Authority under paragraphs (a), (b) or (c)—see section 150.

6 (7) In exercising its powers under this section in relation to a draft
7 standard or variation, the Council must comply with:

8 (a) the Food Regulation Agreement; and

9 (b) the Australia New Zealand Joint Food Standards Agreement.

10 **85 Council may request a second review**

11 (1) If the Authority notifies the Council that the Authority has:

12 (a) made a decision under paragraph 84(6)(a) to re-affirm the
13 Authority's approval of a draft standard or variation; or

14 (b) made a decision under paragraph 84(6)(b) to re-affirm the
15 Authority's approval of a draft standard or variation, subject
16 to amendments;

17 the Council must, within 60 days after the notification:

18 (c) request the Authority to review the draft; or

19 (d) inform the Authority that the Council does not intend to
20 request the Authority to review the draft.

21 (2) If the Council requests the Authority to review a draft standard or
22 variation, the Council must inform the Authority of the Council's
23 concerns with the draft.

24 (3) The Council may give to the Authority such directions as it thinks
25 fit in relation to the conduct of a review of a draft standard or
26 variation. A direction under this subsection is not a legislative
27 instrument.

28 (4) Subject to any directions under subsection (3), a review is to be
29 conducted in such manner as the Authority considers appropriate.

30 (5) If the Council requests the Authority to review a draft standard or
31 variation, the Authority must complete that review, and make a
32 decision under subsection (6):

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

34 (b) if the Council allows a longer period—within that longer
35 period.

- 1 (6) After completing a review under this section of a draft standard or
2 variation, the Authority must:
3 (a) decide to re-affirm its approval of the draft; or
4 (b) decide to re-affirm its approval of the draft, subject to such
5 amendments as the Authority considers necessary; or
6 (c) decide to withdraw its approval of the draft;
7 and give the Council, within 10 business days after making its
8 decision:
9 (d) written notification of the terms of the Authority's decision;
10 and
11 (e) the Authority's reasons for making that decision.
- 12 Note: The Board must not delegate its powers to act on behalf of the
13 Authority under paragraphs (a), (b) or (c)—see section 150.
- 14 (7) In exercising its powers under this section in relation to a draft
15 standard or variation, the Council must comply with the Food
16 Regulation Agreement.

17 **86 Council may amend or reject draft after second review**

- 18 (1) If the Authority notifies the Council that the Authority has:
19 (a) made a decision under paragraph 85(6)(a) to re-affirm the
20 Authority's approval of a draft standard or variation; or
21 (b) made a decision under paragraph 85(6)(b) to re-affirm the
22 Authority's approval of a draft standard or variation, subject
23 to amendments;
24 the Council must, within 60 days after the notification:
25 (c) inform the Authority that the Council does not intend to
26 amend or reject the draft; or
27 (d) by written instrument, amend the draft; or
28 (e) reject the draft.
- 29 (2) Before amending the draft standard or variation, the Council must
30 give the Authority an opportunity to submit to the Council a draft
31 of the text of the amendment.
- 32 (3) As soon as practicable after the Council decides to amend a draft
33 standard or variation, the Council must inform the Authority that
34 the Council has amended the draft, and give the Authority a copy
35 of the amended draft standard or variation.

- 1 (4) An instrument made under paragraph (1)(d) is not a legislative
2 instrument.
- 3 (5) If the Council decides to reject the draft, the Council must:
4 (a) prepare a notice setting out that decision and the reasons for
5 that decision; and
6 (b) give the Authority a copy of the notice; and
7 (c) publish a copy of the notice on the Internet and in a
8 newspaper circulating in each State or Territory and in New
9 Zealand.

10 **87 Publication of standard or variation**

11 *Standard or variation not subject to review at the request of the*
12 *Council*

- 13 (1) If:
14 (a) the Authority notifies the Council under section 34, 41, 64 or
15 69 that the Authority has approved a draft standard or
16 variation (with or without amendments); and
17 (b) the Council informs the Authority that the Council does not
18 intend to request the Authority to review the draft;
19 then, as soon as practicable, the Authority must comply with the
20 publication requirements set out in subsection (5) in relation to the
21 draft or the draft as so amended.

22 *Standard or variation subject to a first review at the request of the*
23 *Council*

- 24 (2) If:
25 (a) the Authority notifies the Council under subsection 84(6) that
26 the Authority has:
27 (i) made a decision under paragraph 84(6)(a) to re-affirm
28 the Authority's approval of a draft standard or variation;
29 or
30 (ii) made a decision under paragraph 84(6)(b) to re-affirm
31 the Authority's approval of a draft standard or variation,
32 subject to amendments; and
33 (b) the Council informs the Authority that the Council does not
34 intend to request the Authority to review the draft;

1 then, as soon as practicable, the Authority must comply with the
2 publication requirements set out in subsection (5) in relation to the
3 draft or the draft as so amended.

4 *Standard or variation subject to a second review at the request of*
5 *the Council*

6 (3) If:

7 (a) the Authority notifies the Council under subsection 85(6) that
8 the Authority has:

9 (i) made a decision under paragraph 85(6)(a) to re-affirm
10 the Authority's approval of a draft standard or variation;
11 or

12 (ii) made a decision under paragraph 85(6)(b) to re-affirm
13 the Authority's approval of a draft standard or variation,
14 subject to amendments; and

15 (b) the Council informs the Authority that the Council does not
16 intend to amend or reject the draft;

17 then, as soon as practicable, the Authority must comply with the
18 publication requirements set out in subsection (5) in relation to the
19 draft or the draft as so amended.

20 *Standard or variation amended by the Council at the second*
21 *review*

22 (4) If:

23 (a) the Authority notifies the Council under subsection 85(6) that
24 the Authority has:

25 (i) made a decision under paragraph 85(6)(a) to re-affirm
26 the Authority's approval of a draft standard or variation;
27 or

28 (ii) made a decision under paragraph 85(6)(b) to re-affirm
29 the Authority's approval of a draft standard or variation,
30 subject to amendments; and

31 (b) the Council informs the Authority that the Council has
32 amended the draft;

33 then, as soon as practicable, the Authority must comply with the
34 publication requirements set out in subsection (5) in relation to the
35 draft as so amended.

1 *Publication requirements*

- 2 (5) The publication requirements applicable to a draft or draft as
3 amended are as follows:
4 (a) the Authority must prepare a notice stating that the draft or
5 the draft as so amended is to come into effect on a date
6 specified in the notice;
7 (b) the Authority must cause a copy of the notice to be
8 published:
9 (i) in the *Gazette*; and
10 (ii) in the *New Zealand Gazette*; and
11 (iii) in a generally circulating newspaper, in each State or
12 Territory and in New Zealand;
13 together with information about where a copy of the draft or
14 draft as amended may be obtained or inspected;
15 (c) the Authority must make a copy of:
16 (i) the notice; and
17 (ii) the text of the draft or the draft as so amended;
18 available for inspection by the public;
19 (d) the Authority must publish on the Authority's Internet site a
20 copy of:
21 (i) the notice; and
22 (ii) the text of the draft or the draft as so amended.

23 *When standard or variation made under this Act*

- 24 (6) If a standard or variation is the subject of a notice under
25 subsection (5), the standard or variation is taken to have been **made**
26 **under this Act** if and when the standard or variation comes into
27 effect in accordance with the notice.

28 *Draft as so amended*

- 29 (7) To avoid doubt, a reference in this section to a **draft as so amended**
30 does not imply that a reference in another provision of this Act to a
31 draft does not include a reference to an amended draft.

1 *Standards are legislative instruments, but not subject to*
2 *disallowance or sunseting*

3 (8) A standard, or a variation of a standard, in relation to which a
4 notice is published under this section is a legislative instrument,
5 but section 42 and Part 6 of the *Legislative Instruments Act 2003*
6 do not apply to the standard or variation.

7 **Division 4—Urgent applications and proposals**

8 **Subdivision A—Urgent consideration of applications and**
9 **proposals**

10 **95 Declaration of urgency**

- 11 (1) The Authority may:
- 12 (a) declare in writing that a specified application made under
13 section 22 is an urgent application for the purposes of this
14 Part; or
- 15 (b) declare in writing that a specified proposal prepared under
16 section 55 is an urgent proposal for the purposes of this Part;
- 17 if:
- 18 (c) the application or proposal relates to the development or
19 variation of a standard; and
- 20 (d) the Authority considers that it is appropriate to do so in order
21 to protect public health and safety.
- 22 (2) The Authority may:
- 23 (a) declare in writing that a specified application made under
24 section 22 is an urgent application for the purposes of this
25 Part; or
- 26 (b) declare in writing that a specified proposal prepared under
27 section 55 is an urgent proposal for the purposes of this Part;
- 28 if:
- 29 (c) the application or proposal relates to the variation of a
30 standard; and
- 31 (d) the standard has had or, if not varied in the manner sought in
32 the application or proposal, will have, a negative impact on
33 trade that was not envisaged when the standard was made;
34 and

- 1 (e) the Authority considers that the variation of the standard will
2 meet the following objectives:
- 3 (i) the protection of public health and safety;
4 (ii) the provision of adequate information relating to food to
5 enable consumers to make informed choices;
6 (iii) the prevention of misleading or deceptive conduct.
- 7 (3) The Authority must:
- 8 (a) give public notice of a declaration under subsection (1) or
9 (2), and include a copy of the declaration in the notice; and
10 (b) publish in a generally circulating newspaper, in each State or
11 Territory and in New Zealand, a copy of the declaration.
- 12 (4) The Authority must take all reasonable steps to distribute copies of
13 the declaration to the print and electronic media in Australia and
14 New Zealand for the purpose of seeking media publicity about the
15 urgent application or proposal.
- 16 (5) The Authority must give a copy of a declaration under
17 subsection (1) or (2) to:
- 18 (a) each appropriate government agency; and
19 (b) the Council; and
20 (c) if the declaration relates to an application—the applicant.
- 21 (6) The following do not apply to an urgent application or urgent
22 proposal:
- 23 (a) Subdivisions C to F of Division 1 of this Part;
24 (b) Subdivisions C to H of Division 2 of this Part;
25 (c) Division 3 of this Part.
- 26 (7) No charge fixed under section 146 is payable in relation to an
27 urgent application.

28 **96 Preparation of draft standard or variation**

- 29 (1) After considering an urgent application, the Authority must:
- 30 (a) prepare in writing a draft standard or a draft variation of a
31 standard; or
32 (b) reject the application.

Schedule 1 New application and proposal procedures
Part 4 New application and proposal procedures

1 Note: See also section 18, which sets out the objectives of the Authority in
2 developing food regulatory measures and variations of those
3 measures.

- 4 (2) After considering an urgent proposal, the Authority must:
5 (a) prepare in writing a draft standard or a draft variation of a
6 standard; or
7 (b) abandon the proposal.

8 Note: See also section 18, which sets out the objectives of the Authority in
9 developing food regulatory measures and variations of those
10 measures.

- 11 (3) If, under this section, the Authority prepares a draft standard, or a
12 draft variation of a standard, the Authority must give public notice
13 of the matters mentioned in subsection (4).

- 14 (4) The notice must:
15 (a) state that the Authority has prepared a draft standard, or a
16 draft variation of a standard, as the case requires; and
17 (b) include a copy of the draft standard or draft variation; and
18 (c) call for written submissions from interested persons and
19 appropriate government agencies, for the purposes of the
20 Authority's consideration of the draft standard, or draft
21 variation, to be given to the Authority within the period
22 specified in the notice (the *submission period*).

- 23 (5) The submission period must not end later than 10 business days
24 after the publication of the notice.

- 25 (6) As soon as practicable after complying with subsection (3), the
26 Authority must publish in a generally circulating newspaper, in
27 each State or Territory and in New Zealand, a copy of the notice
28 mentioned in subsection (3), together with information about
29 where a copy of the draft may be obtained.

30 **97 Approval and publication of standard or variation**

31 *Approval*

- 32 (1) After considering a draft standard, or a draft variation of a
33 standard, prepared under section 96, the Authority must:
34 (a) approve the draft; or

- 1 (b) approve the draft subject to such amendments as the
2 Authority considers necessary; or
3 (c) abandon the draft.

4 Note: The Board must not delegate its powers to act on behalf of the
5 Authority under this subsection—see section 150.

- 6 (2) In doing so, the Authority must have regard to all submissions
7 made by interested persons and appropriate government agencies
8 during the submission period.
9 (3) To avoid doubt, the draft does not take effect except in accordance
10 with a notice under subsection (4).

11 *Publication*

- 12 (4) If the Authority approves a draft standard or a draft variation of a
13 standard under this section (with or without amendments), the
14 Authority must:
15 (a) give public notice of the approval, together with information
16 about where further information about the draft standard or
17 draft variation may be obtained; and
18 (b) publish in a generally circulating newspaper, in each State or
19 Territory and in New Zealand, a notice stating that the draft
20 standard or draft variation has been approved and stating
21 where further information about the draft standard or draft
22 variation may be obtained.

23 *When a standard or variation takes effect*

- 24 (5) The standard, or the variation of the standard, takes effect on the
25 day specified in the notice given under subsection (4).

26 *Standards are legislative instruments, but not subject to*
27 *disallowance or sunseting*

- 28 (6) The standard, or the variation of the standard, in relation to which
29 notice is published under subsection (4), is a legislative instrument,
30 but section 42 and Part 6 of the *Legislative Instruments Act 2003*
31 do not apply to the standard or variation.

1 **Subdivision B—Assessing the resulting standard or variation**

2 **98 Application**

3 This Subdivision applies if the Authority approves a draft standard
4 or a draft variation of a standard under section 97 (with or without
5 amendments).

6 **99 Assessing the standard or variation**

- 7 (1) The Authority must assess the standard or variation.
- 8 (2) In assessing the standard or variation, the Authority must have
9 regard to the following matters:
- 10 (a) whether costs that have arisen, or will arise, from the
11 standard or variation outweigh the direct and indirect benefits
12 to the community, Government or industry that have arisen,
13 or will arise, from the standard or variation;
- 14 (b) whether other measures (available to the Authority or not)
15 would be more cost-effective than the standard or variation;
- 16 (c) all relevant New Zealand standards;
- 17 (d) any other relevant matters.

18 Note: See also section 18, which sets out the objectives of the Authority in
19 developing food regulatory measures and variations of those
20 measures.

21 **100 Calling for submissions**

- 22 (1) After assessing the standard or variation, the Authority must call
23 for submissions by giving public notice of the matters mentioned in
24 subsection (2).
- 25 (2) The notice must:
- 26 (a) identify the standard or variation; and
- 27 (b) include a copy of the standard or variation, or state how a
28 copy of the standard or variation can be obtained; and
- 29 (c) call for written submissions, for the purpose of making a
30 decision under subsection 101(1), to be given to the
31 Authority within the period specified in the notice (the
32 *submission period*).

1 **101 Re-affirm the standard or variation or propose changes**

- 2 (1) After the submission period, and in any event within 12 months
3 after the standard or variation takes effect, the Authority must:
4 (a) re-affirm its decision to approve the standard or variation; or
5 (b) prepare a proposal under section 55 for the development of:
6 (i) the variation, or further variation, of the relevant
7 standard; or
8 (ii) a replacement standard.

9 Note: The Board must not delegate its powers to act on behalf of the
10 Authority under this subsection—see section 150.

- 11 (2) In making a decision under subsection (1), the Authority must take
12 into account all submissions made during the submission period.
- 13 (3) Within 10 business days after making a decision under
14 subsection (1), the Authority must give the Council written notice
15 of its decision, and include with that notice a report prepared in
16 accordance with subsection (4).
- 17 (4) The report must include each of the following:
18 (a) the reasons for initially declaring the application or proposal
19 that resulted in the standard or variation to be urgent;
20 (b) a copy of the declaration under section 95;
21 (c) a copy of the standard or variation approved as a result of the
22 application or proposal;
23 (d) a summary of the submissions received by the Authority in
24 relation to the standard or variation approved as a result of
25 the urgent application or proposal;
26 (e) the Authority's responses to the issues raised in those
27 submissions;
28 (f) the Authority's reasons for its decision under subsection (1);
29 (g) a Regulation Impact Statement in relation to the standard or
30 variation.
- 31 (5) If the Authority notifies the Council that the Authority has
32 re-affirmed a standard or variation of a standard, the Council may
33 direct the Authority to give the Council such information as the
34 Council reasonably requires for the purpose of assisting the
35 Council to make a decision about the standard or variation under
36 section 102.

1 **102 Council may request Authority to review**

- 2 (1) If the Authority notifies the Council under section 101 that the
3 Authority has re-affirmed its approval of the standard or variation,
4 the Council must, within 60 days after the notification:
5 (a) request the Authority to review the standard or variation; or
6 (b) inform the Authority that the Council does not intend to
7 request the Authority to review the standard or variation.
- 8 (2) In exercising its powers under this section in relation to the
9 standard or variation, the Council must comply with:
10 (a) the Food Regulation Agreement; and
11 (b) the Australia New Zealand Joint Food Standards Agreement.

12 **103 Review requested**

- 13 (1) If the Council requests the Authority to review the standard or
14 variation, the Council must inform the Authority of the Council's
15 concerns with the standard or variation.
- 16 (2) The Council may give to the Authority such directions as it thinks
17 fit in relation to the conduct of a review of a standard or variation
18 under this Subdivision.
- 19 (3) A direction under subsection (2) is not a legislative instrument.

20 **104 Authority to respond to request**

- 21 (1) If the Council requests the Authority to review the standard or
22 variation:
23 (a) the review is to be conducted, subject to any directions given
24 under subsection 103(2), in such manner as the Authority
25 considers appropriate; and
26 (b) the Authority must complete the review, and make a decision
27 under subsection (2):
28 (i) within 3 months after the request was made; or
29 (ii) if the Council allows a longer period—within that
30 longer period.
- 31 (2) After completing a review under this section of the standard or
32 variation, the Authority must:
33 (a) re-affirm its decision to approve the standard or variation; or

- 1 (b) prepare a proposal under section 55 for the development of:
2 (i) the variation, or further variation, of the relevant
3 standard; or
4 (ii) a replacement standard.

5 Note: The Board must not delegate its powers to act on behalf of the
6 Authority under this subsection—see section 150.

- 7 (3) The Authority must give to the Council within 10 business days
8 after making its decision:
9 (a) written notice of its decision under subsection (2); and
10 (b) the Authority's reasons for making that decision.

11 **105 Council may request second review**

- 12 (1) If the Authority notifies the Council under section 104 that the
13 Authority re-affirmed its decision to approve the standard or
14 variation, the Council must, within 60 days after the notification:
15 (a) request the Authority to review the standard or variation; or
16 (b) inform the Authority that the Council does not intend to
17 request the Authority to review the standard or variation.
- 18 (2) In exercising its powers under this section in relation to the
19 standard or variation, the Council must comply with the Food
20 Regulation Agreement.
- 21 (3) Sections 103 and 104 apply in the same way in relation to the
22 second review as they apply in relation to the first.

23 **106 Council may revoke or amend standard or variation**

- 24 (1) If, after a second review, the Authority notifies the Council that the
25 Authority has decided under paragraph 104(2)(a) to re-affirm the
26 standard or variation, the Council must, within 60 days after the
27 notification:
28 (a) inform the Authority that the Council does not intend to
29 revoke or amend the standard or variation; or
30 (b) by legislative instrument, revoke or amend the standard or
31 variation with effect from a date specified in the instrument.
- 32 (2) If the Council decides to revoke or amend the standard or variation,
33 the Council must:
34 (a) prepare a notice setting out the reasons for that decision; and

- 1 (b) give the Authority a copy of the notice; and
2 (c) publish a copy of the notice:
3 (i) on the Internet; and
4 (ii) in a generally circulating newspaper, in each State or
5 Territory and in New Zealand.
- 6 (3) Before amending the standard or variation, the Council must give
7 the Authority an opportunity to submit to the Council a draft of the
8 text of the amendment.
- 9 (4) As soon as practicable after the Council decides to revoke or
10 amend the standard or variation, the Authority must:
11 (a) prepare a notice stating that the revocation or amendment is
12 to come into effect on the date specified in the instrument of
13 revocation or amendment; and
14 (b) cause a copy of the notice to be published:
15 (i) in the *Gazette*; and
16 (ii) in the *New Zealand Gazette*; and
17 (iii) in a generally circulating newspaper, in each State or
18 Territory and in New Zealand;
19 together with information about where the text of the
20 revocation or amendment may be obtained or inspected; and
21 (c) make a copy of:
22 (i) the notice; and
23 (ii) the text of the instrument of revocation or amendment;
24 available for inspection by the public; and
25 (d) publish on the Authority's Internet site a copy of:
26 (i) the notice; and
27 (ii) the text of the instrument of revocation or amendment.
- 28 (5) If a standard or variation is the subject of a notice under
29 subsection (4), the standard or variation is taken to have been made
30 under this Act if and when the standard or variation comes into
31 effect under the instrument of revocation or amendment.
- 32 *Instruments of revocation are not subject to disallowance or*
33 *sunsetting*
- 34 (6) Section 42 and Part 6 of the *Legislative Instruments Act 2003* do
35 not apply to the instrument of revocation or amendment.
-

1 **75 Division 6 of Part 3 (heading)**

2 Repeal the heading, substitute:

3 **Division 5—General rules for considering applications and**
4 **proposals**

5 **76 Division 6 of Part 3, other than section 114**

6 Repeal the Division, other than section 114, substitute:

7 **107 General conduct in considering an application or proposal**

8 Subject to this Act, in considering an application or proposal:

- 9 (a) the Authority is not bound to act in a formal manner; and
10 (b) the Authority is not bound by the rules of evidence; and
11 (c) the Authority may inform itself on any matter in such manner
12 as it thinks fit; and
13 (d) the Authority may receive written or oral information or
14 submissions; and
15 (e) the Authority may consult with such persons as it thinks fit.

16 **108 Authority may require further information**

- 17 (1) If the Authority needs more information:
18 (a) to enable it to assess an application and develop the relevant
19 food regulatory measure, or the relevant variation of a food
20 regulatory measure; or
21 (b) to enable it to determine whether a charge fixed under
22 section 146 is payable to the Authority in relation to an
23 application;
24 the Authority may request the applicant to provide it with such
25 further information as is specified in the request within such
26 reasonable time as is specified in the request.
- 27 (2) If the applicant refuses or fails to comply with the request within
28 the period specified in the request, without reasonable excuse, the
29 application is taken to have been withdrawn. The Authority must
30 give written notice of that fact to the applicant.
- 31 (3) If an application is taken to have been withdrawn under
32 subsection (2) after public notice of the application is given under

1 section 28, the Authority must give public notice that the
2 application is taken to have been withdrawn under subsection (2).

3 **109 Period within which consideration of applications for standards**
4 **or variations must be completed**

5 *Applications must be considered within the consideration period*

6 (1) If the Authority accepts an application under section 26 for the
7 development of a standard or the variation of a standard, the
8 Authority must complete the procedure that the Authority must,
9 under Subdivision C of Division 1, adopt in the consideration of
10 the application within the consideration period.

11 *Consideration period*

12 (2) The *consideration period* begins:

- 13 (a) if an exclusive capturable commercial benefit would be
14 conferred on the applicant as a result of the development of
15 the resulting standard or variation—on the day on which the
16 charge fixed under subparagraph 146(6)(b)(i) is paid or, if the
17 charge is payable in instalments, the first instalment is paid;
18 and
19 (b) if the applicant elects to have the consideration of the
20 application expedited—on the day on which the charge fixed
21 under subparagraph 146(6)(b)(ii) is paid or, if the charge is
22 payable in instalments, the first instalment is paid; and
23 (c) in any other case, on the day on which the Authority begins
24 its assessment of the application under section 29.

25 (3) The *consideration period* ends 12 months after it begins or, if a
26 shorter period is prescribed, at the end of that shorter period.

27 *Extension for consideration of new standard or major variation*

28 (4) If the application is one to which Subdivision F of Division 1
29 applies (an application for the development of a new standard or a
30 major variation), the Authority may extend the consideration
31 period, if it is not practicable for the general procedure, as
32 modified by that Subdivision, to be completed within the period
33 specified under subsections (2) and (3).

1 (5) The maximum period for which an extension may be given under
2 subsection (4) is 6 months.

3 *Stopping the clock*

4 (6) If the Authority requests an applicant to provide it with further
5 information under section 108, the time taken by the applicant to
6 provide the information is not to be included in the consideration
7 period.

8 (7) If an instalment of a charge fixed under section 146 is due, but not
9 paid, the time during which it remains unpaid is not to be included
10 in the consideration period.

11 (8) If an application is made to the Administrative Appeals Tribunal
12 for the review of a decision of the Authority made in connection
13 with the preparation of a draft standard or a draft variation of a
14 standard, the period beginning on the day on which the application
15 for review is made and ending on the day on which it is finalised is
16 not to be included in the consideration period.

17 (9) If the Council notifies the Authority that it is formulating policy
18 guidelines for the purposes of paragraph 18(2)(e):
19 (a) the Authority may suspend its consideration of all
20 applications which, in the opinion of the Authority, would be
21 affected by the guidelines once formulated; and
22 (b) notify the applicants of the suspension, and the period of the
23 suspension.

24 (10) The suspension begins on the day on which the Authority is
25 notified by the Council and ends on the day on which:
26 (a) the Council notifies the Authority of the policy guidelines; or
27 (b) the Council notifies the Authority that it has decided not to
28 proceed with the policy guidelines; or
29 (c) a period of 18 months, beginning on the day on which the
30 Authority was notified under subsection (9), has elapsed.

31 (11) The period during which the consideration of the application is
32 suspended is not to be included in the consideration period.

1 **110 Rejecting an application or abandoning a proposal**

2 *Notice of rejection*

- 3 (1) If the Authority rejects:
- 4 (a) an application for the development or variation of a food
5 regulatory measure; or
- 6 (b) a draft food regulatory measure or a draft variation of a food
7 regulatory measure that results from such an application;
- 8 the Authority must comply with the notice requirements set out in
9 subsection (2).
- 10 (2) The notice requirements for the purposes of subsection (1) are as
11 follows:
- 12 (a) the Authority must give notice in writing of the rejection, and
13 the reasons for the rejection, to the applicant;
- 14 (b) if the Authority rejects the application after public notice is
15 given under section 28, the Authority must give public notice
16 of the rejection, and the reasons for the rejection;
- 17 (c) if the rejection occurs after a draft food regulatory measure or
18 a draft variation of a food regulatory measure has been
19 prepared as a result of the application—the Authority must
20 give notice in writing of the rejection to the Council.

21 *Refund on rejection*

- 22 (3) If the Authority rejects:
- 23 (a) an application for the development or variation of a food
24 regulatory measure; or
- 25 (b) a draft food regulatory measure or a draft variation of a food
26 regulatory measure that results from an application;
- 27 after the applicant has paid a charge fixed under section 146 in
28 relation to the application, the Authority must refund to the
29 applicant so much of the charge as is equivalent to the sum paid by
30 the applicant but not expended from the charge, calculated in
31 accordance with the regulations.

32 *Notice of abandonment*

- 33 (4) If the Authority abandons:

- 1 (a) a proposal for the development of a standard or the variation
2 of a standard; or
3 (b) a draft food regulatory measure or a draft variation of a food
4 regulatory measure that results from such a proposal;
5 the Authority must comply with the notice requirements set out in
6 subsection (5).
- 7 (5) The notice requirements for the purposes of subsection (4) are as
8 follows:
9 (a) if the Authority abandons the proposal after public notice is
10 given under section 58, the Authority must give public notice
11 of the abandonment, and the reasons for the abandonment;
12 (b) if the abandonment occurs after a draft food regulatory
13 measure or a draft variation of a food regulatory measure has
14 been prepared as a result of the proposal—the Authority must
15 give notice in writing of the abandonment to the Council.

16 **111 Public hearings**

- 17 (1) The Authority may, at the discretion of the Authority, conduct a
18 public hearing at any point during the consideration of an
19 application or proposal for the development or variation of a food
20 regulatory measure.
- 21 (2) If the consideration of an application or proposal includes a public
22 hearing, the Authority, having regard to the confidential nature of
23 any evidence or matter or for any other reason, may direct that any
24 part of the hearing be held in private and determine who may
25 attend.
- 26 (3) The Authority may give directions prohibiting or restricting the
27 publication of evidence given in the course of a public hearing or
28 the review or assessment of a draft food regulatory measure or a
29 draft variation of a food regulatory measure, whether in public or
30 in private, or of matters contained in documents produced in the
31 course of a public hearing or the review or assessment of a draft
32 food regulatory measure or a draft variation of a food regulatory
33 measure.
- 34 (4) A direction under subsection (3) is not a legislative instrument.

1 **112 Authority may rely on work or processes of other government**
2 **agencies**

3 (1) The Authority may decide, in writing, not to do something that it is
4 required to do under this Part in relation to an application made
5 under section 22, or a proposal prepared under section 55, if the
6 Authority considers that doing the thing would be a duplication of
7 work already done, or a process already gone through, by another
8 government agency.

9 (2) If the decision relates to an application in relation to which public
10 notice has been given under section 28, the Authority must give
11 public notice of its decision.

12 (3) If the decision relates to an application in relation to which public
13 notice has not, or not yet, been given under those sections, the
14 Authority must give notice of its decision to the applicant.

15 (4) If the decision relates to a proposal in relation to which public
16 notice has been given under section 58, the Authority must give
17 public notice of its decision.

18 (5) The public notice must:

19 (a) identify the government agency referred to in subsection (1);
20 and

21 (b) contain a brief statement of the work the agency has done or
22 the process it has gone through.

23 (6) The regulations may make modifications of the provisions of this
24 Part, or specified provisions of this Part, as they apply to the
25 application or proposal, to take account of the Authority's decision.

26 (7) In this section:

27 **government agency** means:

28 (a) a Department of State of:

29 (i) the Commonwealth; or

30 (ii) a State or Territory; or

31 (iii) New Zealand; or

32 (b) a body (whether incorporated or not) established by, or by a
33 law of:

34 (i) the Commonwealth; or

- 1 (ii) a State or Territory; or
2 (iii) New Zealand.

3 *modifications* includes additions, omissions and substitutions.

4 **Division 6—Other matters**

5 **113 Review of food regulatory measures**

- 6 (1) The Authority may review a food regulatory measure at the request
7 of a body or person, or on its own initiative, in such manner as the
8 Authority considers appropriate.
- 9 (2) If the Council requests the Authority to review a standard:
10 (a) the Authority must review the standard; and
11 (b) subject to any directions under subsection (3), the Authority
12 may conduct the review in such manner as the Authority
13 considers appropriate.
- 14 (3) The Council may give to the Authority such directions as it thinks
15 fit in relation to the conduct of a review under subsection (2). Such
16 a direction is not a legislative instrument.
- 17 (4) If the Council requests the Authority to review a standard under
18 subsection (2), the Authority must complete that review:
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 (5) After completing a review under subsection (2), the Authority must
23 notify the Council of the result of the review.
- 24 (6) As soon as practicable after the Authority has reviewed a food
25 regulatory measure under this section, it may prepare a proposal
26 for the development of a food regulatory measure in substitution
27 for the food regulatory measure that has been reviewed.
- 28 (7) If the Authority prepares a proposal under this section, this Part has
29 effect as if the proposal were a proposal under section 55.

1

2 **Part 5—Application and transitional issues relating**
3 **to Parts 1 and 4 of this Schedule**

4 **77 Application**

5 The amendments made by Parts 1 and 4 of this Schedule apply in
6 relation to:

- 7 (a) applications made after a period of 3 months, beginning on
8 the day on which Part 4 of the Schedule commences, has
9 elapsed; and
10 (b) proposals prepared after a period of 3 months, beginning on
11 the day on which Part 4 of the Schedule commences, has
12 elapsed.

13 **78 Annual reports**

14 To avoid doubt, if, during a financial year to which a report on the
15 Authority under section 9 of the *Commonwealth Authorities and*
16 *Companies Act 1997* relates, the Authority considers:

- 17 (a) applications and proposals to which this Schedule does not
18 apply (*earlier applications*); and
19 (b) applications and proposals to which it does apply (*later*
20 *applications*);

21 the members must include in the report:

- 22 (c) in relation to the earlier applications—particulars of the
23 matters mentioned in section 69 of the *Food Standards*
24 *Australia New Zealand Act 1991*, as in force immediately
25 before the commencement of Part 3 of this Schedule; and
26 (d) in relation to the later applications—particulars of the matters
27 mentioned in section 152 of that Act, as in force on
28 commencement of item 71 of this Schedule.

1
2
3

Schedule 2—High level health claims

4

Food Standards Australia New Zealand Act 1991

5

1 Subsection 4(1)

6 Insert:

7 *High Level Health Claims Committee* means a committee
8 established under subsection 118(1A) to give advice on
9 applications or proposals to make a high level health claims
10 variation.

11

2 Subsection 4(1)

12 Insert:

13 *high level health claims variation* means a variation, the only
14 effect of which is to make a change to the list of high level health
15 claims, as defined for the purposes of the Nutrition, Health and
16 Related Claims Standard, that may be made under that standard.

17

3 Subsection 4(1)

18 Insert:

19 *Nutrition, Health and Related Claims Standard* means the
20 Nutrition, Health and Related Claims Standard as in force from
21 time to time, or any standard in force in substitution for that
22 standard.

23

4 Subsection 24(1)

24 After “under paragraph 26(1)(a)”, insert “or 47(1)(a)”.

25

5 Subsection 24(3)

26 After “under section 28”, insert “or 51”.

27

6 Section 25

28 Before “The”, insert “(1)”.

29

7 After paragraph 25(b)

30 Insert:

- 1 (c) the application is one to which Subdivision G applies
2 (application for a high level health claims variation); or

3 **8 At the end of section 25**

4 Add:

5 *Where an application for a high level health claims variation is*
6 *included in an application for a variation of another kind*

- 7 (2) If a person applies for a high level health claims variation and a
8 variation of another kind in a single application, then, for the
9 purposes of this Act, the person is taken to have made an
10 application for a high level health claims variation and a separate
11 application for the other kind of variation.

12 **9 At the end of Division 1 of Part 3**

13 Add:

14 **Subdivision G—Procedure for certain variations of the**
15 **Nutrition, Health and Related Claims Standard**

16 **46 Application of Subdivision**

17 This Subdivision applies to an application if:

- 18 (a) the application is made for the variation of the Nutrition,
19 Health and Related Claims Standard; and
20 (b) the variation sought is a high level health claims variation.

21 Note: If an application to vary the Nutrition, Health and Related Claims
22 Standard would not involve a change to the list of high level health
23 claims that may be made under the Standard, the general procedure
24 applies—see Subdivisions D, E and F.

25 **47 Accepting the application**

- 26 (1) The Authority must, within 15 business days after the application
27 is given to the Authority:
28 (a) accept the application; or
29 (b) reject the application.
30 (2) In determining whether to accept or reject the application, the
31 Authority must have regard to the following matters:
-

-
- 1 (a) whether the application complies with subsection 22(2);
2 (b) whether the application is so similar to a previous application
3 or proposal for a high level health claims variation that it
4 ought to be rejected;
5 (c) any other relevant matter.
- 6 (3) If an application is rejected because it does not comply with
7 subsection 22(2), the application must be disregarded for the
8 purposes of determining whether a later application or proposal for
9 the variation of the standard is so similar to a previous application
10 or proposal that the later application ought to be rejected.

11 **48 Notice of acceptance**

- 12 (1) If the Authority accepts the application, the Authority must notify
13 the applicant immediately in writing:
14 (a) that the application has been accepted; and
15 (b) in the case of an applicant who has applied for the variation
16 of a standard and on whom an exclusive capturable
17 commercial benefit would be conferred if the standard were
18 made or varied in the manner sought in the application:
19 (i) that the applicant must pay the charge fixed under
20 subparagraph 146(6)(b)(i) or, if the charge is payable in
21 instalments, the first instalment of the charge, within 20
22 business days after the notification is given; and
23 (ii) that the application will be rejected if the charge, or the
24 first instalment of the charge, is not paid within that
25 period; and
26 (c) in any other case—that the applicant may, if the applicant
27 elects to have the consideration of the application expedited,
28 pay the charge fixed under subparagraph 146(6)(b)(ii) or, if
29 the charge is payable in instalments, the first instalment of
30 the charge.
- 31 (2) The Authority must give notice in writing to the applicant:
32 (a) identifying the procedure that the Authority will adopt in
33 considering the application; and
34 (b) indicating when the Authority proposes to undertake the key
35 steps in the procedure;
36 within:

- 1 (c) if the applicant pays a charge, or the first instalment of a
2 charge, mentioned in paragraph (1)(b) within the period
3 mentioned in that paragraph—5 business days after that
4 payment; or
5 (d) if the applicant pays a charge, or the first instalment of a
6 charge, mentioned in paragraph (1)(c), within 20 business
7 days after notice is given to the applicant under
8 subsection (1) (the *early payment period*)—5 business days
9 after that payment; or
10 (e) in any other case—within 25 business days after notice is
11 given to the applicant under subsection (1).
- 12 (3) If the applicant pays a charge, or the first instalment of a charge,
13 mentioned in paragraph (1)(c) after the end of the early payment
14 period, the Authority must, within 5 business days after that
15 payment, again give the applicant notice of the matters mentioned
16 in subsection (2), including an update on when the Authority now
17 proposes to undertake the key steps in the procedure.

18 **49 Notice of the application to expert committee and Food**
19 **Regulation Standing Committee**

- 20 (1) If the Authority accepts the application, the Authority must also
21 give notice of the matters mentioned in subsection (2) to:
22 (a) the High Level Health Claims Committee established for the
23 purpose of making recommendations on the application, or
24 applications of that kind; and
25 (b) the Food Regulation Standing Committee.

26 *Content of notice*

- 27 (2) The notice must:
28 (a) state that the Authority has received an application for a high
29 level health claims variation; and
30 (b) state the date on which the application was received by the
31 Authority; and
32 (c) state the name of the applicant; and
33 (d) give a summary of the application; and
34 (e) state that the Authority has accepted the application; and
35 (f) identify the procedure that the Authority will adopt in
36 considering the application; and

- 1 (g) indicate when the Authority proposes to undertake the key
2 steps in that procedure.

3 *Period within which notice must be given*

- 4 (3) The notice must be given:
5 (a) if the applicant pays a charge, or the first instalment of a
6 charge, mentioned in subparagraph 48(1)(b)(i) within the
7 period mentioned in that subparagraph—within 5 business
8 days after that payment; or
9 (b) if the applicant pays a charge mentioned in paragraph
10 48(1)(c) within 20 business days after notice is given to the
11 applicant under section 48 (the *early payment period*)—
12 within 5 business days after that payment; or
13 (c) in any other case—within 25 business days after notice is
14 given to the applicant under section 48.

15 *Exclusive capturable commercial benefit—fee not paid*

- 16 (4) If an applicant:
17 (a) who applies for a high level health claims variation; and
18 (b) on whom an exclusive capturable commercial benefit would
19 be conferred if the standard were made or varied in the
20 manner sought in the application;
21 does not pay the charge, or the first instalment of the charge,
22 mentioned in subparagraph 48(1)(b)(i) within the period mentioned
23 in that subparagraph:
24 (c) the Authority must reject the application; and
25 (d) the Authority need not give notice under this section.

26 *Fee to expedite consideration paid after early payment period*

- 27 (5) If an applicant pays a charge, or the first instalment of a charge,
28 mentioned in paragraph 48(1)(c) after the end of the early payment
29 period, the Authority must, within 5 business days after that
30 payment, again give public notice of the matters mentioned in
31 subsection (2), including an update on when the Authority now
32 proposes to undertake the key steps in the procedure.

1 **50 Considering the application**

2 (1) The Authority must consider whether to approve a draft high level
3 health claims variation.

4 (2) Before approving such a draft variation, the Authority must:

5 (a) be satisfied that the approval of the draft variation will meet
6 the following objectives:

7 (i) the protection of public health and safety;

8 (ii) the provision of adequate information relating to food to
9 enable consumers to make informed choices;

10 (iii) the prevention of misleading or deceptive conduct; and

11 (b) assess the draft variation against the criteria set out in the
12 Nutrition, Health and Related Claims Standard in relation to
13 high level health claims, taking into account any
14 recommendations made by the High Level Health Claims
15 Committee in relation to the draft variation or the application
16 that resulted in the draft variation; and

17 (c) take into account any submission made on behalf of a
18 jurisdiction represented on the Food Regulation Standing
19 Committee in relation to the draft variation or the application
20 that resulted in the draft variation; and

21 (d) if the applicant has elected that the Authority give public
22 notice under section 51 calling for submissions, consider all
23 submissions made during the submission period.

24 (3) If:

25 (a) the Authority prepares a draft high level health claims
26 variation; and

27 (b) the draft variation differs from that sought in the application
28 as a result of which it was prepared, or was not sought in the
29 application at all;

30 the Authority must give the applicant notice in writing of that fact
31 and, if the applicant has elected that the Authority give public
32 notice calling for submissions under section 51, state in the notice
33 that the Authority will call for submissions for the purpose of
34 assessing the draft variation.

35 (4) The Authority must not give public notice calling for submissions
36 under section 51 within 10 business days immediately after notice
37 is given under subsection (3) of this section.

51 Calling for submissions

- 1
- 2 (1) When applying for a high level health claims variation, the
3 applicant may elect to have the Authority give public notice under
4 this section calling for submissions.
- 5 (2) If the applicant has made an election under subsection (1), the
6 Authority must give public notice of the matters mentioned in
7 subsection (3).
- 8 (3) The notice must:
- 9 (a) state that the Authority has prepared a draft high level health
10 claims variation; and
- 11 (b) include a copy of the draft variation, or state how a copy of
12 the draft variation can be obtained; and
- 13 (c) call for written submissions, for the purpose of the
14 Authority's consideration of the draft variation, to be given to
15 the Authority within the period specified in the notice (the
16 *submission period*).

52 Approving the draft variation in relation to high level health claims

- 17
- 18
- 19 (1) After considering whether to approve a draft high level health
20 claims variation and, if notice calling for submissions is given
21 under section 51, after the submission period, the Authority must:
- 22 (a) do one of the following:
- 23 (i) approve the draft high level health claims variation;
- 24 (ii) reject the draft high level health claims variation; and
- 25 (b) prepare a report under this section.

26 Note: The Board must not delegate its powers to act on behalf of the
27 Authority under paragraph (a)—see section 150.

- 28 (2) The report must include each of the following:
- 29 (a) the reasons for initially accepting the application;
- 30 (b) a summary of the recommendations (if any) of the High
31 Level Health Claims Committee in relation to the application
32 and each draft variation that resulted from the application;
- 33 (c) a summary of the submissions (if any) made by members of
34 the Food Regulation Standing Committee in relation to the

- 1 application and each draft variation that resulted from the
2 application;
- 3 (d) a summary of the submissions (if any) received by the
4 Authority within the submission period in response to a
5 notice under section 51, if such notice was given;
- 6 (e) the Authority's response to the issues raised in those
7 submissions;
- 8 (f) the Authority's reasons for approving the draft variation or
9 rejecting the application.

10 **53 Notifying the Council**

- 11 (1) If the Authority approves a draft high level health claims variation,
12 the Authority must, within 10 business days after the approval:
- 13 (a) give the Council:
- 14 (i) a written notification of the approval; and
15 (ii) a copy of the report prepared by the Authority under
16 section 52; and
- 17 (b) if submissions were called for under section 51—give public
18 notice of the decision.
- 19 (2) If the Authority has notified the Council under subsection (1), the
20 Council may direct the Authority to give the Council such
21 information as the Council reasonably requires for the purpose of
22 assisting the Council to make a decision about the draft under
23 Division 3.

24 Note: The process followed by the Council after receiving notification under
25 this section is set out in Division 3.

26 **10 Subsection 56(2)**

27 After “under section 58”, insert “ or 77”.

28 **11 After paragraph 57(b)**

29 Insert:

- 30 (c) the proposal is one to which Subdivision G applies (proposal
31 for a high level health claims variation); or

32 **12 After Subdivision F of Division 2 of Part 3**

33 Add:

1 **Subdivision G—Procedure for certain variations of the**
2 **Nutrition, Health and Related Claims Standard**

3 **74 Application of Subdivision**

4 This Subdivision applies to a proposal if:

- 5 (a) the proposal is for the variation of the Nutrition, Health and
6 Related Claims Standard; and
7 (b) the variation proposed is a high level health claims variation.

8 Note: If a proposal to vary the Nutrition, Health and Related Claims
9 Standard would not involve a change to the list of high level health
10 claims that may be made under the Standard, the general procedure
11 applies—see Subdivisions D, E and F.

12 **75 Notice of the proposal**

- 13 (1) The Authority must give public notice of the matters mentioned in
14 subsection (3).
- 15 (2) The Authority must also give notice of the matters mentioned in
16 subsection (3) to:
17 (a) the High Level Health Claims Committee established for the
18 purpose of making recommendations on the proposal, or
19 proposals of that kind; and
20 (b) the Food Regulation Standing Committee.
- 21 (3) The notice must:
22 (a) state that the Authority proposes to make a high level health
23 claims variation; and
24 (b) give a summary of the proposal; and
25 (c) identify the procedure that the Authority will adopt in
26 considering the proposal; and
27 (d) indicate when the Authority proposes to undertake the key
28 steps in that procedure.

29 **76 Considering the proposal**

- 30 (1) The Authority must consider whether to approve a draft high level
31 health claims variation.
- 32 (2) Before approving such a draft variation, the Authority must:

- 1 (a) be satisfied that the approval of the draft variation will meet
2 the following objectives:
3 (i) the protection of public health and safety;
4 (ii) the provision of adequate information relating to food to
5 enable consumers to make informed choices;
6 (iii) the prevention of misleading or deceptive conduct; and
7 (b) assess the draft variation against the criteria set out in the
8 Nutrition, Health and Related Claims Standard in relation to
9 high level health claims, taking into account any
10 recommendations made by the High Level Health Claims
11 Committee in relation to the draft variation or the proposal
12 that resulted in the draft variation; and
13 (c) take into account any submission made on behalf of a
14 jurisdiction represented on the Food Regulation Standing
15 Committee in relation to the draft variation or the proposal
16 that resulted in the draft variation; and
17 (d) all submissions made during the submission period.

18 **77 Calling for submissions**

- 19 (1) The Authority must give public notice of the matters mentioned in
20 subsection (3) before a high level health claims variation is
21 approved as a result of a proposal.
- 22 (2) The Authority must also give notice of the matters mentioned in
23 subsection (3) to the Food Regulation Standing Committee before
24 a high level health claims variation is approved.
- 25 (3) The notice must:
26 (a) state that the Authority has prepared a draft high level health
27 claims variation; and
28 (b) include a copy of the draft variation, or state how a copy of
29 the draft variation can be obtained; and
30 (c) call for written submissions, for the purpose of the
31 Authority's consideration of the draft variation, to be given to
32 the Authority within the period specified in the notice (the
33 ***submission period***).

78 Approving the draft variation in relation to high level health claims

- 1
2
- 3 (1) After the submission period, the Authority must:
- 4 (a) do one of the following:
- 5 (i) approve a draft high level health claims variation;
- 6 (ii) abandon the proposal to vary the list; and
- 7 (b) prepare a report under this section.

8 Note: The Board must not delegate its powers to act on behalf of the
9 Authority under paragraph (a)—see section 150.

- 10 (2) The report must include each of the following:
- 11 (a) the reasons for initially preparing the proposal;
- 12 (b) a summary of the recommendations (if any) of the High
13 Level Health Claims Committee in relation to the proposal
14 and each draft variation that resulted from the proposal;
- 15 (c) a summary of the submissions (if any) made by members of
16 the Food Regulation Standing Committee in relation to the
17 proposal and each draft variation that resulted from the
18 proposal;
- 19 (d) a summary of the submissions (if any) received by the
20 Authority within the submission period in response to a
21 notice under section 77;
- 22 (e) the Authority's response to the issues raised in those
23 recommendations and submissions;
- 24 (f) the Authority's reasons for approving the draft variation or
25 abandoning the proposal.

79 Notifying the Council

- 26
- 27 (1) If the Authority approves a draft high level health claims variation,
28 the Authority must, within 10 business days after the approval:
- 29 (a) give the Council:
- 30 (i) a written notification of the approval; and
- 31 (ii) a copy of the report prepared by the Authority under
32 section 78; and
- 33 (b) if submissions were called for under section 77—give public
34 notice of the decision.

1 (2) If the Authority has notified the Council under subsection (1), the
2 Council may direct the Authority to give the Council such
3 information as the Council reasonably requires for the purpose of
4 assisting the Council to make a decision about the draft under
5 Division 3.

6 Note: The process followed by the Council after receiving notification under
7 this section is set out in Division 3.

8 **13 Subsection 84(1)**

9 Omit “under section 34, 41, 64 or 69”, substitute “under section 34, 41,
10 53, 64, 69 or 79”.

11 **14 Paragraph 95(6)(a)**

12 Omit “F”, substitute “G”.

13 **15 Subsection 108(3)**

14 After “under section 28”, insert “or 51”.

15 **16 Subsection 109(1)**

16 After “under section 26”, insert “or 47”.

17 **17 Paragraph 110(2)(b)**

18 After “under section 28”, insert “or 51”.

19 **18 Paragraph 110(5)(a)**

20 After “under section 58”, insert “or 77”.

21 **19 At the end of subsection 111(1)**

22 Add “, other than an application for a high level health claims
23 variation”.

24 **20 Subsection 112(2)**

25 After “under section 28”, insert “or 51”.

26 **21 Subsection 112(4)**

27 After “under section 58”, insert “or 77”.

28 **22 After subsection 118(1)**

29 Insert:

1 (1A) The Board may establish such committees as it thinks fit to make
2 recommendations on applications or proposals for a high level
3 health claims variation.

4 (1B) The Authority must not consider an application or proposal for a
5 high level health claim variation, unless a committee is established
6 to consider the application or proposal, or applications or proposals
7 of that kind.

8 **23 Subsection 118(4)**

9 After “(1),” insert “(1A),”.

10 **24 After paragraph 129(3)(c)**

11 Insert:
12 (d) paragraph 52(1)(a); or

13 **25 After paragraph 129(3)(g)**

14 Insert:
15 (h) paragraph 78(1)(a); or

16 **26 After subparagraph 143(1)(a)(ii)**

17 Insert:
18 (iii) a decision by the Authority under paragraph 47(1)(b) to
19 reject an application, other than a decision to reject the
20 application because it does not comply with subsection
21 22(2); or

22 **27 After paragraph 150(1)(c)**

23 Insert:
24 (d) paragraph 52(1)(a); or

25 **28 After paragraph 150(1)(g)**

26 Insert:
27 (h) paragraph 78(1)(a); or

28 **29 After paragraph 152(c)**

29 Insert:
30 (d) the number of applications that were considered under
31 Subdivision G of Division 1 of Part 3 during that year; and

1 **30 Paragraph 152(o)**

2 Omit “, F”, substitute “, F, G”.

3 **31 Paragraph 152(p)**

4 Repeal the paragraph, substitute:

- 5 (p) the average number of days that have elapsed:
- 6 (i) between the preparation of a proposal under section 55
7 to which Subdivision G of Division 1 of Part 3 does not
8 apply and the commencement of the assessment of the
9 proposal under section 59; and
- 10 (ii) between the preparation of a proposal under section 81
11 and the commencement of the assessment of the
12 proposal under section 59; and

13 **32 Subparagraph 152(t)(ii)**

14 Repeal the subparagraph, substitute:

- 15 (ii) section 41;
16 (iii) section 52; and

1
2 **Schedule 3—Council review of approved draft**
3 **standards**

4 **Part 1—Amendments**

5 *Food Standards Australia New Zealand Act 1991*

6 **1 Subsection 33(1) (note)**

7 Omit “Note”, substitute “Note 1”.

8 **2 At the end of subsection 33(1)**

9 Add:

10 Note 2: The draft does not take effect except in accordance with a notice
11 under section 92—see section 93.

12 **3 Subsection 63(1)(note)**

13 Omit “Note”, substitute “Note 1”.

14 **4 At the end of subsection 63(1)**

15 Add:

16 Note 2: The draft does not take effect except in accordance with a notice
17 under section 93.

18 **5 Division 3 of Part 3**

19 Repeal the Division, substitute:

20 **Division 3—Council review of draft standards and draft**
21 **variations of standards**

22 **84 Council may request a review**

- 23 (1) If the Authority notifies the Council under section 34, 41, 64 or 69
24 that the Authority has approved a draft standard or draft variation
25 (with or without amendments), the Council must, within 60 days
26 after the notification:
27 (a) request the Authority to review the draft; or

1 (b) inform the Authority that the Council does not intend to
2 request the Authority to review the draft.

3 (2) In exercising its powers under this section in relation to a draft
4 standard or variation, the Council must comply with:

5 (a) the Food Regulation Agreement; and

6 (b) the Australia New Zealand Joint Food Standards Agreement.

7 **85 Review not requested**

8 If the Council informs the Authority under paragraph 84(1)(b) that
9 the Council does not intend to request the Authority to review a
10 draft standard or draft variation then, as soon as practicable, the
11 Authority must comply with the publication requirements set out in
12 section 92.

13 **86 Review requested**

14 (1) If the Council requests the Authority to review a draft standard or
15 draft variation, the Council must inform the Authority of the
16 Council's concerns with the draft.

17 (2) The Council may give to the Authority such directions as it thinks
18 fit in relation to the conduct of a review of a draft standard or draft
19 variation.

20 (3) A direction under subsection (2) is not a legislative instrument.

21 **87 Authority to respond to request**

22 (1) If the Council requests the Authority to review a draft standard or
23 draft variation:

24 (a) a review is to be conducted, subject to any directions given
25 under subsection 86(2), in such manner as the Authority
26 considers appropriate; and

27 (b) the Authority must complete the review, and make a decision
28 under subsection (2):

29 (i) within 3 months after the request was made; or

30 (ii) if the Council allows a longer period—within that
31 longer period.

- 1 (2) After completing a review under this section of a draft standard or
2 draft variation, the Authority must:
3 (a) decide to re-affirm its approval of the draft; or
4 (b) decide to re-affirm its approval of the draft, subject to such
5 amendments as the Authority considers necessary; or
6 (c) decide to withdraw its approval of the draft.

7 Note: The Board must not delegate its powers to act on behalf of the
8 Authority under this subsection—see section 150.

- 9 (3) The Authority must give to the Council, within 10 business days of
10 making its decision:
11 (a) written notice of the terms of the Authority's decision; and
12 (b) the Authority's reasons for making that decision.

13 **88 Council may amend or reject draft after review**

- 14 (1) If the Authority notifies the Council of a decision made under
15 paragraph 87(2)(a) or (b), the Council must, within 60 days after
16 the notification:
17 (a) inform the Authority that the Council does not intend to
18 amend or reject the draft; or
19 (b) by written instrument, amend the draft; or
20 (c) reject the draft.
- 21 (2) An instrument made under paragraph (1)(b) is not a legislative
22 instrument.

23 **89 Council does not intend to amend or reject the draft**

24 If the Council informs the Authority under paragraph 88(1)(a) that
25 it does not intend to amend or reject a draft standard or draft
26 variation then, as soon as practicable, the Authority must comply
27 with the publication requirements set out in section 92.

28 **90 Council amends the draft**

- 29 (1) Before amending a draft standard or draft variation under
30 paragraph 88(1)(b), the Council must give the Authority an
31 opportunity to submit to the Council a draft of the text of the
32 amendment.

- 1 (2) As soon as practicable after the Council decides to amend a draft
2 standard or draft variation, the Council must inform the Authority
3 that the Council has amended the draft, and give the Authority a
4 copy of the amended draft.
- 5 (3) The Authority must, as soon as practicable after being informed of
6 the amendment, comply with the publication requirements set out
7 in section 92.

8 **91 Council rejects the draft**

- 9 If the Council decides to reject a draft standard or draft variation
10 under paragraph 88(1)(c), the Council must:
- 11 (a) prepare a notice setting out that decision and reasons for that
12 decision; and
13 (b) give the Authority a copy of the notice; and
14 (c) publish a copy of the notice:
15 (i) on the Internet; and
16 (ii) in a generally circulating newspaper, in each State or
17 Territory and in New Zealand.

18 **92 Publication requirements**

- 19 The *publication requirements* for the purposes of sections 85 and
20 89 and subsection 90(3) are as follows:
- 21 (a) the Authority must prepare a notice stating that the draft or
22 amended draft, as the case requires, is to come into effect on
23 a day specified in the notice;
- 24 (b) the Authority must cause a copy of the notice to be
25 published:
26 (i) in the *Gazette*; and
27 (ii) in the *New Zealand Gazette*; and
28 (iii) in a generally circulating newspaper, in each State or
29 Territory and in New Zealand;
30 together with information about where a copy of the draft or
31 amended draft may be obtained or inspected;
- 32 (c) the Authority must make a copy of:
33 (i) the notice; and
34 (ii) the text of the draft or the amended draft;
35 available for inspection by the public;

- 1 (d) the Authority must publish on the Authority's Internet site a
2 copy of:
3 (i) the notice; and
4 (ii) the text of the draft or the amended draft.

5 **93 When a standard or variation takes effect**

6 A standard, or variation of a standard, takes effect on the day
7 specified in the notice given under section 92.

8 **94 Standards are legislative instruments, but not subject to**
9 **disallowance or sunseting**

10 A standard, or a variation of a standard, in relation to which a
11 notice is published under section 92 is a legislative instrument, but
12 section 42 and Part 6 of the *Legislative Instruments Act 2003* do
13 not apply to the standard or variation.

14 **6 Section 105**

15 Repeal the section.

16 **7 Subsection 106(1)**

17 Omit “, after a second review,”.

18 **8 Paragraph 129(3)(i)**

19 Repeal the paragraph, substitute:
20 (i) subsection 87(2); or

21 **9 Paragraph 150(1)(i)**

22 Repeal the paragraph, substitute:
23 (i) subsection 87(2); or

1

2 **Part 2—Further amendment of section 84**

3 *Food Standards Australia New Zealand 1991*

4 **10 Subsection 84(1)**

5 Omit “under section 34, 41, 64 or 69”, substitute “under section 34, 41,
6 53, 64, 69 or 79”.