

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Family Services,
the Hon. Dr Michael Wooldridge, MP)



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
JANUARY 1, 1997

AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 1996

OUTLINE

The Australia New Zealand Food Authority Amendment Bill 1996 (the Bill) makes amendments to the *Australia New Zealand Food Authority Act 1991* (the ANZFA Act) which will enable it to overcome three main deficiencies within the current legislation which prevent the Authority having the capacity to plan, manage or prioritise its work load:

Firstly, the Authority has no control over the number of applications which it is legally bound to handle at any one time. As resources must be provided for the processing of each of those applications, the Authority is placed in the invidious situation of either compromising the quality of the assessment of each application, or breaching its statutory obligation to finalise applications within 12 months;

Secondly, the Authority is obliged to utilise available resources on a 'first come - first served' basis so preventing it from taking into account the relative importance or value of each application (according to the objectives set out under section 10 of the Act);

Thirdly, the Authority's obligation to assess each application individually means that the Authority is required to make variations to the Code on a fragmented, one by one basis in response to individual applications which generally only benefit a particular sector of industry. This in turn prevents the Authority from undertaking more comprehensive and thorough reviews of groupings of standards. These reviews of groupings of standards are urgently needed to make the Code less prescriptive, easier to use and more consistent.

The amendments in this Bill will overcome these deficiencies by enabling the Authority to establish a three-year Standards Review Work Program. This work program will set priorities for food standards review over the next three years and will be agreed to and supported by the food industry, the States, Territories and New Zealand. Development of this work program will involve agreement from stakeholders as to which health and safety, consumer protection, industry and international harmonisation issues require priority over the next three years.

This Bill contains amendments to implement this work program by enabling the Authority to:

assess applications which are within the work program at no charge to the applicant by having regulations under the ANZFA Act exempt certain applications, including classes of applications, from charges; and

delay assessing applications which are outside the work program until payment of appropriate charges, the amount of which will be directly related to the Authority's costs of assessing that application.

The ANZFA Act already permits charges to be imposed by regulations in relation to the processing of applications. At present there are no regulations which prescribe such charges. These amendments will enable any charges prescribed in regulations made under section 66 to be paid directly to the Authority. Regulations will also detail any conditions for waiver, remittance or refund of those charges.

FINANCIAL IMPACT

There are no costs associated with this Bill. The Authority will be able to take on additional food standards work on a partial cost recovery basis. These amendments will also enable the Authority to meet its statutory obligations by ensuring that its appropriated resources are spent on issues of greatest priority to its stakeholders.

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NOTES ON CLAUSES

Clauses 1 and 2

The first two clauses of the Bill provide for the short title and commencement of the legislation. The Act will come into effect on the day it receives Royal Assent.

Clause 3

This clause provides that the *Australia New Zealand Food Authority Act 1991* (the ANZFA Act) is amended in accordance with Schedule 1.

Schedule 1 - Amendments to the Australia New Zealand Food Authority Act 1991

Item 1

This item requires any application for the development or variation of a standard in the Food Standards Code to be accompanied by a charge in relation to the making of a preliminary assessment of the application and in relation to giving notices under section 14 of the ANZFA Act.

A charge will only be required once regulations made under the ANZFA Act specify the amount of the charge and the class of applications, if it will not be all applications, to which the charges will apply.

Item 2

This item will require the Authority to refund any charge received in relation to publication of the notices under section 14 of the ANZFA Act, if the Authority rejects an application. In such cases, the Authority does not publish any notices. The refund is to be made as soon as practicable once any avenues of appeal open to the applicant have been exhausted.

If the Authority's decision to reject the application is replaced, by a court or tribunal of appeal, with a decision to accept the application and therefore to publish the notices under section 14 of the ANZFA Act, the Authority is not required to refund any of the charge.

Items 3 and 4

These items direct the Authority to not undertake a full assessment of an application unless the prescribed charge, in relation to making a full assessment, giving notices under sections 16 or 17 of the ANZFA Act, and preparing of a draft standard or a draft variation to a standard as the case may be, has been paid to the Authority.

Item 5

This Item requires the Authority to refund any charge received in relation to preparation of a draft standard or variation to a standard if the Authority has rejected the application. In such cases, no draft standard or variation is prepared by the Authority. The refund is to be made as soon as practicable once any avenues of appeal open to the applicant have been exhausted.

If the Authority's decision to reject the application is replaced, by a court or tribunal of appeal, with a decision to prepare a draft standard or variation to a standard, the Authority is not required to refund any of the charge.

Item 6

The Authority must make a recommendation to the Australia New Zealand Food Standards Council in relation to an application within 12 months of receiving that application. This period may be extended by a period of 6 months maximum if required. This item provides that any time taken by the applicant to pay charges as they become due is not to be included within this prescribed time limit for assessing the application.

Item 7

This item extends the types of money which the Authority can receive to include all charges prescribed in the regulations. Charges are to be paid directly to the Authority. Expenditure of this money will continue to be required to be in accordance with estimates of expenditure approved by the Minister.

Item 8

This item repeals the existing power for regulations under the ANZFA Act to impose fees for services provided by the Authority, and replaces it with a broader power for the regulations to impose charges for services and facilities provided by the Authority, and any other matter in relation to which the Authority incurs expense.

The regulations can also prescribe the persons and bodies by whom the charges are payable and the times when such charges are payable. Charges prescribed in the regulations must be reasonably related to the expense incurred by the Authority and must not amount to taxation. The regulations can deal with the remission or refund of charges, in whole or in part. The regulations can also give the Authority powers in relation to remitting or refunding charges.

The revised section also clarifies that regulations do not need to specify a charge where the Authority is providing a service or facility by contract.

