

1995

THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL FOOD AUTHORITY AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

Circulated by authority of the
Minister for Human Services and Health

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OUTLINE

The National Food Authority Amendment Bill 1995 amends the *National Food Authority Act 1991* (the Act) to establish a joint system for developing food standards between Australia and New Zealand. This system is based upon the existing Australian arrangements which involve the States and the Territories adopting by reference and without amendment food standards that are developed by the National Food Authority, adopted by a Ministerial council known as the National Food Standards Council (NFSC), and published in the Gazette. These arrangements are formalised in a Commonwealth, State and Territory Agreement on the adoption of uniform food standards signed by heads of government in 1991 (the 1991 Agreement).

Under the proposed Australia New Zealand food standards system, New Zealand will also adopt by reference and without amendment standards developed by the Authority and adopted by the NFSC, which is to be renamed the Australia New Zealand Food Standards Council and reconstituted so that New Zealand is a full voting member. The Authority will also be renamed the Australia New Zealand Food Authority and reconstituted to include two members (out of seven) nominated by New Zealand. The Authority's Advisory Committee established under the Act will also be renamed.

The process by which the Authority assesses applications and proposals for the variation of a food standard or the development of a new food standard is set out in Part 3 of the Act. This process is consultative, involving publication of notices in the Gazette and in a newspaper circulating nationally. The Authority, under the Australia New Zealand food standards system, will publish similar notices in the New Zealand Gazette and in a newspaper in New Zealand. Food standards are collated into a document which is to become known as the Australia New Zealand Food Standards Code.

The development of the Australia New Zealand food standards system involves minimal disruption to the existing Australian arrangements. In particular, the adoption in Australia of standards developed by the Australia New Zealand Food Authority will continue to be the responsibility of the States and Territories under the 1991 Agreement.

FINANCIAL IMPACT

There are no costs associated with the Bill as New Zealand has agreed to pay its share of the costs of the joint Australia New Zealand food standards system. The Authority is to be given power to receive money directly from the Government of New Zealand in this respect.

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NOTES ON CLAUSES

Clauses 1 and 2

1. The first two clauses of the Bill provide for the short title and commencement of the legislation. These two clauses come into effect on the day the Bill receives Royal assent, with the remaining provision and the amendments specified in the Schedules coming into effect on a day to be fixed by Proclamation. The date of proclamation is to be the date the proposed Agreement with New Zealand in relation to the establishment of a joint food standards system enters into effect. If the Act is not proclaimed to commence within 12 months of the date on which the Bill receives Royal assent, subclause 2(3) provides that the Act is repealed.

Clause 3: Schedules

This clause provides that the *National Food Authority Act 1991* is amended in accordance with Schedule 1, and the *Agricultural and Veterinary Chemicals Act 1994* and the *Imported Food Control Act 1992* are amended in accordance with Schedule 2.

Schedule 1 - Amendments to the National Food Authority Act 1991

Clauses 1 and 2

These clauses amend the title and short title of the *National Food Authority Act 1991* (the Act) to refer to the Australia New Zealand Food Authority (the Authority).

Clauses 3 and 4

Appropriate government agencies are agencies which the Authority must consult in developing food standards or variations to food standards. These clauses provide that the New Zealand Ministry of Health (as the NZ agency primarily responsible for public health) is such a agency, together with any other New Zealand Department of State nominated by New Zealand or any other New Zealand agency prescribed in the regulations.

Clause 5

This clause updates the definition of the Ministerial council to refer to its new name, the Australia New Zealand Food Standards Council.

Clause 6

This clause updates the definition of the Food Standards Code to refer to its new name, the Australia New Zealand Food Standards Code.

Clause 7

This clause updates the definition of the Authority's advisory committee, the National Food Authority Advisory Committee, to refer to its new name, the Australia New Zealand Food Authority Advisory Committee.

Clause 8

A new definition for the Australia New Zealand Food Standards Code is inserted by clause 9 of Schedule 1. This clause omits the old definition.

Clause 9

This clause inserts new definitions for the "Australia New Zealand Food Standards Code", "Chief Officer", "New Zealand authority" and "New Zealand standard". The definition for Chief Officer is moved from section 39 of the Act so that it may have more general application.

Clause 10

The clause rewrites subsection 3(2) of the Act which deals with references to the Authority. The effect of the amendment, apart from textual clarifications, is to incorporate the changes to the composition of the Authority arising from the inclusion of the two New Zealand members.

Clause 11

This clause renames the National Food Authority as the Australia New Zealand Food Authority.

Clause 12

This clause provides that any industry codes of practice developed by the Authority can be used in New Zealand as part of the joint food standards system.

Clause 13

This clause amends one of the objectives to which the Authority has regard in developing food standards. The objectives are listed in order of priority with the protection of public health and safety foremost. The objective amended is the lowest ranked, being the promotion of consistency between domestic and international food standards where these are at variance, providing it does not lower the Australian standard. The proviso to this objective, relating to lowering the Australian standard, is to be deleted.

As the objective in question is the lowest ranked in priority, alignment with international standards will not occur if any of the higher ranked objectives (public health and safety, the provision of information to consumers, the promotion of fair trading and the promotion of trade and commerce) would be compromised. The removal of the proviso on the other hand is seen by New Zealand to be an essential element of the Australia New Zealand food standards system as it discriminates against New Zealand and potentially creates problems in relation to international trading obligations such as those under the Agreement establishing the World Trade Organization.

Clauses 14 to 21

These clauses require the Authority to publish notices about its food standards assessments in the New Zealand Gazette and in a newspaper in New Zealand. The clauses are equivalent to existing provisions in the Act which require publication in the Commonwealth of Australia Gazette and in a newspaper with national circulation. While the amendment only requires publication in one New Zealand newspaper, it is anticipated that a national coverage will be obtained, if necessary by publishing the notices in a number of newspapers.

Clauses 22 and 23

This clause requires the Authority to publish amendments to the Australia New Zealand Food Standards Code, together with a date of effect, in the New Zealand Gazette. The Act already provides for publication in the Commonwealth of Australia Gazette.

Clause 24

This clause deals with another notice published by the Authority in the Gazette and in an Australian newspaper, and again requires equivalent publication in New Zealand.

Clause 25

Section 38 of the Act provides for the arrangement of secondments from Governmental agencies to the Authority. The clause amends the section to provide for equivalent secondments from New Zealand bodies and agencies.

Clause 26

Section 39 of the Act deals with confidential commercial information, and provides for a limited disclosure of such information for the purposes of arrangements made under section 38. Amendments are made to refer to arrangements made under section 38 with New Zealand bodies and agencies.

Clause 27

The definition of Chief Officer has been moved to the interpretation section of the Act (see clause 9).

Clause 28

This clause provides for 2 members of the Australia New Zealand Food Authority to be appointed by the Australian Minister on the nomination of the New Zealand Government. The other 5 members of the Authority, including the Chairperson, will continue to be appointed under the existing arrangements of the Act.

Clause 29

This clause renames the National Food Authority Advisory Committee as the Australia New Zealand Food Authority Advisory Committee (ANZFAAC).

Clause 30

This clause provides for matters to be referred to the ANZFAAC by New Zealand.

Clause 31 ,32 and 34

These clauses correct typographical errors in the Act.

Clauses 33 and 35

These clauses provide that remuneration is not payable to New Zealand members of the Authority or of committees of the Authority who are full time public servants in New Zealand. This provision is equivalent to provisions in the current Act which apply to Commonwealth, State and Territory public servants.

Clause 36

This clause provides that the money of the Authority includes any money paid to the Authority by New Zealand in respect of the Australia New Zealand standards setting system.

Clause 37

This clause deals with a notice published by the Authority in the Gazette and in an Australian newspaper. The notice relates to appeal rights. The clause requires such notices to be published also in New Zealand.

Clauses 38 and 39

These clauses provide that the Chairperson of the Authority can agree with the relevant New Zealand Minister with respect to the fees for services provided to New Zealand under the Australia New Zealand food standards system, and that such fees are paid to the Authority (see clause 36 above) rather than paid to the Consolidated Revenue Fund. This implements the New Zealand contribution to the operation of the joint standards system.

Schedule 2 - Consequential Amendments

Schedule 2 makes consequential amendments to the *Agricultural and Veterinary Chemicals Act 1994* and the *Imported Food Control Act 1992* to update references in those Acts to the Authority and the Food Standards Code.



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