



# **Food Standards Australia New Zealand Act 1991**

**No. 118, 1991**

## **Compilation No. 28**

<b>Compilation date:</b>	19 June 2018
<b>Includes amendments up to:</b>	Act No. 41, 2018
<b>Registered:</b>	21 June 2018

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Food Standards Australia New Zealand Act 1991* that shows the text of the law as amended and in force on 19 June 2018 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# Contents

<b>Part 1—Preliminary</b>	1
1 Short title .....	1
2 Commencement .....	1
3 Object of Act .....	1
4 Interpretation .....	2
5 Meaning of <i>food</i> .....	7
6 Declaration of what is food .....	7
7 How is <i>public notice</i> given? .....	8
8 When is an <i>exclusive capturable commercial benefit</i> conferred on an applicant? .....	8
9 Operation of Act .....	9
10 Act to bind Crown .....	10
11 Application of the <i>Criminal Code</i> .....	10
<b>Part 2—The Authority</b>	11
<b>Division 1—Establishment, functions and powers of the Authority</b>	11
12 Establishment of Authority .....	11
13 Functions .....	11
14 Powers .....	13
15 Minister may give directions .....	14
<b>Division 2—Food regulatory measures</b>	16
16 Matters that may be included in standards and variations of standards .....	16
17 Codes of practice .....	18
18 Objectives of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures .....	18
<b>Division 3—Forward planning</b>	21
20 Authority to develop three year plan .....	21
<b>Part 3—Food regulatory measures</b>	22
<b>Division 1—Applications for the development or variation of food regulatory measures</b>	22
<b>Subdivision A—Overview</b>	22
21 Steps in the consideration of an application .....	22

---

<b>Subdivision B—Applications</b>	24
22 Applications.....	24
23 Application guidelines.....	24
24 Withdrawal of applications.....	25
<b>Subdivision C—Procedures for considering applications</b>	26
25 Which procedure is appropriate? .....	26
<b>Subdivision D—General procedure</b>	26
26 Accepting an application .....	26
27 Notice of acceptance.....	27
28 Public notice of the application .....	28
29 Assessing the application.....	29
30 Preparing a draft variation .....	30
31 Calling for submissions .....	30
32 Alternative steps to be followed .....	31
33 Approving the draft standard or draft variation .....	31
34 Notifying the Forum on Food Regulation.....	32
35 Alternative to steps set out in sections 33 and 34—approving the draft code of practice or draft variation .....	33
<b>Subdivision E—Modification of general procedure for minor variations</b>	34
36 Application of Subdivision .....	34
37 Adopt the general procedure with the modifications set out in this Subdivision .....	34
38 Modification of step set out in section 29.....	34
39 Modification of step set out in section 30.....	35
40 Modification of step set out in section 31 .....	35
41 Modification of steps set out in sections 32, 33, 34 and 35 .....	35
<b>Subdivision F—Modification of general procedure for developing new food regulatory measures and major variations</b>	37
42 Application of Subdivision .....	37
43 Adopt the general procedure with the modifications set out in this Subdivision .....	37
44 Additional step after step set out in section 29 .....	37
45 Matters to which Authority must have regard in making a decision under section 30 .....	38
<b>Subdivision G—Procedure for certain variations of the Nutrition, Health and Related Claims Standard</b>	38
46 Application of Subdivision .....	38

---

---

47	Accepting the application .....	38
48	Notice of acceptance.....	39
49	Notice of the application to expert committee and Food Regulation Standing Committee.....	40
50	Considering the application.....	42
51	Calling for submissions .....	43
52	Approving the draft variation in relation to high level health claims .....	44
53	Notifying the Forum on Food Regulation.....	44
<b>Division 2—Proposals for the development or variation of food regulatory measures</b>		46
<b>Subdivision A—Overview</b>		46
54	Steps in the consideration of a proposal .....	46
<b>Subdivision B—Proposals</b>		48
55	Proposals .....	48
56	Abandonment of proposals .....	48
<b>Subdivision C—Procedures for considering proposals</b>		48
57	Which procedure is appropriate? .....	48
<b>Subdivision D—General procedure</b>		49
58	Public notice of a proposal .....	49
59	Assessing a proposal.....	49
60	Preparing a draft food regulatory measure or draft variation .....	50
61	Calling for submissions .....	50
62	Alternative steps to be followed .....	51
63	Approving the draft standard or draft variation .....	51
64	Notifying the Forum on Food Regulation.....	52
65	Alternative to steps set out in sections 63 and 64—approving the draft code of practice or draft variation .....	53
<b>Subdivision E—Modification of general procedure for minor variations</b>		54
66	Application of Subdivision .....	54
67	Adopt the general procedure with the modifications set out in this Subdivision .....	54
68	Modification of step set out in section 61 .....	54
69	Modification of steps set out in sections 62, 63, 64 and 65 .....	55
<b>Subdivision F—Modification of general procedure for developing new food regulatory measures and major variations</b>		56

---

---

70	Application of Subdivision .....	56
71	Adopt the general procedure with the modifications set out in this Subdivision .....	57
72	Additional step after step set out in section 59 .....	57
73	Matters to which Authority must have regard in making a decision under section 60 .....	57
<b>Subdivision G—Procedure for certain variations of the Nutrition, Health and Related Claims Standard</b>		57
74	Application of Subdivision .....	57
75	Notice of the proposal .....	58
76	Considering the proposal .....	58
77	Calling for submissions .....	59
78	Approving the draft variation in relation to high level health claims .....	59
79	Notifying the Forum on Food Regulation.....	60
<b>Division 2A—Variations by APVMA of the Maximum Residue Limits Standard</b>		62
80	Application of Division .....	62
81	Authority to give notice of APVMA notification .....	62
82	APVMA may vary the Maximum Residue Limits Standard .....	62
83	No limit on the Authority’s power to vary the Maximum Residue Limits Standard.....	64
<b>Division 3—Forum on Food Regulation review of draft standards and draft variations of standards</b>		65
84	Forum on Food Regulation may request a review .....	65
85	Review not requested .....	65
86	Review requested.....	65
87	Authority to respond to request .....	66
88	Forum on Food Regulation may amend or reject the draft after review.....	67
89	Forum on Food Regulation does not intend to amend or reject the draft.....	67
90	Forum on Food Regulation amends the draft.....	67
91	Forum on Food Regulation rejects the draft .....	68
92	Publication requirements .....	68
93	When a standard or variation takes effect.....	68
94	Standards and variations are legislative instruments .....	69

---

---

<b>Division 4—Urgent applications and proposals</b>	70
<b>Subdivision A—Urgent consideration of applications and proposals</b>	70
95 Declaration of urgency .....	70
96 Preparation of draft standard or variation .....	71
97 Approval and publication of standard or variation .....	72
<b>Subdivision B—Assessing the resulting standard or variation</b>	74
98 Application .....	74
99 Assessing the standard or variation .....	74
100 Calling for submissions .....	74
101 Re-affirm the standard or variation or propose changes .....	75
102 Forum on Food Regulation may request Authority to review.....	76
103 Review requested.....	76
104 Authority to respond to request .....	76
106 Forum on Food Regulation may revoke or amend standard or variation.....	77
<b>Division 5—General rules for considering applications and proposals</b>	79
107 General conduct in considering an application or proposal .....	79
108 Authority may require further information .....	79
109 Period within which consideration of applications for standards or variations must be completed .....	80
110 Rejecting an application or abandoning a proposal .....	82
111 Public hearings .....	84
112 Authority may rely on work or processes of other government agencies .....	85
<b>Division 6—Other matters</b>	87
113 Review of food regulatory measures .....	87
114 Confidential commercial information.....	88
<b>Part 4—The Board, the Chief Executive Officer and the Authority’s staff</b>	91
<b>Division 1—The Board</b>	91
115 Board .....	91
116 Constitution of Board .....	91
117 Appointment of members .....	95
118 Committees.....	97
119 Remuneration and allowances .....	98

---

---

120	Leave of absence of members.....	99
121	Acting appointments.....	99
122	Meetings.....	99
123	Conduct of meetings.....	100
124	Resolutions without formal meetings .....	100
125	Disclosure of interests .....	101
126	Resignation.....	101
127	Termination of appointment.....	101
<b>Division 2—The Chief Executive Officer</b>		<b>103</b>
128	Appointment.....	103
129	Duties .....	103
130	Delegation .....	104
131	Remuneration and allowances .....	104
132	Resignation.....	104
133	Other terms and conditions.....	105
134	Acting Chief Executive Officer .....	105
<b>Division 3—Staff, consultants and assistance from other agencies</b>		<b>106</b>
135	Staff of Authority .....	106
136	Consultants .....	106
137	Arrangements with Commonwealth Departments etc. ....	106
<b>Part 5—Finance</b>		<b>108</b>
138	Money to be appropriated.....	108
139	Money of Authority.....	108
140	Taxation.....	109
141	Trust money.....	109
<b>Part 6—Miscellaneous</b>		<b>110</b>
142	Documents and samples become Commonwealth property .....	110
143	Review of decisions.....	110
144	Statement accompanying notification of decisions.....	111
145	Fees for services provided to New Zealand.....	112
146	Charges relating to the Authority’s costs.....	112
147	Charge—late payment penalty .....	113
148	Charge—discount for early payment.....	113
149	Charge and late payment penalty—remissions and refunds .....	113
150	Delegation by Board.....	114
151	Exemption from suit.....	115
152	Annual report.....	116

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152A	Corporate plans.....	120
153	Regulations.....	120
<b>Endnotes</b>		121
<b>Endnote 1—About the endnotes</b>		121
<b>Endnote 2—Abbreviation key</b>		123
<b>Endnote 3—Legislation history</b>		124
<b>Endnote 4—Amendment history</b>		129
<b>Endnote 5—Miscellaneous</b>		141



# **An Act establishing a body to be known as Food Standards Australia New Zealand with functions relating to the development of food regulatory measures, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Food Standards Australia New Zealand Act 1991*.

### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

### **3 Object of Act**

The object of this Act is to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals:

- (a) a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand;
- (b) an effective, transparent and accountable regulatory framework within which the food industry can work efficiently;

Section 4

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- (c) the provision of adequate information relating to food to enable consumers to make informed choices;
- (d) the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection.

#### 4 Interpretation

- (1) In this Act, unless the contrary intention appears:

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

***appropriate government agency*** means:

- (a) the relevant Department of State of the Commonwealth, a State, a Territory or New Zealand administered by a Minister who is a member of the Forum on Food Regulation; or
- (b) any other body that has an officer on the Food Regulation Standing Committee; or
- (c) any other body or officer of the Commonwealth, a State, a Territory or New Zealand that the Authority considers has a particular interest in the relevant matter.

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

***Australia New Zealand Food Standards Code*** means the code published under the name ***Food Standards Code*** in the *Gazette* on 27 August 1987 together with any amendments of the standards in that code:

- (a) approved by a former Council before this Act commenced and published in the *Gazette* as forming part of that code; or
- (b) made under this Act.

***Australia New Zealand Joint Food Standards Agreement*** means 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, as amended in accordance with Article 10 of that Agreement.

**Authority** means Food Standards Australia New Zealand.

**Board** means the Board of the Authority.

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

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

**Chief Officer** means:

- (a) in relation to a Commonwealth, State, Territory or New Zealand authority—the person who has the responsibility of Executive Officer or Chief Executive Officer of that authority (whether the person is a member of that authority or not); and
- (b) in relation to any other authority or body—the person who has the responsibility for the day to day management of that authority or body.

**code of practice** means a code of practice developed by the Authority under Part 3. However, a code of practice is not a standard.

**Commonwealth authority** means a body, whether corporate or not, established by the Commonwealth, or by or under a law of the Commonwealth.

**confidential commercial information**, in relation to food, means:

- (a) a trade secret relating to food; or
- (b) any other information relating to food that has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Section 4

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

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

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

**Finance Minister** means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

**food** has the meaning given by section 5.

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

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

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

**food regulatory measure** means a standard or a code of practice.

**former Council** means:

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

Council by agreement between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory—that Council as so reconstituted and continued in existence.

***Forum on Food Regulation*** means the Australia and New Zealand Ministerial Forum on Food Regulation established by the Food Regulation Agreement.

***general procedure*** means:

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

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

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

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

***member*** means a member of the Board and includes the Chairperson and the Chief Executive Officer.

***New Zealand authority*** means a body (whether corporate or not) established by New Zealand, or by or under a law of New Zealand.

***New Zealand lead Minister on the Forum on Food Regulation*** means the Minister of the government of New Zealand who is:

- (a) a member of the Forum on Food Regulation; and

Section 4

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- (b) nominated by the government of New Zealand to be the New Zealand lead Minister on the Forum on Food Regulation.

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

***policy guideline*** means a guideline formulated by the Forum on Food Regulation for the purposes of paragraph 18(2)(e).

***prepare*** includes process, manufacture and treat.

***produce*** includes prepare.

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

***standard*** means:

- (aa) a standard made under this Act after the commencement of Part 1 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 2001*; or
- (a) a standard that has been adopted, or taken to have been adopted, by a former Council under this Act before the commencement of Part 1 of Schedule 1 to the *Australia New Zealand Food Authority Amendment Act 2001*; or
- (b) a standard that is included in the Australia New Zealand Food Standards Code.

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

- (c) text identified as an editorial note;
- (d) text identified as an example.

***State or Territory authority*** means a body, whether corporate or not, established by a State or Territory, or by or under a law of a State or Territory.

***Territory*** means the Australian Capital Territory and the Northern Territory.

***trust money*** means money received or held by the Authority on trust.



- (3) A reference in the definition of *Australia New Zealand Food Standards Code* in subsection (1) to the **amendment of the standards in that code** includes, and is taken always to have included, a reference to an amendment by way of the insertion, revocation or substitution of a standard in that code.
- (4) A reference in this Act to the **variation** of a food regulatory measure includes, and is taken always to have included, a reference to the revocation of a food regulatory measure.

## 5 Meaning of food

- (1) **Food** includes:
  - (a) any substance or thing of a kind used, capable of being used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared); and
  - (b) any substance or thing of a kind used, capable of being used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a); and
  - (c) any substance used in preparing a substance or thing referred to in paragraph (a); and
  - (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; and
  - (e) any substance or thing declared to be a food under a declaration in force under section 6.(It does not matter whether the substance, thing or chewing gum is in a condition fit for human consumption.)
- (2) However, **food** does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*.
- (3) To avoid doubt, **food** may include live animals and plants.

## 6 Declaration of what is food

- (1) After consulting the Authority, the Minister may, by legislative instrument, declare that a substance or thing is food for the purposes of this Act.

## Section 7

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Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration: see subsection 44(1) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the declaration: see subsection 54(1) of that Act.

- (2) The Minister must cause a copy of the declaration to be published in the New Zealand Gazette.
- (3) A declaration takes effect on the day specified in the declaration. That day must not be a day before the declaration is published.

### 7 How is *public notice* given?

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

- (a) publishing notice of the matter on the Authority's website; and
- (b) giving written notice of the matter to each appropriate government agency; and
- (c) if the requirement to give notice arises in the course of considering an application to develop or vary a food regulatory measure—giving written notice of the matter to the applicant; and
- (d) if the Authority has called for submissions in the course of considering an application or proposal for the development or variation of a food regulatory measure—giving written notice of the matter to each of the persons invited to make a submission who made a submission within the relevant submission period; and
- (e) giving written notice to any other person or body whom the Authority considers appropriate.

### 8 When is an *exclusive capturable commercial benefit* conferred on an applicant?

An *exclusive capturable commercial benefit* is conferred upon a person who applies for the development of a food regulatory

measure or the variation of a food regulatory measure under section 22 if:

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

## **9 Operation of Act**

- (1) Without prejudice to its effect apart from this section, this Act has effect for any or all of the following purposes:
  - (a) for purposes connected with fixing:
    - (i) the standard of food sold by corporations; or
    - (ii) standards in relation to activities undertaken by corporations in respect of food before, or in connection with, its sale, where, in the case of trading corporations, those activities are undertaken for the purpose of the trading activities of the corporations;
  - (b) for the purpose of ensuring, to the extent that the Constitution permits, that trade and commerce in food:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States;is carried on in an efficient and profitable manner;
  - (c) for purposes connected with the regulation of food and food standards in the Territories;
  - (d) for purposes connected with controlling the standards of all food supplied to the Commonwealth, its authorities and its instrumentalities;
  - (e) for purposes connected with the fixing of weights and measures in respect of food.
- (2) In subsection (1):

Section 10

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**corporation** means any corporation to which paragraph 51(xx) of the Constitution is applicable.

**trading corporation** means a trading corporation to which paragraph 51(xx) of the Constitution is applicable.

**10 Act to bind Crown**

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory but nothing in this Act renders the Crown liable to be prosecuted for an offence.

**11 Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part 2—The Authority**

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

#### **12 Establishment of Authority**

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

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

- (2) The Authority:
- (a) is a body corporate with perpetual succession; and
  - (b) must have a seal; and
  - (c) may sue and be sued in its corporate name.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Authority. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (3) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the Authority appearing on a document and are to presume that the document was duly sealed.

#### **13 Functions**

- (1) The functions of the Authority are:
- (a) in accordance with this Act, to develop standards and variations of standards, and to review standards and variations of standards; and
  - (b) in accordance with this Act, to develop codes of practice and variations of codes of practice for industry and to review codes of practice; and
  - (c) to develop guidelines to assist the interpretation of the Australia New Zealand Food Standards Code on its own

**Part 2** The Authority

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

**Section 13**

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initiative or in consultation with the States, the Territories and any other body or person that the Authority considers appropriate; and

- (d) to promote consistency between standards in Australia and New Zealand with those used internationally, based on the best available scientific evidence; and
- (e) in consultation with the States and Territories, or on its own initiative, to facilitate the harmonisation of State and Territory laws relating to food; and
- (f) in consultation with the States and Territories, or on its own initiative, to co-ordinate the development of procedures required to implement requirements set out in standards; and
- (g) in consultation with the States and Territories, to co-ordinate the monitoring, surveillance and enforcement of activities relating to food available in Australia; and
- (h) in consultation with the States and Territories, or on its own initiative, to conduct research and surveys in relation to any of the matters that may be included in a standard; and
- (i) in co-operation with the States and Territories, to develop food education initiatives, including the publication of information to increase public awareness of food standards and food labels; and
- (ia) to provide information, on request by a member of the public, about the Australia New Zealand Food Standards Code; and
- (j) in co-operation with the Department administered by the Minister administering Part 3-3 of Schedule 2 to the *Competition and Consumer Act 2010*, as that Part applies as a law of the Commonwealth, to co-ordinate the recall of food under that Part; and
- (k) at the request of the States and Territories, to co-ordinate action by the States and Territories to recall food under State and Territory laws; and
- (l) to develop assessment policies in relation to food imported into Australia; and
- (m) to provide advice to the Minister on matters relating to food; and

- (n) to participate in international, regional and bilateral negotiations on matters that may be included in standards; and
  - (o) to make the Authority's knowledge, expertise, equipment, facilities and intellectual property available to other persons on a commercial basis; and
  - (p) at the request of New Zealand, to perform functions for New Zealand similar to the functions that the Authority may perform in relation to the States and Territories; and
  - (q) at the request of New Zealand, to perform functions for New Zealand similar to the other functions that the Authority may perform; and
  - (qa) such other functions as are conferred on the Authority by this Act; and
  - (r) any functions incidental to any of the foregoing functions.
- (2) The function conferred by paragraph (1)(o):
- (a) can only be exercised:
    - (i) for a purpose for which the Parliament has power to make laws; or
    - (ii) to utilise the Authority's spare capacity; and
  - (b) does not authorise the Authority to do something that would impede the Authority's capacity to perform its other functions.

## 14 Powers

- (1) The Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, may:
- (a) enter into contracts; and
  - (b) acquire, hold and dispose of real or personal property; and
  - (c) occupy, use and control any land or building owned, or held under lease, by the Commonwealth and made available for the purposes of the Authority; and
  - (d) engage persons to perform services for the Authority; and

**Section 15**

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- (e) provide assistance to bodies or persons to prepare submissions:
    - (i) relating to the development or consideration of draft food regulatory measures or draft variations of food regulatory measures; or
    - (ii) relating to the performance of any other function of the Authority;  
if the Authority determines that such assistance will advance the development or consideration of that draft or the performance of that other function; and
  - (f) accept gifts, grants, bequests and advances made to the Authority (whether on trust or otherwise) and act as trustee of money or other property vested in the Authority on trust; and
  - (fa) form, or participate in the formation of, companies; and
  - (fb) subscribe for or purchase shares in, or debentures and other securities of, companies; and
  - (fc) participate in partnerships, trusts and unincorporated joint ventures; and
  - (g) do anything incidental to any of its powers.
- (2) The powers of the Authority may be exercised within or outside Australia.

**15 Minister may give directions**

- (1) Subject to subsection (3), the Minister may give written directions to the Authority as to the performance of its functions and the exercise of its powers and the Authority must comply with those directions.
- (2) The Minister must cause:
  - (a) a copy of a direction given under subsection (1); and
  - (b) a written statement of the reasons for giving the direction; to be laid before each House of the Parliament within 15 sitting days of that House after the direction is given.



- (3) The Minister must consult with the Forum on Food Regulation before he or she gives a direction under subsection (1).
- (4) This section does not affect the application of section 22 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the application of government policy to corporate Commonwealth entities) in relation to the Authority.
- (5) A direction given under subsection (1) is not a legislative instrument.

## Division 2—Food regulatory measures

### 16 Matters that may be included in standards and variations of standards

- (1) Standards, and variations of standards, developed by the Authority may relate to any of the following:
  - (a) the composition of food, including:
    - (i) the maximum amounts of contaminants or residues that may be present in the food; and
    - (ia) the maximum or minimum amounts of additives that must or may be present in the food; and
    - (ii) its microbiological status and safety; and
    - (iii) the method of sampling and testing the food to determine its composition;
  - (b) the production of food;
  - (c) the handling of food;
  - (ca) the prohibition of the sale of food:
    - (i) either in all circumstances or in specified circumstances; and
    - (ii) either unconditionally or subject to specified conditions;
  - (d) any information about food including labelling, promotion and advertising;
  - (e) the knowledge, skill, health and hygiene requirements for people handling food;
  - (f) the responsibilities of businesses that are handling food relating to any hygiene requirements in force under paragraph (e) for people involved in the business who are handling food;
  - (g) the responsibilities of businesses that are handling food to ensure that information in connection with hygiene requirements in force under paragraph (e) that is provided by individuals involved in the business and who are handling food remains confidential except in specified circumstances;

- (h) the use of devices of a particular standard to measure the temperature of food;
  - (i) the design, construction, maintenance and cleanliness of:
    - (i) premises (including fittings and fixtures) at which food is handled; or
    - (ii) equipment (including single use items) used to handle food; or
    - (iii) vehicles used to transport food;
  - (j) the information that a business that handles food may be required to give about the business to State or Territory authorities;
  - (k) restrictions on the premises at which, and the persons by whom, particular food may be sold or otherwise supplied;
  - (l) restrictions on the publications that may contain advertisements for particular food;
  - (m) requirements relating to animals and pests at premises in which food is handled, or in vehicles in which food is transported;
  - (n) the interpretation of other standards;
  - (o) the application of standards;
  - (p) such other public health matters relating to food as are prescribed.
- (2) Without limiting subsection (1), a standard may relate to:
- (a) a class of food generally; or
  - (b) a particular brand of food.
- (2A) To avoid doubt, subparagraphs (1)(ca)(i) and (ii) do not, by implication, limit any other paragraph of subsection (1).
- (2B) The matters to which standards, and variations of standards, may relate, are taken always to have included the matter mentioned in paragraph (1)(ca).
- (2C) To avoid doubt, paragraph (2)(a), as in force before the commencement of this subsection, is taken always to have had

## Section 17

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effect as if the reference in that paragraph to type were a reference to class.

(3) In this section:

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

Note: See also the definitions of **produce** and **prepare** in subsection 4(1).

## 17 Codes of practice

Codes of practice, and variations of codes of practice, may deal only with matters that may be included in standards.

## 18 Objectives of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures

- (1) The objectives (in descending priority order) of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures are:
  - (a) the protection of public health and safety; and
  - (b) the provision of adequate information relating to food to enable consumers to make informed choices; and
  - (c) the prevention of misleading or deceptive conduct.
- (2) In developing or reviewing food regulatory measures and variations of food regulatory measures, the Authority must also have regard to the following:
  - (a) the need for standards to be based on risk analysis using the best available scientific evidence;
  - (b) the promotion of consistency between domestic and international food standards;
  - (c) the desirability of an efficient and internationally competitive food industry;
  - (d) the promotion of fair trading in food;

- (e) any written policy guidelines formulated by the Forum on Food Regulation for the purposes of this paragraph and notified to the Authority.
- (3) If any policy guidelines formulated by the Forum on Food Regulation for the purposes of paragraph (2)(e) are notified to the Authority, the Authority must publish the guidelines on the Authority's website.
- (3A) Policy guidelines formulated by the Forum on Food Regulation for the purposes of paragraph (2)(e) must not be inconsistent with the objectives set out in subsection (1).
- (4) Where the Authority considers that the best available scientific evidence referred to in paragraph (2)(a) is insufficient, the Authority may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent scientific information. In such cases, the Authority must take all reasonable steps to obtain the information necessary for a more objective risk analysis and a review of the sanitary or phytosanitary measures, to be undertaken within a reasonable period of time.
- (5) For the purposes of this section, a ***sanitary or phytosanitary measure*** means any measure applied:
- (a) to protect animal or plant life or health from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; or
  - (b) to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs; or
  - (c) to protect human life or health from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
  - (d) to prevent or limit other damage from the entry, establishment or spread of pests;
- and includes:
- (e) any relevant law, decree, regulation, requirement or procedure, including end product criteria; and

**Part 2** The Authority

**Division 2** Food regulatory measures

**Section 18**

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- (f) processes and production methods; and
  - (g) testing, inspection, certification and approval procedures; and
  - (h) quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; and
  - (i) provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and
  - (j) packaging and labelling requirements directly related to food safety.
- (6) A policy guideline formulated by the Forum on Food Regulation for the purposes of paragraph (2)(e) is not a legislative instrument.

## **Division 3—Forward planning**

### **20 Authority to develop three year plan**

- (1) Not later than 30 June in each year, the Authority must develop and publish a three year forward plan for applications, proposals and types of applications and proposals on which it intends to develop standards or variations to standards.
- (2) In developing a three year forward plan, the Authority must consult interested persons.
- (3) The Authority must review and update the plan at least every 3 months.

## **Part 3—Food regulatory measures**

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

#### **Subdivision A—Overview**

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

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

Step 1. An application is made.

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

Step 3. The Authority notifies the applicant of acceptance.

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

Step 5. The Authority assesses the application.

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

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

In any other case, it is step 7.



Step 6. The Authority calls for public submissions.

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 Forum on Food Regulation 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 Forum on Food Regulation 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
  - (b) if the form in which the application is to be made is specified in guidelines made under section 23—be in the form specified; and
  - (c) include all of the information that, under guidelines made under section 23, is to be included with the application; and
  - (d) include each thing that, under guidelines made under section 23, is to be included with the application; and
  - (e) identify the procedure that, in the applicant's view, applies to the consideration of the application.

### **23 Application guidelines**

*Authority may make guidelines*

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

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the guidelines: see subsection 44(1) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the guidelines: see subsection 54(1) of that Act.

- (2) The Authority may only specify information, or kinds of information, under paragraph (1)(b) in relation to an application if the inclusion of that information, or information of those kinds:
  - (a) would enable the Authority to assess the application and develop the relevant food regulatory measure, or the relevant variation of a food regulatory measure; or
  - (b) would enable the Authority to determine whether a charge under section 146 is payable to the Authority in relation to the application.
- (3) The Authority may only specify a thing, or a kind of thing, under paragraph (1)(c) in relation to an application, if the inclusion of that thing, or things of those kinds, would enable the Authority to assess the application and develop the relevant food regulatory measure, or the relevant variation of a food regulatory measure.

## **24 Withdrawal of applications**

- (1) An applicant may withdraw the applicant's application by giving written notice of the withdrawal to the Authority at any time before:
  - (a) the Authority approves a draft food regulatory measure, or a draft variation of a food regulatory measure, as a result of the application; or
  - (b) the Authority notifies the applicant that the Authority has rejected the application.
- (2) If the Authority receives notice of the withdrawal of an application after the applicant pays a charge under section 146, the Authority must refund to the applicant so much of the charge as is equivalent to the sum paid by the applicant but not expended from the charge, calculated in accordance with the regulations.
- (3) If the Authority receives notice of the withdrawal of an application after public notice of the application has been given under section 28 or 51, the Authority must give public notice that the application has been withdrawn.

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

#### **25 Which procedure is appropriate?**

- (1) The Authority must adopt the general procedure in considering an application for the development of a food regulatory measure or the variation of a food regulatory measure, unless:
  - (a) the application is one to which Subdivision E applies (application for a minor variation of a food regulatory measure); or
  - (b) the application is one to which Subdivision F applies (application for the development of a new food regulatory measure or a major variation of a food regulatory measure); or
  - (c) the application is one to which Subdivision G applies (application for a high level health claims variation); or
  - (d) the application is declared to be an urgent application for the purposes of this Part under section 95.

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

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

### **Subdivision D—General procedure**

#### **26 Accepting an application**

- (1) The Authority must, within 15 business days after an application is given to the Authority:
  - (a) accept the application; or
  - (b) reject the application.

- (2) In determining whether to accept or reject the application, the Authority must have regard to the following matters:
  - (a) whether the application complies with subsection 22(2);
  - (b) whether the application relates to a matter that may be developed as a food regulatory measure, or that warrants the variation of a food regulatory measure;
  - (c) whether the application is so similar to a previous application or proposal for the development or variation of a food regulatory measure that it ought to be rejected;
  - (d) any other relevant matter.
- (3) If an application is rejected because it does not comply with subsection 22(2), the application must be disregarded for the purposes of determining whether a later application or proposal for the development or variation of a food regulatory measure is so similar to a previous application that the later application or proposal ought to be rejected.

## **27 Notice of acceptance**

If the Authority accepts an application, the Authority must notify the applicant immediately in writing:

- (a) that the application has been accepted; and
- (b) of the procedure the Authority will adopt in considering the application; and
- (c) in the case of an applicant who has applied for the development or variation of a standard and on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application:
  - (i) that the applicant must pay the charge under section 146 in relation to the application or, if the charge is payable in instalments, the first instalment of the charge, within 20 business days after the notification is given; and
  - (ii) that the application will be rejected if the charge, or the first instalment of the charge, is not paid within that period; and

Section 28

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- (d) in any other case—that the applicant may, if the applicant elects to have the consideration of the application expedited, pay the charge under section 146 in relation to the application or, if the charge is payable in instalments, the first instalment of the charge.

**28 Public notice of the application**

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

*Content of notice*

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

*Period within which notice must be given*

- (3) The notice must be given:
  - (a) if the applicant pays a charge, or the first instalment of a charge, mentioned in subparagraph 27(c)(i) within the period mentioned in that paragraph—within 5 business days after that payment; or
  - (b) if the applicant pays a charge, or the first instalment of a charge, mentioned in paragraph 27(d) within 20 business

days after notice is given to the applicant under section 27 (the *early payment period*)—within 5 business days after that payment; or

- (c) in any other case—within 25 business days after notice is given to the applicant under section 27.

*Exclusive capturable commercial benefit—fee not paid*

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

*Fee to expedite consideration paid after early payment period*

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

## **29 Assessing the application**

- (1) If the Authority accepts an application, the Authority must assess the application.
- (2) In assessing the application, the Authority must have regard to the following matters:
  - (a) whether costs that would arise from a food regulatory measure developed or varied as a result of the application

**Part 3** Food regulatory measures

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

**Section 30**

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outweigh the direct and indirect benefits to the community, Government or industry that would arise from the development or variation of the food regulatory measure;

- (b) whether other measures (available to the Authority or not) would be more cost-effective than a food regulatory measure developed or varied as a result of the application;
- (c) any relevant New Zealand standards;
- (d) any other relevant matters.

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

**30 Preparing a draft variation**

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

**31 Calling for submissions**

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

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

### **32 Alternative steps to be followed**

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

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

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

**Part 3** Food regulatory measures

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

**Section 34**

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Note 1: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.

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

- (2) The Authority must have regard to all submissions made during the submission period in making a decision under subsection (1).
- (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) a summary of the submissions received by the Authority in relation to the draft standard or draft variation;
  - (d) the Authority's response to the issues raised in those submissions;
  - (e) whether the draft standard or draft variation was amended after submissions were made and, if so, the reasons for those amendments;
  - (f) the Authority's reasons for approving or rejecting the draft standard or draft variation;
  - (g) a copy of the draft standard or draft variation on which submissions were received;
  - (h) if the draft standard or draft variation was amended after submissions were made—a copy of the draft standard or draft variation as amended;
  - (i) if applicable—a Regulation Impact Statement.

**34 Notifying the Forum on Food Regulation**

- (1) If the Authority approves a draft standard or a draft variation of a standard, the Authority must, within 10 business days after the approval:
  - (a) give the Forum on Food Regulation:
    - (i) a written notification of the approval; and
    - (ii) a copy of the report prepared by the Authority under section 33; and

- (b) give public notice of the approval, together with information about where further information about the draft standard or draft variation may be obtained; and
  - (c) publish a notice on the Authority's website that states:
    - (i) that the draft standard or draft variation has been approved; and
    - (ii) that the Forum has been notified that the draft standard or draft variation has been approved; and
    - (iii) that the Forum may request the Authority to review the draft standard or draft variation under Division 3; and
    - (iv) where further information about the draft standard or draft variation may be obtained.
- (2) If the Authority has notified the Forum on Food Regulation under subsection (1), the Forum may direct the Authority to give the Forum such information as the Forum reasonably requires for the purpose of assisting the Forum to make a decision about the draft under Division 3.

Note: The process followed by the Forum on Food Regulation after receiving notification under this section is set out in Division 3.

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

- (1) After the submission period, the Authority must:
- (a) approve the draft code of practice or draft variation; or
  - (b) reject the draft code of practice or draft variation.
- Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.
- (2) If another code of practice would be superseded, in whole or in part, by the Authority's decision under subsection (1), the Authority must:
- (a) revoke the other code of practice (if it would be wholly superseded); or
  - (b) vary the other code of practice (if it would be partly superseded).

**Part 3** Food regulatory measures

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

**Section 36**

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- (3) The Authority must give public notice of its decision.
- (4) The notice must:
  - (a) specify the date of effect of the decision; and
  - (b) state how to obtain further information about the decision and the reasons for it.
- (5) The Authority must also give written notice of its decision to the Forum on Food Regulation.

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

**36 Application of Subdivision**

This Subdivision applies to an application for the variation of a food regulatory measure that, if made, would not directly or indirectly:

- (a) impose, vary or remove an obligation on any person; or
- (b) create, vary or remove a right of any person; or
- (c) otherwise alter the legal effect of the measure.

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

- (a) to correct a typographical error; or
- (b) to update a reference to another document; or
- (c) to change a cross-reference within a food regulatory measure; or
- (d) to omit provisions of a food regulatory measure that have ceased to have effect.

**37 Adopt the general procedure with the modifications set out in this Subdivision**

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

**38 Modification of step set out in section 29**

Paragraphs 29(2)(a) and (b) do not apply.

Note: Paragraphs 29(2)(a) and (b) require the Authority to do a cost benefit analysis. This is unnecessary given the minor nature of the variation.

### **39 Modification of step set out in section 30**

Subsections 30(2) and (3) do not apply.

Note: Subsections 30(2) and (3) deal with the case where the draft variation differs from that sought in the application, or was not sought at all.

### **40 Modification of step set out in section 31**

- (1) Section 31 does not apply.
- (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*).

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

- (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;

**Part 3** Food regulatory measures

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

**Section 41**

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- (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.
- (4) If the draft variation is of a standard and the Authority approves the draft variation, the Authority must, within 10 business days after the approval:
  - (a) give the Forum on Food Regulation:
    - (i) a written notification of the approval; and
    - (ii) a copy of the report prepared by the Authority under this section; and
  - (b) give public notice of the approval, together with information about where further information about the draft variation may be obtained; and
  - (c) publish a notice on the Authority's website that states:
    - (i) that the draft variation has been approved; and
    - (ii) that the Forum has been notified that the draft variation has been approved; and
    - (iii) that the Forum may request the Authority to review the draft variation under Division 3; and
    - (iv) where further information about the draft variation may be obtained.
- (5) If the Authority has notified the Forum on Food Regulation under subsection (4), the Forum may direct the Authority to give the

Forum such information as the Forum reasonably requires for the purpose of assisting the Forum to make a decision about the draft under Division 3.

Note: The process followed by the Forum on Food Regulation after receiving notification under this section is set out in Division 3.

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

#### **42 Application of Subdivision**

This Subdivision applies to:

- (a) an application for the development of a new food regulatory measure; and
- (b) an application for the variation of a food regulatory measure that:
  - (i) involves such scientific or technical complexity that it is necessary to adopt this procedure in considering it; or
  - (ii) involves such a significant change to the scope of the food regulatory measure that it is necessary to adopt this procedure in considering it.

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

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

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

- (1) The Authority must, after assessing the application under section 29 but before undertaking the step set out in section 30, give public notice of the matters set out in subsection (2).
- (2) The notice must:
  - (a) state that the Authority has assessed the application; and

Section 45

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- (b) include a summary of the results of the Authority's assessment of the application, or state how a copy of the summary can be obtained; and
- (c) call for written submissions on matters relevant to the application to be given to the Authority within the period specified in the notice (the *submission period*).

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

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

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

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

**46 Application of Subdivision**

This Subdivision applies to an application if:

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

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

**47 Accepting the application**

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



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

#### **48 Notice of acceptance**

- (1) If the Authority accepts the application, the Authority must notify the applicant immediately in writing:
- (a) that the application has been accepted; and
  - (b) in the case of an applicant who has applied for the variation of a standard and on whom an exclusive capturable commercial benefit would be conferred if the standard were made or varied in the manner sought in the application:
    - (i) that the applicant must pay the charge under section 146 in relation to the application or, if the charge is payable in instalments, the first instalment of the charge, within 20 business days after the notification is given; and
    - (ii) that the application will be rejected if the charge, or the first instalment of the charge, is not paid within that period; and
  - (c) in any other case—that the applicant may, if the applicant elects to have the consideration of the application expedited, pay the charge under section 146 in relation to the application or, if the charge is payable in instalments, the first instalment of the charge.
- (2) The Authority must give notice in writing to the applicant:
- (a) identifying the procedure that the Authority will adopt in considering the application; and

Section 49

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

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

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

*Content of notice*

- (2) The notice must:
  - (a) state that the Authority has received an application for a high level health claims variation; and

- (b) state the date on which the application was received by the Authority; and
- (c) state the name of the applicant; and
- (d) give a summary of the application; and
- (e) state that the Authority has accepted the application; and
- (f) identify the procedure that the Authority will adopt in considering the application; and
- (g) indicate when the Authority proposes to undertake the key steps in that procedure.

*Period within which notice must be given*

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

*Exclusive capturable commercial benefit—fee not paid*

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

**Section 50**

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*Fee to expedite consideration paid after early payment period*

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

**50 Considering the application**

- (1) The Authority must consider whether to approve a draft high level health claims variation.
- (2) Before approving such a draft variation, the Authority must:
- (a) be satisfied that the approval of the draft variation will meet the following objectives:
    - (i) the protection of public health and safety;
    - (ii) the provision of adequate information relating to food to enable consumers to make informed choices;
    - (iii) the prevention of misleading or deceptive conduct; and
  - (b) take into account any recommendations made by the High Level Health Claims Committee in relation to the draft variation or the application that resulted in the draft variation; and
  - (c) take into account any submission made on behalf of a jurisdiction represented on the Food Regulation Standing Committee in relation to the draft variation or the application that resulted in the draft variation; and
  - (d) if the applicant has elected that the Authority give public notice under section 51 calling for submissions, consider all submissions made during the submission period.
- (3) If:
- (a) the Authority prepares a draft high level health claims variation; and

- (b) the draft variation differs from that sought in the application as a result of which it was prepared, or was not sought in the application at all;
- the Authority must give the applicant notice in writing of that fact and, if the applicant has elected that the Authority give public notice calling for submissions under section 51, state in the notice that the Authority will call for submissions for the purpose of assessing the draft variation.
- (4) The Authority must not give public notice calling for submissions under section 51 within 10 business days immediately after notice is given under subsection (3) of this section.

### **51 Calling for submissions**

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

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

- (1) After considering whether to approve a draft high level health claims variation and, if notice calling for submissions is given under section 51, after the submission period, the Authority must:
  - (a) do one of the following:
    - (i) approve the draft high level health claims variation;
    - (ii) reject the draft high level health claims 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.

- (2) The report must include each of the following:
  - (a) the reasons for initially accepting the application;
  - (b) a summary of the recommendations (if any) of the High Level Health Claims Committee in relation to the application and each draft variation that resulted from the application;
  - (c) a summary of the submissions (if any) made by members of the Food Regulation Standing Committee in relation to the application and each draft variation that resulted from the application;
  - (d) a summary of the submissions (if any) received by the Authority within the submission period in response to a notice under section 51, if such notice was given;
  - (e) the Authority's response to the issues raised in those submissions;
  - (f) the Authority's reasons for approving the draft variation or rejecting the application.

## **53 Notifying the Forum on Food Regulation**

- (1) If the Authority approves a draft high level health claims variation, the Authority must, within 10 business days after the approval:
  - (a) give the Forum on Food Regulation:
    - (i) a written notification of the approval; and

- (ii) a copy of the report prepared by the Authority under section 52; and
  - (b) if submissions were called for under section 51—give public notice of the decision.
- (2) If the Authority has notified the Forum on Food Regulation under subsection (1), the Forum may direct the Authority to give the Forum such information as the Forum reasonably requires for the purpose of assisting the Forum to make a decision about the draft under Division 3.

Note: The process followed by the Forum on Food Regulation after receiving notification under this section is set out in Division 3.

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

### Subdivision A—Overview

#### 54 Steps in the consideration of a proposal

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

- |   |
|---|
| <p>Step 1. A proposal is prepared.</p> <p>Step 2. As the Authority prepares the proposal, there is no equivalent to step 2 of the applications procedure in which the application is accepted or rejected.</p> <p>Step 3. As the Authority prepares the proposal, there is no equivalent to step 3 of the applications procedure in which the Authority notifies the applicant of acceptance.</p> <p>Step 4. The Authority gives public notice of the proposal, indicating when the Authority proposes to undertake key steps in considering it.</p> <p>Step 5. The Authority assesses the proposal.</p> <p>The Authority may, after assessing the proposal, either abandon it or proceed to the next step.</p> <p>If the proposal is for a new food regulatory measure or a major variation of a food regulatory measure, the next step is step 6.</p> <p>In any other case, it is step 7.</p> |
|---|



Step 6. The Authority calls for public submissions.

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 proposal 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 Forum on Food Regulation 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 of 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 Forum on Food Regulation and published.

Note: Division 2A deals with variations by the APVMA of the Maximum Residue Limits Standard.

## **Subdivision B—Proposals**

### **55 Proposals**

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

### **56 Abandonment of proposals**

- (1) The Authority may abandon a proposal at any time before:
  - (a) if the proposal results, or would result, in the development or variation of a standard—the draft standard or draft variation is approved; or
  - (b) if the proposal results, or would result, in the development or variation of a code of practice—the draft code of practice or draft variation is approved.
- (2) However, if the Authority abandons a proposal after public notice has been given under section 58 or 75, the Authority must give public notice of the matters mentioned in subsection (3).
- (3) The notice must:
  - (a) state that the Authority has decided to abandon the proposal; and
  - (b) state how to obtain further information about the decision and the reasons for it.

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

### **57 Which procedure is appropriate?**

The Authority must adopt the general procedure in considering a proposal for the development of a food regulatory measure or the variation of a food regulatory measure, unless:

- (a) the proposal is one to which Subdivision E applies (proposal for a minor variation of a food regulatory measure); or

- (b) the proposal is one to which Subdivision F applies (proposal for the development of a new food regulatory measure, or a major variation of a food regulatory measure); or
- (c) the proposal is one to which Subdivision G applies (proposal for a high level health claims variation); or
- (e) the proposal is declared to be an urgent proposal for the purposes of this Part under section 95.

## **Subdivision D—General procedure**

### **58 Public notice of a proposal**

- (1) If the Authority prepares a proposal, the Authority must give public notice of the matters mentioned in subsection (2).
- (2) The notice must:
  - (a) state that the Authority has prepared a proposal for the development or variation of a food regulatory measure, as the case requires; and
  - (b) state the date on which the proposal was made; and
  - (c) give a summary of the proposal; and
  - (d) identify the procedure that the Authority will adopt in considering the proposal; and
  - (e) indicate when the Authority proposes to undertake the key steps in that procedure; and
  - (f) state how to obtain further information about the proposal.

### **59 Assessing a proposal**

- (1) Subject to section 56, if the Authority prepares a proposal, the Authority must assess the proposal.

Note: Section 56 allows the Authority to abandon a proposal.
- (2) In assessing the proposal, the Authority must have regard to the following matters:
  - (a) whether costs that would arise from a food regulatory measure developed or varied as a result of the proposal

**Part 3** Food regulatory measures

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

**Section 60**

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outweigh the direct and indirect benefits to the community, Government or industry that would arise from the development or variation of the food regulatory measure;

- (b) whether other measures (available to the Authority or not) would be more cost-effective than a food regulatory measure developed or varied as a result of the proposal;
- (c) any relevant New Zealand standards;
- (d) any other relevant matters.

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

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

After assessing a proposal, the Authority must:

- (a) prepare in writing a draft food regulatory measure or a draft variation of a food regulatory measure; or
- (b) abandon the proposal.

**61 Calling for submissions**

- (1) After preparing a draft food regulatory measure or a draft variation of a food regulatory measure as a result of a proposal, the Authority must give public notice of the matters mentioned in subsection (2).
- (2) The notice must:
  - (a) state that the Authority has prepared a draft food regulatory measure or a draft variation of a food regulatory measure, as the case requires; and
  - (b) include:
    - (i) a copy of the draft food regulatory measure or draft variation; and
    - (ii) a summary of the results of the Authority's assessment of the proposal;or state how a copy of those documents can be obtained; and

- (c) call for written submissions, for the purpose of the Authority's consideration of the draft measure or draft variation, to be given to the Authority within the period specified in the notice (the *submission period*).

## **62 Alternative steps to be followed**

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

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

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

Note 1: The Board must not delegate its powers to act on behalf of the Authority under paragraph (a)—see section 150.

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

- (2) The Authority must have regard to all submissions made during the submission period in making a decision under subsection (1).
- (3) The report must include each of the following:
  - (a) the reasons for initially preparing the proposal;
  - (b) a summary of the results of the Authority's assessment of the proposal;
  - (c) a summary of the submissions received by the Authority in relation to the draft standard or draft variation;

**Section 64**

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- (d) the Authority's response to the issues raised in those submissions;
- (e) whether the draft standard or draft variation was amended after submissions were made and, if so, the reasons for those amendments;
- (f) the Authority's reasons for approving or rejecting the draft standard or draft variation;
- (g) a copy of the draft standard or draft variation on which submissions were received;
- (h) if the draft standard or draft variation was amended after submissions were made—a copy of the draft standard or draft variation as amended;
- (i) if applicable—a Regulation Impact Statement.

**64 Notifying the Forum on Food Regulation**

- (1) If the Authority approves a draft standard or a draft variation of a standard, the Authority must, within 10 business days after the approval:
  - (a) give the Forum on Food Regulation:
    - (i) a written notification of the approval; and
    - (ii) a copy of the report prepared by the Authority under section 63; and
  - (b) give public notice of the approval, together with information about where further information about the draft standard or draft variation may be obtained; and
  - (c) publish a notice on the Authority's website that states:
    - (i) that the draft standard or draft variation has been approved; and
    - (ii) that the Forum has been notified that the draft standard or draft variation has been approved; and
    - (iii) that the Forum may request the Authority to review the draft standard or draft variation under Division 3; and
    - (iv) where further information about the draft standard or draft variation may be obtained.

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

Note: The process followed by the Forum on Food Regulation after receiving notification under this section is set out in Division 3.

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

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

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

- (2) If another code of practice would be superseded, in whole or in part, by the Authority's decision under subsection (1), the Authority must:
- (a) revoke the other code of practice (if it would be wholly superseded); or
  - (b) vary the other code of practice (if it would be partly superseded).
- (3) The Authority must give public notice of its decision.
- (4) The notice must:
- (a) specify the date of effect of the decision; and
  - (b) state how to obtain further information about the decision and the reasons for it.
- (5) The Authority must also give written notice of its decision to the Forum on Food Regulation.

### **Subdivision E—Modification of general procedure for minor variations**

#### **66 Application of Subdivision**

This Subdivision applies to a proposal for the variation of a food regulatory measure that, if made, would not directly or indirectly:

- (a) impose, vary or remove an obligation on any person; or
- (b) create, vary or remove a right of any person; or
- (c) otherwise alter the legal effect of the measure.

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

- (a) to correct a typographical error; or
- (b) to update a reference to another document; or
- (c) to change a cross-reference within a food regulatory measure; or
- (d) to omit provisions of a food regulatory measure that have ceased to have effect.

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

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

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

- (1) Section 61 does not apply.
- (2) However, after preparing a draft variation of the food regulatory measure as a result of a proposal, the Authority must give written notice to 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 proposal;



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*).

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

- (1) Sections 62, 63, 64 and 65 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 preparing the proposal;
  - (b) a summary of the results of the Authority's assessment of the proposal;
  - (c) the Authority's reasons for approving or rejecting the draft variation;
  - (d) a copy of the draft variation.
- (4) If the draft variation is of a standard and the Authority approves the draft variation, the Authority must, within 10 business days after the approval:
- (a) give the Forum on Food Regulation:
    - (i) a written notification of the approval; and
    - (ii) a copy of the report prepared by the Authority under this section; and

**Part 3** Food regulatory measures

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

Section 70

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- (b) give public notice of the approval, together with information about where further information about the draft variation may be obtained; and
- (c) publish a notice on the Authority's website that states:
  - (i) that the draft variation has been approved; and
  - (ii) that the Forum has been notified that the draft variation has been approved; and
  - (iii) that the Forum may request the Authority to review the draft variation under Division 3; and
  - (iv) where further information about the draft variation may be obtained.
- (5) If the Authority has notified the Forum on Food Regulation under subsection (4), the Forum may direct the Authority to give the Forum such information as the Forum reasonably requires for the purpose of assisting the Forum to make a decision about the draft under Division 3.

Note: The process followed by the Forum on Food Regulation after receiving notification under this section is set out in Division 3.

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

**70 Application of Subdivision**

This Subdivision applies to:

- (a) a proposal for the development of a new food regulatory measure; and
- (b) a proposal for the variation of a food regulatory measure that:
  - (i) involves such scientific or technical complexity that it is necessary to adopt this procedure in considering it; or
  - (ii) involves such a significant change to the scope of the food regulatory measure that it is necessary to adopt this procedure in considering it.

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

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

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

- (1) The Authority must, after assessing the proposal under section 59 but before undertaking the step set out in section 60, give public notice of the matters set out in subsection (2).
- (2) The notice must:
  - (a) state that the Authority has assessed the proposal; and
  - (b) include a summary of the results of the Authority's assessment of the proposal, or state how a copy of the summary can be obtained; and
  - (c) call for written submissions on matters relevant to the proposal to be given to the Authority within the period specified in the notice (the *submission period*).

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

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

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

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

### **74 Application of Subdivision**

This Subdivision applies to a proposal if:

- (a) the proposal is for the variation of the Nutrition, Health and Related Claims Standard; and

**Section 75**

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- (b) the variation proposed is a high level health claims variation.

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

**75 Notice of the proposal**

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

**76 Considering the proposal**

- (1) The Authority must consider whether to approve a draft high level health claims variation.
- (2) Before approving such a draft variation, the Authority must:
  - (a) be satisfied that the approval of the draft variation will meet the following objectives:
    - (i) the protection of public health and safety;
    - (ii) the provision of adequate information relating to food to enable consumers to make informed choices;

- (iii) the prevention of misleading or deceptive conduct; and
- (b) take into account any recommendations made by the High Level Health Claims Committee in relation to the draft variation or the proposal that resulted in the draft variation; and
- (c) take into account any submission made on behalf of a jurisdiction represented on the Food Regulation Standing Committee in relation to the draft variation or the proposal that resulted in the draft variation; and
- (d) consider all submissions made during the submission period.

### **77 Calling for submissions**

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

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

- (1) After the submission period, the Authority must:
  - (a) do one of the following:
    - (i) approve a draft high level health claims variation;

**Part 3** Food regulatory measures

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

**Section 79**

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- (ii) abandon the proposal to vary the list; 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.

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

**79 Notifying the Forum on Food Regulation**

- (1) If the Authority approves a draft high level health claims variation, the Authority must, within 10 business days after the approval:
  - (a) give the Forum on Food Regulation:
    - (i) a written notification of the approval; and
    - (ii) a copy of the report prepared by the Authority under section 78; and
  - (b) give public notice of the decision.
- (2) If the Authority has notified the Forum on Food Regulation under subsection (1), the Forum may direct the Authority to give the Forum such information as the Forum reasonably requires for the purpose of assisting the Forum to make a decision about the draft under Division 3.

Note: The process followed by the Forum on Food Regulation after receiving notification under this section is set out in Division 3.

## **Division 2A—Variations by APVMA of the Maximum Residue Limits Standard**

### **80 Application of Division**

This Division applies if the APVMA notifies the Authority under section 8E of the Agvet Code of an application or variation in relation to a chemical product.

### **81 Authority to give notice of APVMA notification**

- (1) The Authority must give public notice of the following matters:
  - (a) that the Authority has been notified under section 8E of the Agvet Code of an application or variation;
  - (b) the particulars referred to in subparagraph 8E(2)(b)(i) of the Agvet Code that were set out in the notice under section 8E of the Agvet Code;
  - (c) any other matters that the Authority thinks appropriate.
- (2) The Authority must give the notice as soon as practicable after the notification under section 8E of the Agvet Code.

### **82 APVMA may vary the Maximum Residue Limits Standard**

- (1) The APVMA may vary the Maximum Residue Limits Standard to include or change a permitted maximum residue limit to cover the chemical product.

*Variation is a legislative instrument*

- (2) A variation made under subsection (1) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the variation: see subsection 44(1) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the variation: see subsection 54(1) of that Act.



*Proposed variation*

- (3) Before making a variation under subsection (1), the APVMA must notify the Authority of a proposed variation.

*Dietary exposure assessment*

- (4) The Authority must:
- (a) prepare a dietary exposure assessment of the proposed variation and give a copy of the assessment to the APVMA and the Forum on Food Regulation; or
  - (b) if, with the Authority's agreement, a dietary exposure assessment of the proposed variation is prepared by another person or body:
    - (i) review the assessment and prepare comments on the assessment (including comments relating to the dietary exposure risk of the proposed variation); and
    - (ii) give a copy of the assessment to the Forum and, if the assessment is not prepared by the APVMA, give a copy of the assessment to the APVMA; and
    - (iii) give a copy of the comments on the assessment to the APVMA and the Forum.
- (5) Before making a variation under subsection (1), the APVMA must:
- (a) if paragraph (4)(a) applies—consider the assessment; or
  - (b) if paragraph (4)(b) applies—consider the assessment and the comments on the assessment referred to in that paragraph.

*APVMA to give the Authority a copy of the variation*

- (6) The APVMA must give a copy of a variation made under subsection (1) to the Authority.

*Gazettal*

- (7) In addition to the requirement under the *Legislation Act 2003* for a variation made under subsection (1) to be registered, the APVMA must cause a copy of the variation to be published in the *Gazette*.

**Part 3** Food regulatory measures

**Division 2A** Variations by APVMA of the Maximum Residue Limits Standard

Section 83

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*When variation commences*

- (8) Despite subsection 12(1) of the *Legislation Act 2003*, a variation made under subsection (1) of this section commences on the day a copy of the variation is published as mentioned in subsection (7) of this section.

**83 No limit on the Authority's power to vary the Maximum Residue Limits Standard**

This Division does not limit the Authority's power to vary the Maximum Residue Limits Standard.

### **Division 3—Forum on Food Regulation review of draft standards and draft variations of standards**

#### **84 Forum on Food Regulation may request a review**

- (1) If the Authority notifies the Forum on Food Regulation under section 34, 41, 64 or 69 that the Authority has approved a draft standard or draft variation (with or without amendments), or under section 53 and 79 that the Authority has approved a draft high level health claims variation, the Forum must, within 60 days after the notification:
  - (a) request the Authority to review the draft; or
  - (b) inform the Authority that the Forum does not intend to request the Authority to review the draft.
- (2) In exercising its powers under this section in relation to a draft standard or variation, or a draft high level health claims variation, the Forum on Food Regulation must comply with:
  - (a) the Food Regulation Agreement; and
  - (b) the Australia New Zealand Joint Food Standards Agreement.

#### **85 Review not requested**

If the Forum on Food Regulation informs the Authority under paragraph 84(1)(b) that the Forum does not intend to request the Authority to review a draft standard or draft variation then, as soon as practicable, the Authority must comply with the publication requirements set out in section 92.

#### **86 Review requested**

- (1) If the Forum on Food Regulation requests the Authority to review a draft standard or draft variation, the Forum must inform the Authority of the Forum's concerns with the draft.

**Part 3** Food regulatory measures

**Division 3** Forum on Food Regulation review of draft standards and draft variations of standards

**Section 87**

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- (2) The Forum on Food Regulation may give to the Authority such directions as it thinks fit in relation to the conduct of a review of a draft standard or draft variation.
- (3) A direction under subsection (2) is not a legislative instrument.

**87 Authority to respond to request**

- (1) If the Forum on Food Regulation requests the Authority to review a draft standard or draft variation:
    - (a) a review is to be conducted, subject to any directions given under subsection 86(2), in such manner as the Authority considers appropriate; and
    - (b) the Authority must complete the review, and make a decision under subsection (2):
      - (i) within 3 months after the request was made; or
      - (ii) if the Forum allows a longer period—within that longer period.
  - (2) After completing a review under this section of a draft standard or draft variation, the Authority must:
    - (a) decide to re-affirm its approval of the draft; or
    - (b) decide to re-affirm its approval of the draft, subject to such amendments as the Authority considers necessary; or
    - (c) decide to withdraw its approval of the draft.
- Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.
- (3) The Authority must give to the Forum on Food Regulation, within 10 business days of making its decision:
    - (a) written notice of the terms of the Authority's decision; and
    - (b) the Authority's reasons for making that decision.

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**88 Forum on Food Regulation may amend or reject the draft after review**

- (1) If the Authority notifies the Forum on Food Regulation of a decision made under paragraph 87(2)(a) or (b), the Forum must, within 60 days after the notification:
  - (a) inform the Authority that the Forum does not intend to amend or reject the draft; or
  - (b) by written instrument, amend the draft; or
  - (c) reject the draft.
- (2) An instrument made under paragraph (1)(b) is not a legislative instrument.

**89 Forum on Food Regulation does not intend to amend or reject the draft**

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

**90 Forum on Food Regulation amends the draft**

- (1) Before amending a draft standard or draft variation under paragraph 88(1)(b), the Forum on Food Regulation must give the Authority an opportunity to submit to the Forum a draft of the text of the amendment.
- (2) As soon as practicable after the Forum on Food Regulation decides to amend a draft standard or draft variation, the Forum must inform the Authority that the Forum has amended the draft, and give the Authority a copy of the amended draft.
- (3) The Authority must, as soon as practicable after being informed of the amendment, comply with the publication requirements set out in section 92.

**Part 3** Food regulatory measures

**Division 3** Forum on Food Regulation review of draft standards and draft variations of standards

Section 91

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**91 Forum on Food Regulation rejects the draft**

- (1) If the Forum on Food Regulation decides to reject a draft standard or draft variation under paragraph 88(1)(c), the Forum must:
  - (a) prepare a notice setting out that decision and reasons for that decision; and
  - (b) give the Authority a copy of the notice; and
  - (c) publish a copy of the notice on the internet.
- (2) Upon receiving a copy of the notice, the Authority must give public notice of the Forum on Food Regulation's notice.

**92 Publication requirements**

The *publication requirements* for the purposes of sections 85 and 89 and subsection 90(3) are as follows:

- (a) the Authority must prepare a notice stating that the draft or amended draft, as the case requires, is to come into effect on a day specified in the notice;
- (b) the Authority must cause a copy of the notice to be published:
  - (i) in the *Gazette*; and
  - (ii) in the *New Zealand Gazette*;  
together with information about where a copy of the draft or amended draft may be obtained or inspected;
- (d) the Authority must publish on the Authority's website a copy of:
  - (i) the notice; and
  - (ii) the text of the draft or the amended draft.

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

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

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**94 Standards and variations are legislative instruments**

A standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the standard or variation: see subsection 44(1) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the standard or variation: see subsection 54(1) of that Act.

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

### **Subdivision A—Urgent consideration of applications and proposals**

#### **95 Declaration of urgency**

- (1) The Authority may:
  - (a) declare in writing that a specified application made under section 22 is an urgent application for the purposes of this Part; or
  - (b) declare in writing that a specified proposal prepared under section 55 is an urgent proposal for the purposes of this Part;  
if:
    - (c) the application or proposal relates to the development or variation of a standard; and
    - (d) the Authority considers that it is appropriate to do so in order to protect public health and safety.
- (2) The Authority may:
  - (a) declare in writing that a specified application made under section 22 is an urgent application for the purposes of this Part; or
  - (b) declare in writing that a specified proposal prepared under section 55 is an urgent proposal for the purposes of this Part;  
if:
    - (c) the application or proposal relates to the variation of a standard; and
    - (d) the standard has had or, if not varied in the manner sought in the application or proposal, will have, a negative impact on trade that was not envisaged when the standard was made; and
    - (e) the Authority considers that the variation of the standard will meet the following objectives:
      - (i) the protection of public health and safety;



- (ii) the provision of adequate information relating to food to enable consumers to make informed choices;
  - (iii) the prevention of misleading or deceptive conduct.
- (3) The Authority must give public notice of a declaration under subsection (1) or (2) and include a copy of the declaration in the notice.
- (4) The Authority must take all reasonable steps to distribute copies of the declaration to the print and electronic media in Australia and New Zealand for the purpose of seeking media publicity about the urgent application or proposal.
- (5) The Authority must give a copy of a declaration under subsection (1) or (2) to:
  - (a) each appropriate government agency; and
  - (b) the Forum on Food Regulation; and
  - (c) if the declaration relates to an application—the applicant.
- (6) The following do not apply to an urgent application or urgent proposal:
  - (a) Subdivisions C to G of Division 1 of this Part;
  - (b) Subdivisions C to G of Division 2 of this Part;
  - (c) Division 3 of this Part.
- (7) No charge under section 146 is payable in relation to an urgent application.

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

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

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

**Part 3** Food regulatory measures

**Division 4** Urgent applications and proposals

**Section 97**

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

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

- (3) If, under this section, the Authority prepares a draft standard, or a draft variation of a standard, the Authority must give public notice of the matters mentioned in subsection (4).
- (4) The notice must:
- (a) state that the Authority has prepared a draft standard, or a draft variation of a standard, as the case requires; and
  - (b) include a copy of the draft standard or draft variation; and
  - (c) call for written submissions from interested persons and appropriate government agencies, for the purposes of the Authority's consideration of the draft standard, or draft variation, to be given to the Authority within the period specified in the notice (the *submission period*).
- (5) The submission period must not end later than 10 business days after the publication of the notice.
- (6) As soon as practicable after complying with subsection (3), the Authority must publish, on the Authority's website, a copy of the notice mentioned in subsection (3), together with information about where a copy of the draft may be obtained.

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

*Approval*

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

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

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

- (2) In doing so, the Authority must have regard to all submissions made by interested persons and appropriate government agencies during the submission period.
- (3) To avoid doubt, the draft does not take effect except in accordance with a notice under subsection (4).
- (4) If the Authority approves a draft standard or a draft variation of a standard under this section (with or without amendments), the Authority must give public notice of the approval, together with information about where further information about the draft standard or draft variation may be obtained.

*When a standard or variation takes effect*

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

*Standards and variations are legislative instruments*

- (6) The standard, or the variation of the standard, in relation to which notice is published under subsection (4), is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the standard or variation: see subsection 44(1) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the standard or variation: see subsection 54(1) of that Act.

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

### **98 Application**

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

### **99 Assessing the standard or variation**

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

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

### **100 Calling for submissions**

- (1) After assessing the standard or variation, the Authority must call for submissions by giving public notice of the matters mentioned in subsection (2).
- (2) The notice must:
  - (a) identify the standard or variation; and
  - (b) include a copy of the standard or variation, or state how a copy of the standard or variation can be obtained; and
  - (c) call for written submissions, for the purpose of making a decision under subsection 101(1), to be given to the

Authority within the period specified in the notice (the *submission period*).

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

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

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

- (2) In making a decision under subsection (1), the Authority must take into account all submissions made during the submission period.
- (3) Within 10 business days after making a decision under subsection (1), the Authority must give the Forum on Food Regulation written notice of its decision, and include with that notice a report prepared in accordance with subsection (4).
- (4) The report must include each of the following:
  - (a) the reasons for initially declaring the application or proposal that resulted in the standard or variation to be urgent;
  - (b) a copy of the declaration under section 95;
  - (c) a copy of the standard or variation approved as a result of the application or proposal;
  - (d) a summary of the submissions received by the Authority in relation to the standard or variation approved as a result of the urgent application or proposal;
  - (e) the Authority's responses to the issues raised in those submissions;
  - (f) the Authority's reasons for its decision under subsection (1);
  - (g) if applicable—a Regulation Impact Statement in relation to the standard or variation.

**Section 102**

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- (5) If the Authority notifies the Forum on Food Regulation that the Authority has re-affirmed a standard or variation of a standard, the Forum may direct the Authority to give the Forum such information as the Forum reasonably requires for the purpose of assisting the Forum to make a decision about the standard or variation under section 102.

**102 Forum on Food Regulation may request Authority to review**

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

**103 Review requested**

- (1) If the Forum on Food Regulation requests the Authority to review the standard or variation, the Forum must inform the Authority of the Forum's concerns with the standard or variation.
- (2) The Forum on Food Regulation may give to the Authority such directions as it thinks fit in relation to the conduct of a review of a standard or variation under this Subdivision.
- (3) A direction under subsection (2) is not a legislative instrument.

**104 Authority to respond to request**

- (1) If the Forum on Food Regulation requests the Authority to review the standard or variation:
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- (a) the review is to be conducted, subject to any directions given under subsection 103(2), in such manner as the Authority considers appropriate; and
  - (b) the Authority must complete the review, and make a decision under subsection (2):
    - (i) within 3 months after the request was made; or
    - (ii) if the Forum allows a longer period—within that longer period.
- (2) After completing a review under this section of the standard or variation, the Authority must:
- (a) re-affirm its decision to approve the standard or variation; or
  - (b) prepare a proposal under section 55 for the development of:
    - (i) the variation, or further variation, of the relevant standard; or
    - (ii) a replacement standard.
- Note: The Board must not delegate its powers to act on behalf of the Authority under this subsection—see section 150.
- (3) The Authority must give to the Forum on Food Regulation within 10 business days after making its decision:
- (a) written notice of its decision under subsection (2); and
  - (b) the Authority's reasons for making that decision.

### **106 Forum on Food Regulation may revoke or amend standard or variation**

- (1) If the Authority notifies the Forum on Food Regulation that the Authority has decided under paragraph 104(2)(a) to re-affirm the standard or variation, the Forum must, within 60 days after the notification:
- (a) inform the Authority that the Forum does not intend to revoke or amend the standard or variation; or
  - (b) by legislative instrument, revoke or amend the standard or variation with effect from a date specified in the instrument.

**Part 3** Food regulatory measures

**Division 4** Urgent applications and proposals

**Section 106**

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Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument of revocation or amendment: see subsection 44(1) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument of revocation or amendment: see subsection 54(1) of that Act.

- (2) If the Forum on Food Regulation decides to revoke or amend the standard or variation, the Forum must:
- (a) prepare a notice setting out the reasons for that decision; and
  - (b) give the Authority a copy of the notice; and
  - (c) publish a copy of the notice on the internet.
- (2A) Upon receiving a copy of the notice, the Authority must give public notice of the Forum on Food Regulation's notice.
- (3) Before amending the standard or variation, the Forum on Food Regulation must give the Authority an opportunity to submit to the Forum a draft of the text of the amendment.
- (4) As soon as practicable after the Forum on Food Regulation decides to revoke or amend the standard or variation, the Authority must:
- (a) prepare a notice stating that the revocation or amendment is to come into effect on the date specified in the instrument of revocation or amendment; and
  - (b) cause a copy of the notice to be published:
    - (i) in the *Gazette*; and
    - (ii) in the *New Zealand Gazette*;together with information about where the text of the revocation or amendment may be obtained or inspected; and
  - (d) publish on the Authority's website a copy of:
    - (i) the notice; and
    - (ii) the text of the instrument of revocation or amendment.
- (5) If a standard or variation is the subject of a notice under subsection (4), the standard or variation is taken to have been made under this Act if and when the standard or variation comes into effect under the instrument of revocation or amendment.



## **Division 5—General rules for considering applications and proposals**

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

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

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

### **108 Authority may require further information**

- (1) If the Authority needs more information:
  - (a) to enable it to assess an application and develop the relevant food regulatory measure, or the relevant variation of a food regulatory measure; or
  - (b) to enable it to determine whether a charge under section 146 is payable to the Authority in relation to an application;the Authority may request the applicant to provide it with such further information as is specified in the request within such reasonable time as is specified in the request.
- (2) If the applicant refuses or fails to comply with the request within the period specified in the request, without reasonable excuse, the application is taken to have been withdrawn. The Authority must give written notice of that fact to the applicant.
- (3) If an application is taken to have been withdrawn under subsection (2) after public notice of the application is given under section 28 or 51, the Authority must give public notice that the application is taken to have been withdrawn under subsection (2).

### 109 Period within which consideration of applications for standards or variations must be completed

*Applications must be considered within the consideration period*

- (1) If the Authority accepts an application under section 26 or 47 for the development of a standard or the variation of a standard, the Authority must complete the procedure that the Authority must, under Subdivision C of Division 1, adopt in the consideration of the application within the consideration period.

*Consideration period*

- (2) The **consideration period** begins:
  - (a) if an exclusive capturable commercial benefit would be conferred on the applicant as a result of the development of the resulting standard or variation—on the day on which the charge under section 146 in relation to the application is paid or, if the charge is payable in instalments, the first instalment is paid; and
  - (b) if the applicant elects to have the consideration of the application expedited—on the day on which the charge under section 146 in relation to the application is paid or, if the charge is payable in instalments, the first instalment is paid; and
  - (c) in any other case, on the day on which the Authority begins its assessment of the application under section 29.
- (3) The **consideration period** ends 12 months after it begins or, if a shorter period is prescribed, at the end of that shorter period.

*Extension for consideration of new standard or major variation*

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

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

*Stopping the clock*

- (6) If the Authority requests an applicant to provide it with further information under section 108, the time taken by the applicant to provide the information is not to be included in the consideration period.
- (7) If an instalment of a charge under section 146 is due, but not paid, the time during which it remains unpaid is not to be included in the consideration period.
- (8) If an application is made to the Administrative Appeals Tribunal for the review of a decision of the Authority made in connection with the preparation of a draft standard or a draft variation of a standard, the period beginning on the day on which the application for review is made and ending on the day on which it is finalised is not to be included in the consideration period.
- (9) If the Forum on Food Regulation notifies the Authority that it is formulating policy guidelines for the purposes of paragraph 18(2)(e):
- (a) the Authority may, subject to subsections (9A) and (9B), suspend its consideration of any application which, in the opinion of the Authority, would be affected by the guidelines once formulated; and
  - (b) if the Authority suspends its consideration of an application, notify the applicant of the suspension, and the period of the suspension.
- (9A) If:
- (a) an applicant has applied for the development or variation of a standard; and
  - (b) an exclusive capturable commercial benefit would be conferred on the applicant if the standard were made or varied in the manner sought in the application; and
  - (c) either:

**Section 110**

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- (i) the charge under section 146 in relation to the application is paid; or
- (ii) in a case where the charge is payable in instalments—each instalment that is due and payable in relation to the application is paid;

the Authority must not suspend its consideration of the application unless the applicant first consents to that suspension.

(9B) If:

- (a) an applicant elects to have the consideration of his or her application expedited; and
- (b) either:
  - (i) the charge under section 146 in relation to the application is paid; or
  - (ii) in a case where the charge is payable in instalments—each instalment that is due and payable in relation to the application is paid;

the Authority must not suspend its consideration of the application unless the applicant first consents to that suspension.

- (10) The suspension begins on the day on which the Authority is notified by the Forum on Food Regulation and ends on the day on which:
  - (a) the Forum notifies the Authority of the policy guidelines; or
  - (b) the Forum notifies the Authority that it has decided not to proceed with the policy guidelines; or
  - (c) a period of 18 months, beginning on the day on which the Authority was notified under subsection (9), has elapsed.
- (11) The period during which the consideration of the application is suspended is not to be included in the consideration period.

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

### *Notice of rejection*

- (1) If the Authority rejects:

- (a) an application for the development or variation of a food regulatory measure; or
  - (b) a draft food regulatory measure or a draft variation of a food regulatory measure that results from such an application;
- the Authority must comply with the notice requirements set out in subsection (2).
- (2) The notice requirements for the purposes of subsection (1) are as follows:
- (a) the Authority must give notice in writing of the rejection, and the reasons for the rejection, to the applicant;
  - (b) if the Authority rejects the application after public notice is given under section 28 or 51, the Authority must give public notice of the rejection, and the reasons for the rejection;
  - (c) if the rejection occurs after a draft food regulatory measure or a draft variation of a food regulatory measure has been prepared as a result of the application—the Authority must give notice in writing of the rejection to the Forum on Food Regulation.

*Refund on rejection*

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

*Notice of abandonment*

- (4) If the Authority abandons:
- (a) a proposal for the development of a standard or the variation of a standard; or

**Section 111**

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- (b) a draft food regulatory measure or a draft variation of a food regulatory measure that results from such a proposal;  
the Authority must comply with the notice requirements set out in subsection (5).
- (5) The notice requirements for the purposes of subsection (4) are as follows:
- (a) if the Authority abandons the proposal after public notice is given under section 58 or 75, the Authority must give public notice of the abandonment, and the reasons for the abandonment;
  - (b) if the abandonment occurs after a draft food regulatory measure or a draft variation of a food regulatory measure has been prepared as a result of the proposal—the Authority must give notice in writing of the abandonment to the Forum on Food Regulation.

**111 Public hearings**

- (1) The Authority may, at the discretion of the Authority, conduct a public hearing at any point during the consideration of an application or proposal for the development or variation of a food regulatory measure, other than an application for a high level health claims variation.
- (2) If the consideration of an application or proposal includes a public hearing, the Authority, having regard to the confidential nature of any evidence or matter or for any other reason, may direct that any part of the hearing be held in private and determine who may attend.
- (3) The Authority may give directions prohibiting or restricting the publication of evidence given in the course of a public hearing or the review or assessment of a draft food regulatory measure or a draft variation of a food regulatory measure, whether in public or in private, or of matters contained in documents produced in the course of a public hearing or the review or assessment of a draft food regulatory measure or a draft variation of a food regulatory measure.

- (4) A direction under subsection (3) is not a legislative instrument.

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

- (1) The Authority may decide, in writing, not to do something that it is required to do under this Part in relation to an application made under section 22, or a proposal prepared under section 55, if the Authority considers that doing the thing would be a duplication of work already done, or a process already gone through, by another government agency.
- (2) If the decision relates to an application in relation to which public notice has been given under section 28 or 51, the Authority must give public notice of its decision.
- (3) If the decision relates to an application in relation to which public notice has not, or not yet, been given under those sections, the Authority must give notice of its decision to the applicant.
- (4) If the decision relates to a proposal in relation to which public notice has been given under section 58 or 75, the Authority must give public notice of its decision.
- (5) The public notice must:
- (a) identify the government agency referred to in subsection (1); and
  - (b) contain a brief statement of the work the agency has done or the process it has gone through.
- (7) In this section:
- government agency** means:
- (a) a Department of State of:
    - (i) the Commonwealth; or
    - (ii) a State or Territory; or
    - (iii) New Zealand; or
  - (b) a body (whether incorporated or not) established by, or by a law of:

**Part 3** Food regulatory measures

**Division 5** General rules for considering applications and proposals

**Section 112**

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- (i) the Commonwealth; or
- (ii) a State or Territory; or
- (iii) New Zealand.



## **Division 6—Other matters**

### **113 Review of food regulatory measures**

- (1) The Authority may review a food regulatory measure at the request of a body or person, or on its own initiative, in such manner as the Authority considers appropriate.
- (2) If the Forum on Food Regulation requests the Authority to review a standard:
  - (a) the Authority must review the standard; and
  - (b) subject to any directions under subsection (3), the Authority may conduct the review in such manner as the Authority considers appropriate.
- (3) The Forum on Food Regulation may give to the Authority such directions as it thinks fit in relation to the conduct of a review under subsection (2). Such a direction is not a legislative instrument.
- (4) If the Forum on Food Regulation requests the Authority to review a standard under subsection (2), the Authority must complete that review:
  - (a) within 3 months after the request was made; or
  - (b) if the Forum allows a longer period—within that longer period.
- (5) After completing a review under subsection (2), the Authority must notify the Forum on Food Regulation of the result of the review.
- (6) As soon as practicable after the Authority has reviewed a food regulatory measure under this section, it may prepare a proposal for the development of a food regulatory measure in substitution for the food regulatory measure that has been reviewed.
- (7) If the Authority prepares a proposal under this section, this Part has effect as if the proposal were a proposal under section 55.

### 114 Confidential commercial information

- (1) It is the duty of a person who is a member of the Board, a member of the staff of the Authority, a member of a committee or a person engaged as a consultant under section 136 not to disclose any confidential commercial information in respect of food that has been acquired by the person because of being such a member or consultant.
- (2) Subsection (1) does not apply to anything done in the performance of duties, or in the exercise of powers or functions, under this Act.
- (3) Subsection (1) does not preclude the disclosure of confidential information in respect of food to any court in any proceeding. However, the Authority must apply to the court for an order preventing disclosure of that information to any other person otherwise than for the purpose of the proceedings, if it is within the jurisdiction of the court to make such an order.
- (4) Despite subsection (1), the Chief Executive Officer may, in respect of confidential commercial information acquired in respect of food by a member of the Board, a member of the staff of the Authority, a member of a committee, or a person engaged as a consultant under section 136, because of being such a member or consultant:
  - (a) if the Minister certifies, by instrument, that it is necessary in the public interest that the information should be disclosed to a specified person—disclose that information to that person; or
  - (b) disclose that information to any prescribed authority or person; or
  - (c) disclose that information to a person or body who, in the opinion of the Chief Executive Officer, is expressly or impliedly authorised to obtain that information by the applicant for the development or variation of a food regulatory measure, in respect of the food concerned.
- (5) The Chief Executive Officer must not disclose, under paragraph (4)(a), any confidential commercial information given by a person in respect of food unless the Chief Executive Officer:

- (a) has advised the person, in writing, of the Chief Executive Officer's intention to disclose the information and of the reasons for disclosing that information; and
  - (b) has given the person a reasonable opportunity to communicate the person's views about the proposed disclosure of that information; and
  - (c) has taken into account any views so communicated.
- (6) Any authority or person to whom information is disclosed under subsection (4), and any person under the control of that authority or person, is, in respect of that information, subject to the same obligations as if that authority or person were a person referred to in subsection (1) who had acquired the information in the circumstances set out in subsection (1).
- (7) Despite subsection (1), the Chief Executive Officer may permit confidential commercial information in respect of food to be disclosed:
- (a) to an Agency Head (within the meaning of the *Public Service Act 1999*) or the Chief Officer of a Commonwealth authority for the purpose of enabling the Agency or authority to perform any arrangements made with the Authority in accordance with paragraph 137(a); or
  - (b) to the Secretary of a Department of the Public Service of a State or Territory or the Chief Officer of a State or Territory authority for the purpose of enabling the Department or authority to perform any arrangements made with the Authority in accordance with paragraph 137(b); or
  - (ba) to the chief executive of a Department of State of New Zealand or the Chief Officer of a New Zealand authority for the purpose of enabling the Department or authority to perform any arrangements made with the Authority in accordance with paragraph 137(c); or
  - (c) to the Chief Officer of any other authority or body for the purpose of enabling that authority or body to perform any arrangements made with the Authority in accordance with paragraph 137(d).

**Section 114**

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- (8) A person to whom information is disclosed under subsection (7) and any person under the control of the first-mentioned person to whom that information is disclosed for the purposes of an arrangement under section 137, must not, directly or indirectly, except for the purposes of that arrangement, disclose the information to any person while the person is, or after the person ceases to be, such a person.

Penalty: Imprisonment for 2 years.

- (9) The powers conferred by subsection (7) are in addition to, and not in derogation of, the powers conferred by subsection (4).
- (10) Nothing in subsection (4) or (7) is taken to limit the generality of subsection (3) or the operation of subsection (2).
- (11) In this section:

***court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

## **Part 4—The Board, the Chief Executive Officer and the Authority's staff**

### **Division 1—The Board**

#### **115 Board**

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

#### **116 Constitution of Board**

- (1) The Board consists of:
  - (a) a Chairperson; and
  - (b) the Chief Executive Officer; and
  - (c) 2 members nominated by the New Zealand lead Minister on the Forum on Food Regulation for the purposes of this paragraph; and
  - (ca) one member nominated by the New Zealand lead Minister on the Forum on Food Regulation for the purposes of this paragraph; and
  - (d) a member nominated by consumer organisations; and
  - (e) a member nominated by the CEO of the National Health and Medical Research Council; and
  - (f) 3 members nominated by organisations, or public bodies, established for purposes relating to science or public health; and

**Section 116**

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- (g) 2 members nominated by organisations, or public bodies, established for purposes relating to the food industry.
- (1A) A member mentioned in paragraph (1)(a), (c), (ca), (d), (e), (f) or (g) is to be appointed by the Minister.
- (1B) The Minister may appoint a person as a member mentioned in paragraph (1)(a), (d), (e), (f) or (g) only if the Forum on Food Regulation has agreed to the appointment.
- (2) Before appointing a person as a member mentioned in paragraph (1)(c) or (ca), the Minister must consult with the Forum on Food Regulation.
- (2A) The Chief Executive Officer is automatically a member and does not have to be appointed as a member. The following references in this Division to a member do not apply to the Chief Executive Officer:
- (a) subsections (7) and (8) of this section;
  - (b) section 117;
  - (c) section 119;
  - (d) section 120;
  - (e) section 121;
  - (f) section 126;
  - (g) section 127.
- Note: See Division 2 for the appointment, and terms and conditions of appointment, of the Chief Executive Officer and for other matters relating to the Chief Executive Officer.
- (2B) The Minister may appoint a person as a member mentioned in paragraph (1)(a) or (c) only if the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:
- (a) public health;
  - (b) consumer affairs;
  - (c) food science;
  - (d) food allergy;
  - (e) human nutrition;

- (f) medical science;
  - (g) microbiology;
  - (h) food safety;
  - (i) biotechnology;
  - (j) veterinary science;
  - (k) the food industry;
  - (l) food processing or retailing;
  - (m) primary food production;
  - (n) small business;
  - (o) international trade;
  - (p) government;
  - (q) food regulation.
- (2C) The Minister may appoint a person as a member mentioned in paragraph (1)(ca) only if the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:
- (a) public health;
  - (b) consumer affairs;
  - (c) food science;
  - (d) food allergy;
  - (e) human nutrition;
  - (f) medical science;
  - (g) microbiology;
  - (h) food safety;
  - (i) biotechnology;
  - (j) veterinary science.
- (3) The Minister may appoint a person as a member mentioned in paragraph (1)(f) only if:
- (a) the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:
    - (i) public health;
    - (ii) consumer affairs;

**Section 116**

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- (iii) food science;
  - (iv) food allergy;
  - (v) human nutrition;
  - (vi) medical science;
  - (vii) microbiology;
  - (viii) food safety;
  - (ix) biotechnology;
  - (x) veterinary science; and
- (b) the Minister has sought nominations from such organisations and public bodies as are prescribed by the regulations for the purposes of:
- (i) if the person is suitably qualified for appointment because of expertise in only one field mentioned in paragraph (a)—the subparagraph of paragraph (a) that is applicable to that field; or
  - (ii) if the person is suitably qualified for appointment because of expertise in more than one field mentioned in paragraph (a)—a subparagraph of paragraph (a) that is applicable to one of those fields; and
- (c) the person has been so nominated.
- (4) The Minister may appoint a person as a member mentioned in paragraph (1)(g) only if:
- (a) the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:
    - (i) the food industry;
    - (ii) food processing or retailing;
    - (iii) primary food production;
    - (iv) small business;
    - (v) international trade;
    - (vi) government;
    - (vii) food regulation; and



- (b) the Minister has sought nominations from such organisations and public bodies as are prescribed by the regulations for the purposes of:
    - (i) if the person is suitably qualified for appointment because of expertise in only one field mentioned in paragraph (a)—the subparagraph of paragraph (a) that is applicable to that field; or
    - (ii) if the person is suitably qualified for appointment because of expertise in more than one field mentioned in paragraph (a)—a subparagraph of paragraph (a) that is applicable to one of those fields; and
  - (c) the person has been so nominated.
- (5) The Minister may only appoint a person as a member mentioned in paragraph (1)(d) if the Minister is satisfied that the person has a good knowledge of consumer rights and consumer affairs policy in Australia.
  - (7) The Chairperson and the other members hold office on a part-time basis.
  - (8) The members hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing.
  - (9) The performance of a function or the exercise of a power by the Board is not affected by a vacancy or vacancies in the membership of the Board.

### **117 Appointment of members**

- (1) Each member is to be appointed with effect from such day as the Minister specifies in the instrument of appointment of that member.
- (2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.

Section 117

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- (4) A person appointed as a member is eligible for reappointment for a second term but must not be reappointed for a third or subsequent term.
- (5) If:
- (a) a member holds office for a particular period (the *original period*); and
  - (b) the Minister does not make a decision before the end of the original period to re-appoint, or not to re-appoint, the member;
- then, subject to this Part, the member continues to hold office on the basis that the original period is extended until:
- (c) the end of the period of 6 months beginning at the end of the original period; or
  - (d) the Minister notifies the member that the Minister has decided not to re-appoint the member; or
  - (e) the Minister signs an instrument re-appointing the member;
- whichever first happens.
- (6) As soon as practicable after subsection (5) begins to apply to a member, the Authority must cause to be published in the *Gazette* a notice describing the circumstances in which that subsection has begun to apply to the member.
- (7) As soon as practicable after subsection (5) ceases to apply to a member, the Authority must cause to be published in the *Gazette* a notice describing the circumstances in which that subsection has ceased to apply to the member.
- (8) The Minister must not appoint a person as the Chairperson if, at any time during the period of 2 years ending immediately before the proposed period of appointment, the person was employed by, or had a pecuniary interest in, a body corporate whose primary commercial activity relates directly to the production or manufacture of food.
- (8A) For the purposes of subsection (8):

- (a) a director (however described) of a body corporate is taken to be employed by the body corporate; and
  - (b) the secretary (however described) of a body corporate is taken to be employed by the body corporate.
- (9) The Minister must not appoint a person as a Chairperson if the person has a pecuniary interest in a body corporate whose primary commercial activity relates directly to the production or manufacture of food.

### **118 Committees**

- (1) The Board may establish such committees as it thinks fit to assist it in carrying out its functions, and may abolish any such committee.
- (1A) The Board may establish such committees as it thinks fit to make recommendations on applications or proposals for a high level health claims variation.
- (1B) The Authority must not consider an application or proposal for a high level health claim variation, unless a committee is established to consider the application or proposal, or applications or proposals of that kind.
- (2) A committee established under this section consists of such persons (whether members of the Board or not) as the Board from time to time appoints.
- (3) The Board may give to a committee established under this section such directions as it thinks fit, including:
  - (a) directions as to the manner in which the committee is to carry out its functions; and
  - (b) directions with respect to the procedure to be followed in relation to meetings of the committee, including directions with respect to:
    - (i) the convening of meetings of the committee; and
    - (ii) the number of members of the committee to constitute a quorum; and

Section 119

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- (iii) the appointment of a member of the committee to preside at meetings of the committee; and
  - (iv) the manner in which questions arising at a meeting of the committee are to be decided; and
  - (v) the voting rights of members of the committee; and
  - (vi) the disclosure of members' interests in matters being considered by the committee.
- (4) In exercising its powers under subsection (1), (1A), (2) or (3), the Authority must comply with any directions given to it by the Forum on Food Regulation.
- (5) The Board must keep the Forum on Food Regulation informed of:
- (a) the establishment or abolition of a committee; and
  - (b) any directions given by the Board to a committee.

**119 Remuneration and allowances**

- (1) This section applies to members of the Board and of committees.
- (2) Subject to subsection (3), a person to whom this section applies is to be paid:
- (a) such remuneration as is determined by the Remuneration Tribunal but, if no determination of that Tribunal is in force, such remuneration as is prescribed; and
  - (b) such allowances as are prescribed.
- (3) If a person to whom this section applies is also:
- (a) in the service or employment of, or of an authority of, the Commonwealth, a State, a Territory or New Zealand on a full-time basis; or
  - (b) a person who holds or performs the duties of an office or position established by or under a law of the Commonwealth, a State, a Territory or New Zealand on a full-time basis;
- the person is not entitled to remuneration under this Act.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## **120 Leave of absence of members**

- (1) The Minister may grant leave of absence to the Chairperson on such terms and conditions as the Minister determines.
- (2) The Chairperson may grant leave of absence to any other member on such terms and conditions as the Chairperson determines.

## **121 Acting appointments**

- (1) The Minister may appoint a person to act as the Chairperson:
  - (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The Minister may appoint a person other than the Chairperson to act as a member:
  - (a) during a vacancy in the office of that member, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when that member is absent from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

## **122 Meetings**

- (1) The Board is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chairperson:
  - (a) may convene a meeting at any time; and
  - (b) must convene a meeting on receipt of a written request signed by not less than 3 other members.

**Section 123**

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- (3) The Chairperson is to preside at all meetings at which he or she is present.
- (4) If the Chairperson is not present at a meeting, the members present must appoint one of their number to preside.
- (5) A majority of the members for the time being of the Board as constituted in a particular manner constitute a quorum for the Board as so constituted.
- (6) Questions arising at a meeting of the Board as constituted in a particular manner are to be determined by a majority of the votes of the members of the Board as so constituted present and voting.
- (7) The person presiding at a meeting of the Board has a deliberative vote and, if necessary, also has a casting vote.

**123 Conduct of meetings**

- (1) The Board may, subject to this Part, regulate proceedings at its meetings as it considers appropriate.
- (2) Without limiting subsection (1), the Board may permit members to participate in a particular meeting, or all meetings, by:
  - (a) telephone; or
  - (b) closed-circuit television; or
  - (c) any other means of communication.
- (3) A member who is permitted to participate in a meeting under subsection (2) is to be regarded as being present at that meeting.

**124 Resolutions without formal meetings**

Where the Board so determines, a resolution is taken to have been passed at a meeting of the Board if:

- (a) without meeting, a majority of the number of members indicate agreement with the resolution in accordance with the method determined by the Board; and

- (b) that majority would, if present at a meeting of the Board, have constituted a quorum under subsection 122(5).

### **125 Disclosure of interests**

- (4) A member who has a material personal interest, including an interest in relation to academic or research associations of the member, in a matter being considered or about to be considered by the Board in accordance with section 124 must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of that interest to the Minister.
- (4A) Subsection (4) applies in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).
- (5) The Board must establish and maintain a system for the declaration and registration of material personal interests of its members that have been disclosed under this section or for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*.
- (6) The entries recorded in the register of members' interests must be published by the Board on the Authority's website.

### **126 Resignation**

A member may resign by instrument in writing delivered to the Minister.

### **127 Termination of appointment**

- (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.
- (2) If:
- (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors,

**Section 127**

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compounds with creditors or makes an assignment of remuneration for their benefit; or

- (b) a member fails, without reasonable excuse, to comply with section 125; or
- (c) a member, being the Chairperson:
  - (i) engages, except with the approval of the Minister, in paid employment outside the duties of his or her office; or
  - (ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months; or
- (d) a member, other than the Chairperson:
  - (i) engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions; or
  - (ii) is absent, except on leave of absence granted under subsection 120(2), from 3 consecutive meetings of the Board;

the Minister may terminate the appointment of the member.

Note: The appointment of a member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).



## **Division 2—The Chief Executive Officer**

### **128 Appointment**

- (1) There is to be a Chief Executive Officer of the Authority.
- (2) The Chief Executive Officer is to be appointed by the Board on a full-time basis.
- (3) The Board must not appoint a person as the Chief Executive Officer if, at any time during the period of 2 years ending immediately before the proposed period of appointment, the person was employed by a body corporate whose primary commercial activity relates directly to the production or manufacture of food.
- (3A) For the purposes of subsection (3):
  - (a) a director (however described) of a body corporate is taken to be employed by the body corporate; and
  - (b) the secretary (however described) of a body corporate is taken to be employed by the body corporate.
- (4) The Board must not appoint a person as the Chief Executive Officer if the person has a pecuniary interest in a body corporate whose primary commercial activity relates directly to the production or manufacture of food.

### **129 Duties**

- (1) The Chief Executive Officer is responsible for the day-to-day administration of the Authority and the control of its operations.
- (2) The Chief Executive Officer is to act in accordance with any policies determined, and any directions given, by the Board in writing.
- (3) The Chief Executive Officer is not authorised to act on behalf of the Authority under:
  - (a) paragraph 33(1)(a); or

**Section 130**

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- (b) subsection 35(1); or
- (c) paragraph 41(2)(a); or
- (d) paragraph 52(1)(a); or
- (e) paragraph 63(1)(a); or
- (f) subsection 65(1); or
- (g) paragraph 69(2)(a); or
- (h) paragraph 78(1)(a); or
- (i) subsection 87(2); or
- (j) subsection 97(1); or
- (k) subsection 101(1); or
- (l) subsection 104(2).

**130 Delegation**

The Chief Executive Officer may, in writing, delegate to a member of the staff of the Authority all or any of the functions or powers of the Chief Executive Officer.

**131 Remuneration and allowances**

- (1) The Chief Executive Officer is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid the remuneration that is determined in writing by the Board.
- (2) The Chief Executive Officer is to be paid the allowances that are determined in writing by the Board.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**132 Resignation**

The Chief Executive Officer may resign by giving the Board a written resignation.

### **133 Other terms and conditions**

The Board may determine in writing the other terms and conditions on which the Chief Executive Officer holds office (including terms and conditions in relation to termination of appointment).

### **134 Acting Chief Executive Officer**

The Board may appoint a person to act as the Chief Executive Officer:

- (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

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

### **135 Staff of Authority**

- (1) The staff of the Authority are persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and
  - (b) the Chief Executive Officer is the Head of that Statutory Agency.

### **136 Consultants**

- (1) The Chief Executive Officer, on the Authority's behalf, may engage as consultants persons having suitable qualifications and experience.
- (2) The terms and conditions of engagement of consultants are such as are determined by the Chief Executive Officer.

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

The Authority may make arrangements:

- (a) with an Agency Head (within the meaning of the *Public Service Act 1999*) or the Chief Officer of any Commonwealth authority; or
- (b) with the Secretary of a Department of the Public Service of a State or Territory, or the Chief Officer of a State or Territory authority; or
- (c) with the chief executive of a Department of State of New Zealand or the Chief Officer of a New Zealand authority; or
- (d) with the Chief Officer of any other authority or body;

for:

- (e) the services of officers or employees in those Agencies, Departments, authorities or bodies to be made available to the Authority; or
- (f) officers or employees in those Agencies, Departments, authorities or bodies to give advice to the Authority.

## Part 5—Finance

### 138 Money to be appropriated

- (1) There is payable to the Authority such money as is from time to time appropriated by the Parliament for the purposes of the Authority.
- (2) The Finance Minister may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Authority.

### 139 Money of Authority

- (1) The money of the Authority consists of:
  - (a) money paid to the Authority under section 138; and
  - (ab) money paid to the Authority under section 145; and
  - (ac) money paid to the Authority under section 146 or 147; and
  - (b) any other money, other than trust money, paid to the Authority.
- (2) The money of the Authority is to be applied only:
  - (a) in payment or discharge of the expenses, obligations and liabilities of the Authority arising under this Act; and
  - (b) in payment of remuneration and allowances payable under this Act; and
  - (c) in making any other payments required or permitted to be made by the Authority.
- (3) Subsection (2) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Authority.

**140 Taxation**

The Authority is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

**141 Trust money**

The Authority:

- (a) may receive money from any body or person on trust for application towards a particular purpose consistent with the functions of the Authority; and
- (b) must pay trust money into an account or accounts containing no money other than trust money; and
- (c) must apply or deal with trust money only in accordance with the powers and duties of the Authority as trustee; and
- (d) may only invest trust money:
  - (i) in any manner in which the Authority is authorised to invest the money by the terms of the trust; or
  - (ii) in any manner in which trust money may be lawfully invested.

## Part 6—Miscellaneous

### 142 Documents and samples become Commonwealth property

- (1) All documents and samples given to the Authority for any purpose of this Act or produced to assist the Authority in the consideration of an application or proposal, or in the assessment or review of a resulting food regulatory measure, become, upon being so given or produced, the property of the Commonwealth and may, subject to section 114, be dealt with or disposed of in any manner that the Authority considers appropriate.
- (2) If the Authority publishes, or permits the public inspection of, any document that has become the property of the Commonwealth under subsection (1), no action or proceeding for defamation lies against the Commonwealth, a member of the Board, or a person assisting the Authority, in relation to the publication or public inspection of the document.

### 143 Review of decisions

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal:
  - (a) by an applicant for the development or variation of a standard, for a review of:
    - (i) a decision by the Authority under paragraph 26(1)(b) to reject an application, other than a decision to reject the application because it does not comply with subsection 22(2); or
    - (ii) a decision by the Authority under paragraph 30(1)(b) to reject an application; or
    - (iii) a decision by the Authority under paragraph 47(1)(b) to reject an application, other than a decision to reject the application because it does not comply with subsection 22(2); or



- (iv) a decision by the Authority under paragraph 96(1)(b) to reject an application; or
  - (b) by a person whose interests are affected by one of the following decisions, for a review of that decision:
    - (i) a decision by the Authority under subsection 56(1) to abandon a proposal;
    - (ii) a decision by the Authority under paragraph 60(b) to abandon a proposal;
    - (iii) a decision by the Authority under paragraph 96(2)(b); or
  - (c) for review of a decision under section 112 not to do something.
- (2) In subsection (1), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

#### **144 Statement accompanying notification of decisions**

- (1) Where:
- (a) notice in writing of the making of a decision of a kind referred to in paragraph 143(1)(a) is given to an applicant; or
  - (b) written notice is given that a decision of a kind referred to in paragraph 143(1)(b) has been made;
- that notice must include a statement to the effect that:
- (c) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision:
    - (i) if it is a decision of a kind referred to in paragraph 143(1)(a)—by the applicant; or
    - (ii) if it is a decision of the kind referred to in paragraph 143(1)(b)—by a person whose interests are affected by the decision; and
  - (d) except where subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings of material questions of fact, referring to the evidence or other materials on which those findings were based and giving the reasons for the decision.

Section 145

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- (2) Any failure to comply with a requirement of subsection (1) in relation to a decision does not affect the validity of the decision.

**145 Fees for services provided to New Zealand**

The Authority may charge, for services provided to New Zealand, such fees as are agreed on from time to time between the Authority and the New Zealand lead Minister on the Forum on Food Regulation.

**146 Charges relating to the Authority's costs**

- (1) The regulations may fix charges to be paid to the Authority by a body or person for services and facilities the Authority provides to the body or person.
- (1A) The regulations may also:
- (a) provide for the charge to be paid by instalments; and
  - (b) fix the times at which instalments are due to be paid.
- (2) A charge under subsection (1) must not be such as to amount to taxation.
- (3) This section does not apply to services or facilities that the Authority provides under contract.
- (4) Regulations made for the purposes of this section must not specify New Zealand as a person or body by whom charges are payable.
- (5) Charge under this section may be recovered by the Authority as a debt due to the Authority.
- (6) A charge may be fixed in relation to an application to develop or vary a standard only if:
- (a) the development or variation of the standard would confer an exclusive capturable commercial benefit on the applicant; or
  - (b) the applicant has elected to have the consideration of the application expedited.

- (7) The consideration of an application in relation to which a charge is fixed as mentioned in subsection (6) must not displace the development of, or variation to, any other food regulatory measure in a three year plan.
- (8) For the purposes of subsection (7), a *three year plan* means a three year forward plan of the Authority developed under section 20.

**147 Charge—late payment penalty**

- (1) The regulations may provide that, if any charge under section 146 remains unpaid by the body or person liable after the time when it became due for payment, the body or person is liable to pay to the Authority, by way of penalty, an amount calculated at the rate of:
  - (a) 20% per year; or
  - (b) if the regulations specify a lower percentage—that lower percentage per year;on the amount unpaid computed from that time.
- (2) A penalty under this section may be recovered by the Authority as a debt due to the Authority.

**148 Charge—discount for early payment**

The regulations may make provision for and in relation to discounts for early payment of charge under section 146.

**149 Charge and late payment penalty—remissions and refunds**

- (1) The regulations may make provision for and in relation to the method of working out an amount of refund of charge for the purposes of subsection 24(2).
- (2) The regulations may make provision for and in relation to:
  - (a) the remission or refund, in whole or in part, of charge under section 146 in circumstances specified in the regulations; and

Section 150

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- (b) the remission, in whole or in part, of late payment penalty under section 147 in circumstances specified in the regulations.
- (3) Regulations made for the purposes of subsection (1) or (2) may confer powers on the Authority.

**150 Delegation by Board**

- (1) The Board may, by resolution, delegate to a member of the Board, or to a senior member of the staff of the Authority, all or any of its powers under this Act, other than its powers to act on behalf of the Authority under:
  - (a) paragraph 33(1)(a); or
  - (b) subsection 35(1); or
  - (c) paragraph 41(2)(a); or
  - (d) paragraph 52(1)(a); or
  - (e) paragraph 63(1)(a); or
  - (f) subsection 65(1); or
  - (g) paragraph 69(2)(a); or
  - (h) paragraph 78(1)(a); or
  - (i) subsection 87(2); or
  - (j) subsection 97(1); or
  - (k) subsection 101(1); or
  - (l) subsection 104(2).
- (2) A delegation of a power under this section:
  - (a) may be revoked by resolution of the Board (whether or not constituted by the persons constituting the Board at the time when the power was delegated); and
  - (b) continues in force notwithstanding a change in the membership of the Board.
- (3) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Board were a person.

- (4) A certificate signed by the Chairperson of the Board stating any matter with respect to a delegation of a power under this section is prima facie evidence of that matter.
- (5) A document purporting to be a certificate mentioned in subsection (4) is, unless the contrary is established, taken to be such a certificate and to have been duly given.
- (6) A delegate under this section is, in the exercise of a power delegated under this section, subject to any directions given by the Board.
- (7) In this section:
  - senior member of the staff of the Authority* means:
    - (a) a person who holds or performs the duties of a Senior Executive Service position in the Authority; or
    - (b) a person who holds or performs the duties of an APS Executive Level 2 position, or an equivalent position, in the Authority.

### **151 Exemption from suit**

- (1) No civil or criminal proceeding, and no action or suit of any other kind, lies against any of the following:
  - (a) the Commonwealth;
  - (b) a member of the Board;
  - (c) a person assisting the Authority in the performance of its functions;in relation to any loss or injury directly or indirectly sustained by a person because of the consumption of, or other dealing with, food.
- (1A) No civil or criminal proceeding, and no action or suit of any other kind, lies against any of the following:
  - (a) the Commonwealth;
  - (b) a member of the Board;
  - (c) a person assisting the Authority in the performance of its functions;

## Section 152

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

- (2) In an action against a person in relation to any loss or injury directly or indirectly sustained because of the consumption of, or other dealing with, food, it is not a defence to that action that:
- (a) a standard has come into effect; or
  - (b) a standard has been adopted, or taken to have been adopted, and published;
- in respect of that food and that the food complies with the standard.

### 152 Annual report

- (1) The members must include in each annual report prepared under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period (the **current period**) particulars of:
- (aa) the number of applications that were made under section 22 during the current period; and
  - (ab) the number of applications accepted under subsection 26(1) during the current period; and
  - (ac) the number of applications rejected under subsection 26(1) during the current period and the reasons for the rejections; and
  - (ad) the number of applications withdrawn under subsection 24(1) during the current period; and
  - (ae) the number of applications accepted under subsection 26(1) during the current period that the Authority had not begun to assess under section 29 during the current period; and
  - (af) the number of applications accepted under subsection 26(1) during a previous period that the Authority had not begun to assess under section 29 before the end of the current period; and

- (a) the number of applications that were considered under Subdivision D of Division 1 of Part 3 during the current period; and
- (b) the number of applications that were considered under Subdivision E of Division 1 of Part 3 during the current period; and
- (c) the number of applications that were considered under Subdivision F of Division 1 of Part 3 during the current period; and
- (d) the number of applications that were considered under Subdivision G of Division 1 of Part 3 during the current period; and
- (e) for each of those Subdivisions, the number of applications considered under that Subdivision that were disposed of during the current period and the manner of their disposal; and
- (f) for each of those Subdivisions, the average time taken to dispose of applications during the current period; and
- (fa) the number of applications accepted under subsection 26(1) during a previous period that the Authority had begun to assess under section 29 before the end of the current period, but that the Authority had not disposed of before the end of the current period; and
- (fb) for an application covered by paragraph (fa), the period that has elapsed since the application was accepted under subsection 26(1); and
- (g) the number of applications made during the current period in relation to which a charge under section 146 was payable; and
- (h) the number of applications made during the current period in relation to which no charge under section 146 was payable; and
- (i) the average number of days that elapsed between the acceptance or rejection under section 26 of an application made during the current period in relation to which no charge

Section 152

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- under section 146 was payable, and the commencement of the assessment of the application under section 29; and
- (j) each occasion during the current period on which the consideration period under section 109 elapsed without the Authority completing the procedure that the Authority must, under Subdivision C of Division 1, adopt in considering the application; and
  - (k) each occasion during the current period on which the Authority extended the consideration period under subsection 109(4), and the reasons for that extension; and
  - (ka) the number of applications declared under section 95 to be urgent applications during the current period; and
  - (l) the number of proposals prepared by the Authority under section 55 during the current period; and
  - (la) the number of proposals prepared under section 55 during the current period that the Authority had not begun to assess under section 59 during that period; and
  - (lb) the number of proposals prepared under section 55 during a previous period that the Authority had not begun to assess under section 59 before the end of the current period; and
  - (n) the number of proposals that were disposed of during the current period and the manner of their disposal; and
  - (o) the average time taken to dispose of proposals under each of Subdivisions D, E, F and G of Division 2 of Part 3 during the current period; and
  - (p) the average number of days that have elapsed between the preparation of a proposal under section 55 to which Subdivision G of Division 1 of Part 3 does not apply and the commencement of the assessment of the proposal under section 59; and
  - (pa) the number of proposals prepared under section 55 during a previous period that the Authority had begun to assess under section 59 before the end of the current period, but that the Authority had not disposed of before the end of the current period; and



- (pb) for a proposal covered by paragraph (pa), the period that has elapsed since the proposal was prepared under section 55; and
- (pc) the number of proposals declared under section 95 to be urgent proposals during the current period; and
- (pd) the number of occasions during the current period when the 12 month period referred to in subsection 101(1) ended with no decision having been made under that subsection and the reasons for no decision having been made; and
- (q) the number of applications made to the Administrative Appeals Tribunal during the current period for review of decisions of the Authority; and
- (r) the results of the applications made to the Administrative Appeals Tribunal that were determined during the current period; and
- (ra) the number of draft standards and draft variations approved during the current period under:
  - (i) section 33 or 63; or
  - (ii) section 41 or 69; or
  - (iii) section 52 or 78; or
  - (iv) section 97; and
- (s) the number of standards made during the current period; and
- (ta) the number of variations given to the Authority under subsection 82(6) during the current period; and
- (u) the number of occasions during the current period when requests were made by the Forum on Food Regulation under Division 3 of Part 3 for a review of a draft standard or draft variation; and
- (v) the number of occasions during the current period when a draft standard or draft variation was rejected by the Forum on Food Regulation under Division 3 of Part 3; and
- (w) the number of occasions during the current period when requests were made by the Forum on Food Regulation under Division 4 of Part 3 for a review of a standard or variation; and

Section 152A

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- (x) the number of occasions during the current period when a standard or variation was revoked or amended by the Forum on Food Regulation under Division 4 of Part 3; and
  - (y) a summary of policy guidelines notified to the Authority during the current period; and
  - (z) such other matters (if any) as are specified in the regulations.
- (2) The report may include any other matters that the members consider relevant.

**152A Corporate plans**

Subsection 35(3) of the *Public Governance, Performance and Accountability Act 2013* (which deals with the Australian Government's key priorities and objectives) does not apply to a corporate plan prepared by the members.

**153 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
National Food Authority Act 1991	118, 1991	27 June 1991	19 Aug 1991 (s 2(1) and gaz 1991, No S219)	
Health and Community Services Legislation Amendment Act 1991	211, 1991	24 Dec 1991	s 31: 19 Aug 1991 (s 2(3))	—
National Food Authority Amendment Act 1995	152, 1995	16 Dec 1995	Sch 1: 1 July 1996 (s 2(2) and gaz 1996, No S230)	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (items 191–200) and Sch 4: 1 Jan 1998 (s 2(2))	Sch 4
Australia New Zealand Food Authority Amendment Act (No. 2) 1997	201, 1997	16 Dec 1997	Sch 1 (items 1, 25, 27–40, 42, 43, 46, 48, 49): 6 Feb 1998 (s 2(2) and gaz 1998, No S50) Sch 1 (item 41): 5 Dec 1999 (s 2(4)) Remainder: 16 Dec 1997 (s 2(1))	Sch 1 (items 48, 49)
<b>as amended by</b>				
Australia New Zealand Food Authority Amendment Act 2001	81, 2001	10 July 2001	Sch 2: 16 Dec 1997 (s 2(4))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 164–169): 5 Dec 1999 (s 2(1), (2))	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Sch 10 (item 17): 13 Mar 2000 (s 2(2)(c) and gaz 2000, No S114)	—
Australia New Zealand Food Authority Amendment Act 1999	200, 1999	23 Dec 1999	Sch 1 (item 13): 30 July 1998 (s 2(2)) Remainder: 23 Dec 1999 (s 2(1))	Sch 1 (items 67–70)
Gene Technology (Consequential Amendments) Act 2000	170, 2000	21 Dec 2000	Sch 1 (items 8–12): 22 June 2001 (s 2)	—
Australia New Zealand Food Authority Amendment Act 2001	81, 2001	10 July 2001	Sch 1 (items 1–120, 121–177): 1 July 2002 (s 2(2), (5) and gaz 2002, No GN30) Sch 1 (items 120A, 179–188): 10 July 2001 (s 2(1)(aa), (b)) Sch 1 (item 178): 23 Dec 1999 (s 2(3))	Sch 1 (items 33, 120A, 124, 133, 147, 153, 155, 156, 163, 168, 172–177)
<b>as amended by</b>				
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 2 (item 2): 10 July 2001 (s 2(1) item 31)	—
Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001	111, 2001	17 Sept 2001	s 4 and Sch 1 (items 5, 6): 17 Sept 2001 (s 2)	s 4
National Health and Medical Research Council Amendment Act 2006	50, 2006	9 June 2006	Sch 1 (items 111, 112, 124–143): 1 July 2006 (s 2(1) items 2, 4)	Sch 1 (items 124–143)
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 1 (item 13): 1 July 2002 (s 2(1) item 10)	—

*Food Standards Australia New Zealand Act 1991*

125

Compilation No. 28

Compilation date: 19/6/18

Registered: 21/6/18

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Food Standards Australia New Zealand Amendment Act 2007	98, 2007	28 June 2007	Sch 1 (items 1–71, 74–78): 1 July 2007 (s 2(1) items 2–6) Sch 2: 28 Dec 2008 (s 2(1) item 7) Sch 3 (items 1–9): 6 July 2010 (s 2(1) item 8) Sch 3 (item 10): never commenced (s 2(1) item 9)	Sch 1 (items 77, 78)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (items 49–51, 53, 54, 137): 1 Mar 2010 (s 2(1) items 31, 33, 38) Sch 5 (item 52): 6 July 2010 (s 2(1) item 32)	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 162, 163) and Sch 7: 1 Jan 2011 (s 2(1) items 7, 8)	Sch 7
Food Standards Australia New Zealand Amendment Act 2010	121, 2010	17 Nov 2010	Sch 1 (items 7–39): 1 Mar 2011 (s 2(1) item 2)	Sch 1 (items 20, 39)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 628–633) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 5 (items 1–3, 10, 11): 20 Oct 2012 (s 2(1) item 36)	Sch 5 (items 10, 11)
Health and Other Legislation Amendment Act 2013	111, 2013	29 June 2013	Sch 1 (items 1–17): 30 June 2013 (s 2(1) item 2)	—



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 9 (items 67–87) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Agricultural and Veterinary Chemicals Legislation Amendment (Removing Re-approval and Re-registration) Act 2014	91, 2014	21 July 2014	Sch 2 (items 56–62): 21 July 2014 (s 2(1) item 2)	—

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Act 2016	7, 2016	11 Feb 2016	Sch 1 (items 1–134): 12 Feb 2016 (s 2(1) item 2) Sch 1 (items 135, 136): 30 Nov 2016 (s 2(1) item 3)	Sch 1 (item 134)
Statute Update (Autumn 2018) Act 2018	41, 2018	22 May 2018	Sch 3: 19 June 2018 (s 2(1) item 4)	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
Title .....	am. No. 152, 1995; No. 200, 1999; No. 81, 2001
<b>Part 1</b>	
s. 1 .....	am. No. 152, 1995; No. 81, 2001
s. 3 .....	ad. No. 200, 1999 am. No. 81, 2001
s. 4 .....	am. No. 152, 1995; No. 201, 1997; No. 200, 1999; No. 170, 2000; No. 81, 2001; No. 50, 2006; No. 98, 2007; No. 136, 2012; No 62, 2014; No 7, 2016
s. 5 .....	ad. No. 200, 1999
s. 6 .....	ad. No. 200, 1999 am. No. 98, 2007; No 41, 2018
s. 7 .....	ad. No. 98, 2007 am. No. 8, 2010
s. 8 .....	ad. No. 98, 2007
s. 11 .....	ad. No. 111, 2001
<b>Part 1A</b>	
Part 1A.....	ad No 7, 2016 rep No 7, 2016
11A .....	ad No 7, 2016 rep No 7, 2016
<b>Part 2</b>	
Heading to Part 2 .....	rs. No. 81, 2001; No. 98, 2007
<b>Division 1</b>	
Heading to Div. 1 of Part 2 .....	ad. No. 98, 2007
s. 12 .....	am. No. 152, 1995; No. 81, 2001
Note to s. 12(2).....	ad. No. 152, 1997 rs No 62, 2014
s. 13 .....	am. No. 152, 1995; No. 201, 1997; No. 200, 1999; No. 81, 2001; No. 98, 2007; No. 103, 2010; No. 136, 2012

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 14 .....	am. No. 201, 1997; No. 200, 1999
s. 15 .....	am. No. 152, 1997; No. 98, 2007; No 62, 2014; No 7, 2016
<b>Division 2</b>	
Heading to Div. 2 of Part 2 .....	ad. No. 98, 2007
s. 16 .....	am. No. 200, 1999; No. 81, 2001
Note to s. 16(3) .....	am. No. 98, 2007
s. 17 .....	ad. No. 200, 1999
Heading to s. 18 .....	am. No. 81, 2001
s. 18 .....	am. No. 152, 1995
	rs. No. 200, 1999
	am. No. 81, 2001; Nos. 8 and 98, 2007; No. 8, 2010; No 7, 2016
s. 19 .....	ad. No. 170, 2000
	am. No. 98, 2007
	rep No 7, 2016
<b>Division 3</b>	
Heading to Div. 3 of Part 2 .....	ad. No. 98, 2007
s. 20 .....	ad. No. 200, 1999
	am. No. 98, 2007
<b>Part 3</b>	
Heading to Part 3 .....	rs. No. 200, 1999
<b>Division 1</b>	
Div. 1 of Part 3 .....	ad. No. 81, 2001
	rs. No. 98, 2007
<b>Subdivision A</b>	
Heading to s. 21 .....	am. No. 200, 1999
	rs. No. 81, 2001; No. 98, 2007
s. 21 .....	am. No. 200, 1999
	rs. No. 81, 2001; No. 98, 2007
	am No 7, 2016
<b>Subdivision B</b>	
s. 22 .....	am. No. 152, 1995

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rs. No. 200, 1999; No. 81, 2001; No. 98, 2007
s. 23 .....	am. No. 200, 1999; No. 81, 2001
	rs. No. 81, 2001; No. 98, 2007
	am. No. 111, 2013; No. 41, 2018
s. 24 .....	am. No. 152, 1995
	rs. No. 200, 1999; No. 81, 2001; No. 98, 2007
	am. No. 98, 2007; No. 111, 2013; No. 7, 2016
<b>Subdivision C</b>	
s. 25 .....	am. No. 152, 1995; No. 201, 1997
	rs. No. 200, 1999; No. 81, 2001; No. 98, 2007
	am. No. 98, 2007
<b>Subdivision D</b>	
Heading to s. 26 .....	am. No. 200, 1999
	rs. No. 81, 2001; No. 98, 2007
s. 26 .....	am. No. 200, 1999
	rs. No. 81, 2001; No. 98, 2007
s. 27 .....	am. No. 152, 1995
	rs. No. 200, 1999; No. 81, 2001; No. 98, 2007
	am. No. 111, 2013
Heading to s. 28 .....	am. No. 200, 1999
	rs. No. 81, 2001; No. 98, 2007
s. 28 .....	am. No. 201, 1997
	rs. No. 81, 2001; No. 98, 2007
Heading to s. 29 .....	am. No. 81, 2001
	rs. No. 98, 2007
s. 29 .....	am. No. 81, 2001
	rs. No. 98, 2007
Heading to s. 30 .....	am. No. 81, 2001
	rs. No. 98, 2007
s. 30 .....	am. No. 81, 2001
	rs. No. 98, 2007

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 31 .....	rep. No. 81, 2001 ad. No. 98, 2007
Heading to s. 32 .....	rs. No. 152, 1995 rep. No. 81, 2001 ad. No. 98, 2007
s. 32 .....	am. No. 152, 1995; No. 201, 1997; No. 200, 1999 rep. No. 81, 2001 ad. No. 98, 2007
s. 33 .....	am. No. 200, 1999; No. 81, 2001 rs. No. 98, 2007 am No 98, 2007: No 7, 2016
s. 34 .....	am. No. 201, 1997; No. 200, 1999; No. 81, 2001 rs. No. 98, 2007 am No 7, 2016
s. 35 .....	am. No. 201, 1997; No. 200, 1999; No. 81, 2001 rs. No. 98, 2007 am No 7, 2016
<b>Subdivision E</b>	
s. 36 .....	am. No. 152, 1995; No. 201, 1997; No. 200, 1999; No. 81, 2001 rs. No. 98, 2007
s. 37 .....	am. No. 200, 1999 rep. No. 81, 2001 rs. No. 98, 2007
Heading to s. 38 .....	rs. No. 152, 1995; No. 98, 2007
s. 38 .....	am. No. 152, 1995; No. 146, 1999 rs. No. 98, 2007
s. 39 .....	ad. No. 98, 2007
s. 40 .....	ad No 98, 2007
s. 41 .....	ad No 98, 2007 am No 7, 2016

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision F</b>	
s. 42 .....	ad. No. 98, 2007
s. 43 .....	ad. No. 98, 2007
s. 44 .....	ad. No. 98, 2007
s. 45 .....	ad. No. 98, 2007
<b>Subdivision G</b>	
s. 46 .....	ad. No. 98, 2007
s. 47 .....	ad. No. 98, 2007
s. 48 .....	ad. No. 98, 2007 am. No. 111, 2013
s. 49 .....	ad. No. 98, 2007
s. 50 .....	ad. No. 98, 2007 am No 7, 2016
s. 51 .....	ad. No. 98, 2007
s. 52 .....	ad. No. 98, 2007
s. 53 .....	ad. No. 98, 2007 am No 7, 2016
<b>Division 2</b>	
Heading to Div. 1 of Part 3 .....	rs. No. 200, 1999
Renumbered Div. 2 .....	No. 81, 2001
Heading to Div. 2 of Part 3 .....	rs. No. 98, 2007
Div. 2 of Part 3.....	rs. No. 98, 2007
<b>Subdivision A</b>	
s. 54 .....	ad. No. 98, 2007 am No 121, 2010; No 7, 2016
<b>Subdivision B</b>	
s. 55 .....	ad. No. 98, 2007
s. 56 .....	ad. No. 98, 2007 am. No. 98, 2007; No 7, 2016
<b>Subdivision C</b>	
s. 57 .....	ad. No. 98, 2007

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am. No. 98, 2007; No. 121, 2010
<b>Subdivision D</b>	
s. 58 .....	ad. No. 98, 2007
s. 59 .....	ad. No. 98, 2007
	am No 7, 2016
s. 60 .....	ad. No. 98, 2007
s. 61 .....	ad. No. 98, 2007
s. 62 .....	ad. No. 98, 2007
s. 63 .....	ad. No. 98, 2007
	am No 98, 2007; No 7, 2016
s. 64 .....	ad. No. 98, 2007
	am No 7, 2016
s. 65 .....	ad. No. 98, 2007
	am No 7, 2016
<b>Subdivision E</b>	
s. 66 .....	ad. No. 98, 2007
	am. No. 121, 2010
s. 67 .....	ad. No. 98, 2007
s. 68 .....	ad. No. 98, 2007
s. 69 .....	ad. No. 98, 2007
	am No 7, 2016
<b>Subdivision F</b>	
s. 70 .....	ad. No. 98, 2007
	am. No. 121, 2010
s. 71 .....	ad. No. 98, 2007
s. 72 .....	ad. No. 98, 2007
s. 73 .....	ad. No. 98, 2007
<b>Subdivision G</b>	
s 74 .....	ad. No. 98, 2007
s 75 .....	ad No 98, 2007
s 76 .....	ad No 98, 2007

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am No 7, 2016
s 77 .....	ad No 98, 2007
s 78 .....	ad No 98, 2007
s 79 .....	ad No 98, 2007
	am No 7, 2016
Subdiv. H of Div. 2 of..... Part 3	rep. No. 121, 2010
<b>Division 2A</b>	
Div. 2A of Part 3.....	ad. No. 121, 2010
s. 80 .....	ad. No. 98, 2007
	rs. No. 121, 2010
	am No 91, 2014
s. 81 .....	ad. No. 98, 2007
	rs. No. 121, 2010
	am No 91, 2014
s. 82 .....	ad. No. 98, 2007
	rs. No. 121, 2010
	am No 7, 2016; No 41, 2018
s. 83 .....	ad. No. 98, 2007
	rs. No. 121, 2010
<b>Division 3</b>	
Division 3 heading.....	rs No 7, 2016
Division 3 .....	ad. No. 81, 2001
	rs. No. 98, 2007
s. 84 .....	ad. No. 98, 2007
	am. No. 98, 2007
	rs. No. 98, 2007
	am No 91, 2014; No 7, 2016
s. 85 .....	ad. No. 98, 2007
	rs. No. 98, 2007
	am No 7, 2016

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 86 .....	ad. No. 98, 2007 rs. No. 98, 2007 am No 8, 2010; No 7, 2016
s 87 .....	ad No 98, 2007 rs. No. 98, 2007 am No 8, 2010; No 7, 2016
s. 88 .....	ad. No. 98, 2007 am No 7, 2016
s. 89 .....	ad. No. 98, 2007 am No 7, 2016
s. 90 .....	ad. No. 98, 2007 am No 7, 2016
s. 91 .....	ad. No. 98, 2007 am. No. 8, 2010; No 7, 2016
s. 92 .....	ad. No. 98, 2007 am. No. 8, 2010; No 7, 2016
s. 93 .....	ad. No. 98, 2007
s. 94 .....	ad. No. 98, 2007 rs No 41, 2018
<b>Division 4</b>	
Division 4 .....	ad. No. 81, 2001 rs. No. 98, 2007
<b>Subdivision A</b>	
s. 95 .....	ad. No. 98, 2007 am. No. 98, 2007; No. 121, 2010; No. 111, 2013; No 7, 2016
s. 96 .....	ad. No. 98, 2007 am No 7, 2016
s. 97 .....	ad. No. 98, 2007 am No 7, 2016; No 41, 2018
<b>Subdivision B</b>	
s 98 .....	ad. No. 98, 2007

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 99 .....	ad. No. 98, 2007
s 100 .....	ad. No. 98, 2007
s 101 .....	ad. No. 98, 2007 am No 7, 2016
s 102 .....	ad. No. 98, 2007 am No 7, 2016
s 103 .....	ad. No. 98, 2007 am No 7, 2016
s 104 .....	ad. No. 98, 2007 am No 7, 2016
s. 105 .....	ad. No. 98, 2007 rep. No. 98, 2007
s. 106 .....	ad. No. 98, 2007 am. No. 98, 2007; No. 8, 2010; No 7, 2016; No 41, 2018
<b>Division 5</b>	
Heading to Div. 6 of Part 3 .....	rep. No. 98, 2007
Heading to Div. 5 of Part 3 .....	ad. No. 98, 2007
s. 107 .....	ad. No. 98, 2007
s. 108 .....	ad. No. 98, 2007 am. No. 98, 2007; No. 111, 2013
s. 109 .....	ad. No. 98, 2007 am. No. 98, 2007; No. 111, 2013; No 7, 2016
s. 110 .....	ad. No. 98, 2007 am. No. 98, 2007; No. 111, 2013; No 7, 2016
s. 111 .....	ad. No. 98, 2007 am. No. 98, 2007
s. 112 .....	ad. No. 98, 2007 am. No. 98, 2007; No. 46, 2011; No 7, 2016
<b>Division 6</b>	
Heading to Div. 3 of Part 3	
Renumbered Div. 6 .....	No. 81, 2001

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Heading to Div. 6 of Part 3 .....	rs. No. 98, 2007
s. 113 .....	ad. No. 98, 2007 am No 7, 2016
s. 114 .....	am. No. 152, 1995; No. 201, 1997; Nos. 146 and 200, 1999; No. 81, 2001; No. 98, 2007
<b>Part 4</b>	
Heading to Part 4 .....	rs. No. 201, 1997; No. 81, 2001
<b>Division 1</b>	
Heading to Div. 1 of Part 4 .....	ad. No. 201, 1997 rs. No. 81, 2001
s. 115 .....	ad. No. 81, 2001
s. 116 .....	am. No. 152, 1995; No. 201, 1997; No. 81, 2001; No. 50, 2006; No. 98, 2007; No 7, 2016
s. 117 .....	am. No. 81, 2001
s. 118 .....	am. No. 81, 2001; No. 98, 2007; No 7, 2016
s. 119 .....	am. No. 152, 1995; No. 81, 2001
s. 121 .....	am. No. 81, 2001; No. 46, 2011
s. 122 .....	am. No. 81, 2001
s. 123 .....	am. No. 81, 2001
s. 124 .....	am. No. 81, 2001; No. 98, 2007
s. 125 .....	am. No. 152, 1997; No. 81, 2001; No. 98, 2007; No. 8, 2010; No 62, 2014
s. 127 .....	am. No. 152, 1997; No. 156, 1999; No. 81, 2001; No. 98, 2007; No 62, 2014
<b>Division 2</b>	
Division 2 .....	ad. No. 201, 1997
s. 128 .....	ad. No. 201, 1997 am. No. 81, 2001; No 7, 2016
s. 129 .....	ad. No. 201, 1997 am. No. 81, 2001; No. 98, 2007
s. 130 .....	ad. No. 201, 1997
s. 131 .....	ad. No. 201, 1997

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am. No. 81, 2001
s. 132 .....	ad. No. 201, 1997
	am. No. 81, 2001
s. 133 .....	ad. No. 201, 1997
	am. No. 81, 2001
s. 134 .....	ad. No. 201, 1997
	am. No. 81, 2001; No. 46, 2011
<b>Division 3</b>	
Heading to Div. 3 of Part 4 .....	ad. No. 201, 1997
	rs. No. 98, 2007
s. 135 .....	am. No. 201, 1997; No. 146, 1999
s. 136 .....	am. No. 201, 1997
s. 137 .....	ad. No. 98, 2007
<b>Part 5</b>	
s. 138 .....	am. No. 136, 2012
s. 139 .....	am. No. 152, 1995; No. 152, 1997; No. 200, 1999; No. 98, 2007; No 62, 2014
s. 141 .....	am. No. 152, 1997; No 62, 2014
<b>Part 6</b>	
s. 142 .....	am. No. 201, 1997; No. 81, 2001; No. 98, 2007
s. 143 .....	am. No. 201, 1997; No. 200, 1999; No. 81, 2001; No. 98, 2007
s. 144 .....	am. No. 152, 1995; No. 200, 1999; No. 98, 2007
s. 145 .....	ad. No. 152, 1995
	am. No. 201, 1997; No. 81, 2001; No 7, 2016
s. 146 .....	am. No. 152, 1995
	rs. No. 200, 1999
	am. No. 81, 2001; No. 98, 2007; No. 121, 2010; No. 111, 2013
s. 147 .....	ad. No. 200, 1999
	am. No. 98, 2007
s. 148 .....	ad. No. 200, 1999
	am. No. 98, 2007

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 149 .....	ad. No. 200, 1999 am. No. 98, 2007
s. 150 .....	rs. No. 81, 2001 am. No. 98, 2007
s. 151 .....	am. No. 201, 1997; No. 200, 1999; No. 81, 2001; No. 98, 2007
s. 152 .....	am. No. 152, 1997; No. 200, 1999; No. 81, 2001 rs. No. 98, 2007 am. No. 98, 2007; No. 121, 2010; No. 111, 2013; No 62, 2014; No 7, 2016
s 152A.....	ad No 62, 2014

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**Endnote 5—Miscellaneous****Repeal table**

The amendment history of the repealed provisions of the *Food Standards Australia New Zealand Act 1991* up to and including *Food Standards Australia New Zealand Amendment Act 2007* (No. 98, 2007) appears in the table below.

<b>Provision affected</b>	<b>How affected</b>
s. 11A (2nd occurring) .....	ad. No. 81, 2001 rep. No. 98, 2007
s. 11B.....	ad. No. 81, 2001 rep. No. 98, 2007
Heading to s. 12 .....	am. No. 200, 1999 rep. No. 98, 2007
s. 12 .....	am. No. 201, 1997; No. 200, 1999; No. 81, 2001 rep. No. 98, 2007
Note to s. 12(2).....	ad. No. 201, 1997 am. No. 200, 1999 rep. No. 98, 2007
s. 12AA.....	ad. No. 81, 2001 rep. No. 98, 2007
s. 12A.....	ad. No. 201, 1997 rs. No. 200, 1999 am. No. 81, 2001 rep. No. 98, 2007
s. 12B.....	ad. No. 200, 1999 am. No. 81, 2001 rep. No. 98, 2007
Heading to s. 13 .....	am. No. 81, 2001 rep. No. 98, 2007
s. 13 .....	am. No. 201, 1997 rs. No. 200, 1999

## Endnotes

### Endnote 5—Miscellaneous

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<b>Provision affected</b>	<b>How affected</b>
	am. No. 81, 2001
	rep. No. 98, 2007
Heading to s. 13A .....	am. No. 81, 2001
	rep. No. 98, 2007
s. 13A.....	ad. No. 200, 1999
	am. No. 81, 2001
	rep. No. 98, 2007
Heading to s. 14 .....	am. No. 81, 2001
	rep. No. 98, 2007
s. 14 .....	am. No. 152, 1995
	rs. No. 200, 1999
	am. No. 81, 2001
	rep. No. 98, 2007
s. 14A.....	ad. No. 81, 2001
	rep. No. 98, 2007
Heading to s. 15 .....	am. No. 81, 2001
	rep. No. 98, 2007
s. 15 .....	rs. No. 200, 1999
	am. No. 81, 2001
	rep. No. 98, 2007
s. 15AA.....	ad. No. 81, 2001
	rep. No. 98, 2007
Heading to s. 15A .....	am. No. 81, 2001
	rep. No. 98, 2007
s. 15A.....	ad. No. 200, 1999
	am. No. 81, 2001
	rep. No. 98, 2007
s. 15B.....	ad. No. 81, 2001
	rep. No. 98, 2007
Heading to s. 16 .....	am. No. 81, 2001
	rep. No. 98, 2007

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## Endnote 5—Miscellaneous

<b>Provision affected</b>	<b>How affected</b>
s. 16 .....	am. No. 152, 1995 rs. No. 200, 1999 am. No. 81, 2001 rep. No. 98, 2007
Heading to s. 17 .....	am. No. 81, 2001 rep. No. 98, 2007
s. 17 .....	am. No. 152, 1995; No. 201, 1997 rs. No. 200, 1999 am. No. 81, 2001 rep. No. 98, 2007
s. 17AA.....	ad. No. 81, 2001 rep. No. 98, 2007
s. 17A.....	ad. No. 200, 1999 rep. No. 98, 2007
s. 17AB.....	ad. No. 81, 2001 rep. No. 98, 2007
s. 17B.....	ad. No. 200, 1999 am. No. 81, 2001 rep. No. 98, 2007
Heading to s. 18 .....	am. No. 200, 1999 rs. No. 81, 2001 rep. No. 98, 2007
s. 18 .....	am. No. 200, 1999 rs. No. 81, 2001 rep. No. 98, 2007
Heading to s. 19 .....	am. No. 81, 2001 rep. No. 98, 2007
s. 19 .....	am. No. 152, 1995 rs. No. 200, 1999 am. No. 81, 2001 (as am. by No. 63, 2002) rep. No. 98, 2007

## Endnotes

### Endnote 5—Miscellaneous

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<b>Provision affected</b>	<b>How affected</b>
Heading to s. 20 .....	am. No. 200, 1999 rs. No. 81, 2001 rep. No. 98, 2007
s. 20 .....	am. No. 201, 1997 rs. No. 81, 2001 rep. No. 98, 2007
Div. 1A of Part 3 .....	ad. No. 200, 1999 rep. No. 81, 2001
ss. 20A–20D .....	ad. No. 200, 1999 rep. No. 81, 2001
Heading to Div. 2 of Part 3 .....	rs. No. 200, 1999 rep. No. 81, 2001
Div. 2 of Part 3 .....	rep. No. 81, 2001
s. 23A .....	ad. No. 81, 2001 rep. No. 98, 2007
Div. 5 of Part 3 .....	ad. No. 81, 2001 rep. No. 98, 2007
s. 25A .....	ad. No. 200, 1999 rep. No. 81, 2001
Div. 2A of Part 3 .....	ad. No. 200, 1999 rep. No. 81, 2001
ss. 28A–28D .....	ad. No. 200, 1999 rs. No. 81, 2001 rep. No. 98, 2007
s. 30A .....	ad. No. 200, 1999 am. No. 81, 2001 rep. No. 98, 2007
s. 30B .....	ad. No. 200, 1999 rep. No. 98, 2007
s. 36A .....	ad. No. 201, 1997 am. No. 200, 1999; No. 81, 2001

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## Endnote 5—Miscellaneous

<b>Provision affected</b>	<b>How affected</b>
	rep. No. 98, 2007
s. 42 .....	am. No. 152, 1995; No. 201, 1997; No. 200, 1999
	rep. No. 81, 2001
s. 56 .....	rep. No. 152, 1997
s. 59 .....	rep. No. 152, 1997
s. 61 .....	am. No. 81, 2001
	rep. No. 98, 2007
s. 65 .....	rep. No. 111, 2001
s. 71 .....	am. No. 211, 1991
	rep. No. 200, 1999

## Endnotes

### Endnote 5—Miscellaneous

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#### Renumbering table

The renumbering of provisions of the *Food Standards Australia New Zealand Act 1991*, made by the *Food Standards Australia New Zealand Amendment Act 2007* (No. 98, 2007) appears in the table below.

<b>Old number</b>	<b>New number</b>	<b>Old number</b>	<b>New number</b>
Section	Section	43	118
1	1	44	119
2	2	45	120
2A	3	46	121
3	4	47	122
3A	5	48	123
3B	6	49	124
3C	7	50	125
3D	8	51	126
4	9	52	127
5	10	52A	128
5A	11	52B	129
6	12	52C	130
7	13	52D	131
8	14	52E	132
(11) 8A	15	52F	133
9	16	52G	134
9A	17	53	135
10	18	54	136
(11A) 10A	19	55	138
(10A) 10B	20	57	139
39	114	58	140
39A	115	60	141
40	116	62	142
41	117	63	143

## Endnote 5—Miscellaneous

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<b>Old number</b>	<b>New number</b>	<b>Old number</b>	<b>New number</b>
64	144	66C	149
65A	145	67	150
66	146	68	151
66A	147	69	152
66B	148	70	153

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