

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL FOOD AUTHORITY BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Aged, Family and  
Health Services the Honourable Peter Staples, MP)

## NATIONAL FOOD AUTHORITY BILL 1991

### OUTLINE

The Bill gives effect to some aspects of the major reform to the food regulation system in Australia that was announced after the special Premiers' Conference on Commonwealth-State Relations held in October 1990.

The major reforms agreed at the Premiers' Conference were that uniform food standards would apply across the nation and be regulated by a National Food Authority. The purpose of the reformed system is to achieve the substantial efficiencies in food production and distribution to be gained from uniform food standards throughout Australia. While public health and safety will remain the prime objective of food standards, in developing new food standards the Authority will also seek to promote, as far as possible, consistency between domestic and overseas food standards in recognition of the benefits to be gained from increased international harmonisation.

The Bill will establish the National Food Authority as an independent statutory authority and makes provision for its membership, staffing, function and powers. It also sets out the process by which food standards will be developed and sets a timeframe within which an application for a food standard will be finalised.

A feature of the Bill is that it provides for the National Food Authority to involve industry and consumers in the development of food standards - public hearings will be held on the more important issues.

Other aspects of the reform agreed to by the Premiers' Conference are the subject of a formal agreement between Heads of Government. This agreement essentially provides that each State and Territory will adopt by reference the food standards developed by the National Food Authority and endorsed by a majority of the members of the National Food Standards Council. This Council comprises the Minister of each State and Territory responsible for food issues.



FINANCIAL IMPACT STATEMENT

The bringing together of the administrative responsibility for domestic food standards and imported food risk assessment from various portfolios into one authority will bring about efficiencies.

The expanded functions of a national body responsible for a broad range of food issues, the tight time restraints for finalising applications for new standards and the need to review all existing food standards for conformity with the objectives for food standards proposed in the Bill will involve a modest additional resource commitment.

However, this increase in expenditure should be viewed against the significant efficiency gains to industry in the production and distribution of food and consequently cost minimisation to consumers.

NATIONAL FOOD AUTHORITY BILL 1991

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

Provides for the Act to be cited as the National Food Authority Act 1991.

Clause 2 - Commencement

Provides that the Act shall come into operation 6 months after the day on which it receives royal assent or on such earlier date as is fixed by proclamation.

Clause 3 - Interpretation

This clause defines various terms for the purposes of this Act.

Sub-clause (2) provides that throughout the Act any reference to the National Food Authority must be read as a reference to any members of the Authority who have been appointed for the particular purpose under consideration as well as members who have term appointments.

Clause 40 of the Bill allows the Minister to appoint a core membership of five persons for periods of up to 5 years plus other members for special purposes. Those special purpose members constitute part of the Authority only when that specific purpose is under consideration and are not entitled to, for example, vote or be included as part of the meeting quorum in respect of other issues.

Clause 4 - Operation of Act

This clause refers to constitutional powers in respect of the establishment and operation of the Authority.

Under an Agreement between the Heads of Government of the Commonwealth and all States and the Territories, the food standards developed by the National Food Authority will be adopted by each State and Territory for the purposes of ensuring the safety of all food within its jurisdiction.

Clause 5 - Act to bind the Crown

The clause provides that the Act binds the Crown in respect of the Commonwealth, States and Territories except that the Crown is not liable to prosecution.

PART 2 - ESTABLISHMENT, FUNCTIONS AND POWERS OF AUTHORITY

Clause 6 - Establishment of the Authority

The clause formally establishes the National Food Authority as a legal entity.

Clause 7 - Functions

This clause sets out the functions of the National Food Authority.

The principal function as set out in the clause would be to develop and review standards relating to the food available in Australia for consideration by the National Foods Standards Council and adoption by the States.

The National Food Standards Council was established by the Agreement between the Commonwealth, all States and the Northern Territory and comprises the Minister from each jurisdiction responsible for food issues. [ A new agreement is being negotiated which would include the Australian Capital Territory.]

The matters that may be included in a food standard relate to the protection of health and safety and the provision of information about food so that consumers can make informed choices.

Ancillary functions intended to be authorised by the Act would include:-

- \* surveys and surveillance of food available for purchase throughout Australia in consultation with States and Territories and to conduct research;
- \* the development of food safety awareness and education programs in co-operation with States and Territories;
- \* co-ordination with States and Territories or the Federal Bureau of Consumer Affairs of the recall of food items where they constitute a public health or safety risk;

- \* the development of risk assessment policies in relation to imported food. These policies would be implemented by the Australian Quarantine Inspection Service;
- \* the provision of advice to the government on food issues;
- \* functions incidental to any of these specified functions such as:-
  - the ongoing review of local and international information on food composition and taking immediate remedial action under the Act where there is an emerging public health risk;
  - facilitating uniform interpretation of standards throughout all jurisdictions; and
  - promoting consistency between international requirements and domestic food standards.

#### Clause 8 - Powers

Formal provision which authorises the Authority to do all things necessary or convenient to enable it to carry out its day to day functions.

#### Clause 9 - Matters that may be included in standards and variations of standards

This clause sets out the range of matters to which a food standard may relate. These matters relate to the purity of food, the minimisation of the health and safety risk from food contamination and food borne disease, the provision of information to the consumer, fair trading in food and the promotion of trade. These issues include:-

- \* the composition of food including;
  - contaminants and pesticide residues in food and its microbiological status and safety;
  - the sampling and testing of food for the purpose of compliance with standards;
- \* all issues that relate to the production of food and its delivery to the consumer including:-
  - maximum and minimum levels of additives;
  - genetic manipulation of the animal, seed or plant, slaughter of animals, processing, storage, transport, handling, serving and sale;

- \* packaging and labelling; and
- \* advertising (in so far as it relates to the objectives of food standards)

The Bill also provides that the Regulations may prescribe other public health matters that may be included in a food standard.

Clause 10 - Objectives of the Authority in developing standards and variations of standards

This clause sets out the objectives to which the National Food Authority must have regard when developing a food standard. In order of priority they are:

- \* the protection of public health and safety;
- \* the provision of adequate information relating to food to enable consumers to make informed choices;
- \* the promotion of fair trading in food;
- \* the promotion of trade and commerce in the food industry;
- \* the promotion of consistency with standards applied to food in international trade.

Clause 11 - Minister may give directions

This clause authorises the Minister to give directions to the National Food Authority as to the performance of its functions.

The clause requires the Minister to consult with the other members of the National Food Standards Council before giving such a direction and to table a copy of the direction and the reasons for giving it in the Parliament.



PART 3 - STANDARDS

**Division 1 - Applications for development  
and variation of standards**

Clause 12 - Applications for development or variation of a standard

This clause authorises an individual or body such as a government department or instrumentality, company, industry association or consumer association, to ask the National Food Authority to develop a new food standard or to vary an existing standard.

The requests must be in a form approved by the Authority and contain all the information that it requires.

Samples of the food can also be requested.

Clause 13 - Authority to make preliminary assessment  
of the application

This clause provides that the Authority must make a preliminary assessment of each application, must have regard to specified matters, and must either reject or accept it.

It could be expected that the Authority would reject an application at this stage on grounds such as that it is very similar to a previous application that had been rejected without offering any additional supporting information.

Where an application is rejected, the applicant must be notified and given the reasons for the rejection. There is a right of appeal to the Administrative Appeals Tribunal against this rejection under Clause 63 of the Bill.

Clause 14 - Authority to invite public submissions

This clause requires the Authority when an application has been accepted, to inform the public and certain specified organisations about the proposal and that it will be the subject of a full assessment.

The following organisations, by virtue of the definition of "appropriate government agency" in sub-clause 3(1), are required to be notified in writing:-

- \* State and Territory health departments or authorities
- \* prescribed Commonwealth departments and authorities

- \* the National Health and Medical Research Council
- \* the nominated Department of State of New Zealand.

Provision is also made for other organisations, such as consumer and industry associations, to be notified. A public notice will be placed in the Commonwealth Gazette and a national newspaper.

The notifications will inform persons where to obtain details of the applications and invite written submissions. The maximum period within which these submissions are to be provided to the Authority will be specified in the notice.

#### Clause 15 - Full assessment of application

This clause requires the Authority to undertake a full assessment of the application for a standard accepted under Clause 13. In undertaking this assessment it must take into account the objectives of food standards as set out in Clause 10, the submissions received, relevant New Zealand food standards and any other matters considered to be relevant.

After making this full assessment the Authority must either prepare a draft standard or reject the application.

An application could be rejected at this stage when, for example, it seeks the use of an additive which, on the information available, would present too high a public health risk.

The applicant has a right of appeal to the AAT against a decision to reject the application.

#### Clause 16 - Notice following preparation of draft standard or variation

This clause requires the Authority to give notice that a draft standard or variation to a standard has been prepared.

The applicant, appropriate government agencies and each body or person who or which made a submission in response to the notice of the application and proposed full assessment must be given notice in writing.

The public would be notified through the Commonwealth Gazette and a national newspaper.

These notifications will inform persons where to obtain details of the draft standard or variation, that there will be an inquiry to consider the draft and invite submissions. The maximum period to provide submissions will be specified in the notice.

Clause 29 of the Bill authorises the Authority to conduct the inquiry by consideration of the written submissions only or to hold a public hearing into the issues involved.

Clause 17 - Notice following rejection of application

This clause provides that if, after making a full assessment under Clause 15 it decides to reject an application for a new standard or variation to a standard, it must give notice that it has done so and of the reasons. This is to be done in writing to the applicant, appropriate government agencies and to each body or person who or which made a submission. A notice must also be published in the Gazette and a national newspaper.

Clause 18 - Authority must make recommendations to Council

After completion of the inquiry the Authority must submit the draft standard or variation of a standard to the National Food Standards Council with a recommendation (including the Authority's reasons) that it either:-

- \* adopt it
- \* adopt it with variations; or
- \* reject it.

Clause 19 - Authority must notify outcome of inquiry

This clause requires the Authority to give notice of the outcome of its inquiry to the applicant, to the appropriate government agencies and to each body or person who or which made a submission in respect of the draft standard. A notice must also be published in the Gazette and a national newspaper.

Clause 20 - Council must deal with recommendation  
made by the Authority

This clause requires the Council after considering the Authority's recommendation in relation to a draft standard or variation of a standard to either:-

- \* adopt the standard as drafted;
- \* adopt it with variations;
- \* reject it, or
- \* return it to the Authority for reconsideration

The Council may also seek additional information from the Authority before it makes a decision.

Where a standard or variation to a standard is adopted by Council, that standard would be published in the Commonwealth Gazette. Under the terms of the Agreement between the Commonwealth and the States and Territories the legislation in each State and Territory would adopt by reference the gazetted standard as law for its jurisdiction.

**Division 2 - Proposals by the Authority for the  
development and variation of standards.**

Clause 21 - Authority may develop or vary a standard

This clause enables the Authority to decide, of its own initiative, to develop a new food standard or an amendment to an existing standard.

Clause 22 - Authority to invite public submissions on proposal

This clause provides for the Authority to inform the public and each appropriate government agency, [as defined in sub-clause 3(1)], about a proposal to develop a new standard or to amend an existing standard and that it intends to undertake a full assessment of the proposal.

Provision is also made for other organisations, such as consumer and industry associations to be notified. A public notice will be placed in the Gazette and a national newspaper.

The notifications will inform persons where to obtain details of the proposal and invite written submissions. The maximum period within which those submissions are to be provided to the Authority will be specified in the notice.

Clause 23 - Full assessment of proposal

This clause requires the Authority to undertake a full assessment of its proposal for a standard. In undertaking this assessment it must take into account the objectives of food standards as set out in Clause 10, the submissions received, relevant New Zealand food standards and any other matters considered to be relevant.

After making this full assessment the Authority must either prepare a draft standard or abandon the proposal.

Clause 24 - Notice following preparation of draft standard or  
variation

This clause requires the authority to give notice that a draft standard or variation to a standard has been prepared.

Notice in writing must be given to appropriate government agencies and each body or person who or which made a submission in response to the notice that the Authority has prepared a proposal to adopt a standard.

The public would be notified through the Gazette and a national newspaper.

These notifications will inform persons where to obtain details of the draft standard or variation, that there will be an inquiry to consider the draft and invite submissions. The maximum period to provide the submissions will be specified in the notice.

Clause 29 of the Bill authorises the Authority to conduct the inquiry by consideration of the written submissions only or to hold a public hearing into the issues involved.

Clause 25 - Notice following abandonment of proposal

This clause provides that if, after making a full assessment under Clause 23 it decides to abandon its proposal for a new standard or variation to a standard, it must give notice that it has done so and of the reasons. This is to be done in writing to appropriate government agencies and each body or person who or which made a submission. A notice must also be published in the Gazette and a national newspaper.

Clause 26 - Authority must make recommendation to Council

After completion of the inquiry, the Authority must submit the draft standard or draft variation of a standard to the National Food Standards Council with a recommendation, (including the Authority's reasons), that it either:-

- \* adopt the draft standard;
- \* adopt it with variations; or
- \* reject it.

Clause 27 - Authority must notify outcome of inquiry

This clause requires the Authority to give notice of the outcome of its inquiry to appropriate government agencies and to each body or person who or which made a submission in respect of the draft standard. A notice must also be published in the Gazette and a national newspaper.

Clause 28 - Council must deal with recommendation made by the Authority

This clause requires the Council after considering the draft and the Authority's recommendation in respect of a draft standard or variation of a standard to either:-

- \* adopt the standard as drafted;
- \* adopt it with variations;
- \* reject it, or
- \* return it to the Authority for reconsideration.

The Council may also seek additional information from the Authority before it makes a decision.

Where a standard or variation to a standard is adopted it is then published in the Commonwealth Gazette. Under the terms of the Agreement between the Commonwealth and the States and Territories the legislation in each State and Territory would adopt by reference the gazetted standard as law for its jurisdiction.

### Division 3 - Miscellaneous

#### Clause 29 - Inquiries may include public hearings

The Authority may at its discretion conduct a public hearing as part of its inquiry of an application or proposal for a new or amended standard.

It is anticipated that the Authority would only call a hearing where the issues involved are complex or the matter is one of considerable public interest. In all other cases the inquiry would be by way of consideration of the written submissions only.

Where there is a public hearing, provision is made for part of that hearing to be held in private so that confidential information may be discussed.

#### Clause 30 - General conduct of inquiries

The Authority is able to set its own procedures for an inquiry and is not bound by rules of evidence or required to act in any formal manner.

#### Clause 31 - Reconsideration of draft standard or variation by Authority

This clause provides that where the National Food Standards Council returns a draft standard for reconsideration by the Authority (see clauses 20 and 28), the Authority must deal with the request as soon as practicable but, in any case, within 12 months.

#### Clause 32 - Authority to publish a standard variation in the Gazette

The Authority must publish in the Gazette the standard as adopted by the Council. State and Territory legislation will then adopt as food standards for individual jurisdictions those standards adopted by the Council and published in the Gazette.

#### Clause 33 - Review of standards

This clause authorises the Authority to conduct a review of all existing standards - i.e. those made under the previous mechanism. Such review would be expected to be for the purpose of deciding whether existing standards are still appropriate in light of the objectives for food standards provided under this Act and in light of current scientific knowledge and technology. The review may be conducted of its own initiative or at the request of another body or person.

Proposals to amend standards following a review would be developed in accordance with the processes set out in Division 2 for the development of standards.

Clause 34 - Authority may require further information

This clause authorises the Authority to seek additional information from the applicant for a new or an amended food standard if the original application did not contain sufficient information for it to undertake an adequate assessment of the application.

The Authority can set a time for the applicant to provide the information and the clause would provide that if the information is not provided, without reasonable excuse, within that time the application is deemed to have been withdrawn.

Clause 35 - Authority to make recommendations to Council within a certain time

This clause is intended to have the effect that the Authority must finalise an application for a new food standard or a variation to an existing standard within 12 months, or such shorter time as is prescribed, from the receipt of the application.

Provision is also made for the Authority to extend the time within which a matter must be finalised. However, the maximum period by which the timeframe may be extended is limited to 6 months.

The clause also provides that, where under clause 34 additional information about an application is sought from the applicant, the time taken for that information to be provided is not taken into account when calculating the time taken to finalise an application.

Clause 36 - Authority may simplify application or proposal procedure

The clause authorises the Authority to simplify and shorten the process for developing a food standard that is set out in this Part where the issues involved in the new food standard or in the variation are of minor significance or complexity. The Authority may only exercise this power if it is satisfied that the interests of any person would not be adversely affected. The decision is to be published in the Gazette.

Sub-clause 36(2) would enable the application of provisions of this Part as modified or adapted by regulations to facilitate decisions made by the Authority under sub-clause 36(1).



Clause 63 provides that a person who believes that his or her interests have been adversely affected by the decision, may seek a review of the decision by the AAT.

Clause 64 requires that the notice published in the Gazette must include details of the right to have the decision reviewed by the AAT.

Clause 37 - Authority may make recommendation as a matter of urgency

This clause would permit a "fast-track" mechanism for the development of a food standard where the Authority considers that in order to avoid compromising any of the objectives of food standards as set out in clause 10, such as endangering public health, it would not be appropriate to undertake the full process as set out in Part 3.

However where a standard is developed under this "fast-track" mechanism the clause requires the Authority to subsequently undertake an inquiry required under Part 3 as if it were a standard or variation prepared under Clause 16 or 24.

Sub-clause 37(2) would enable the application of provisions of Part 3 as adapted or modified by regulations to facilitate a decision made by the Authority under sub-clause 37(1).

Clause 38 - Arrangements with other Commonwealth Departments, States and Territories

This clause would allow the Authority to arrange for officers of the Commonwealth or State Governments or other organisations, such as industry associations, to provide services or advice for the Authority.

Clause 39 - Confidential commercial information

This clause describes the restrictions on the disclosure of information in respect of food that a person acquires in the performance of his duties with the Authority.

Generally, a person must not supply confidential commercial information, [defined in sub-clause 3(1)], to another person except where it is necessary to do so in carrying out his or her duties under the legislation.

However, Clause 39(3) allows information to be disclosed to a court and Clause 39(4) allows the Chairperson to disclose information:

- \* when the Minister certifies in writing that it is necessary in the public interest that information be supplied to a specified person; or

\* to prescribed authorities or persons.

\* where the Chairperson is of the opinion that there exists express or implied consent.

The Chairperson may not disclose confidential commercial information on public interest grounds until he has notified the person or body who supplied the information of his or her intention and taken account of the views of that person or body.

The general prohibition of the clause is extended to persons or authorities to whom information is released under Clauses 39(3) and 39(4), and to persons under their control.

A further exception is that the Chairperson may permit confidential commercial information in respect of food to be supplied to the Secretary or Chief Officer of a Commonwealth or State or Territory Department of the Public Service or authority for the purpose of carrying out an arrangement referred to in Clause 38. It is intended that the term "authority" be interpreted so as to include the National Health and Medical Research Council and any committee established by it.

**PART 4 - CONSTITUTION, MEETINGS AND STAFF OF AUTHORITY**

**Clause 40 - Constitution of Authority**

The Authority is to comprise a full-time chairperson and at least four part-time members. Provision is made for the appointment of one or more additional members who have a special expertise in relation to a matter under consideration by the Authority.

Appointments would be made by the Minister after consultation with the National Food Standards Council.

The Clause provides that the Chairperson and members must have experience or expertise in one or more of the issues that will be essential to the management of the Authority and development of food standards -

- \* public health
- \* food science
- \* human nutrition
- \* food production or retailing
- \* public administration
- \* consumer advocacy

One of the part-time members is to be an officer of a State or Territory Government who has a good knowledge of Australian food regulation systems.

**Clause 41 - Appointment of members**

This clause makes some formal provisions relating to appointments including:-

- \* period of appointments not to exceed 5 years
- \* a 'special purpose' member is a member of the Authority only while it is considering the purpose in relation to which he or she was appointed. That person may not be counted as part of the quorum or vote in respect of any other matter.
- \* a member is not to be appointed for a period beyond his or her 65th birthday

Clause 42 - Food Advisory Committee

The Authority is to establish a National Food Authority Advisory Committee as a mechanism for formal consultation between the Authority and the States and Territories on all matters relating to food.

This Committee will not be involved in the consideration of an application for a food standard unless specifically requested by the Authority. It will be the forum for discussion on major policy issues relating to food policy and food regulation.

The Committee will comprise the Chairperson of the Authority, a representative of each State and Territory and New Zealand, and representatives from the Department of Community Services and Health and the Department of Primary Industries and Energy.

Other members can also be appointed to advise on specific issues.

Clause 43 - Committees other than the Food Advisory Committee

The Authority can establish other committees to assist it in performing its functions.

The Authority may give directions to a committee as to how it carries out its functions. A direction may include requirements that members disclose any interests that they have in matters being considered by the committee.

Clause 44 - Remuneration and allowances

The remuneration for members of the Authority, and of its Committees will be determined by the Remuneration Tribunal. However members who are Commonwealth or State employees will not be entitled to remuneration.

Clause 45 - Leave of absence of members

The Minister may grant leave of absence to the Chairperson or other members of the Authority.

Clause 46 - Acting appointments

This clause enables the Minister to appoint a person as acting Chairperson or member in the event that the office is vacant or the occupant is absent from duty.

Clause 47 - Meetings

This clause outlines the procedures for convening a meeting of the Authority and other formal requirements such as the quorum and the resolution of questions.

Clause 48 - Conduct of meetings

The Authority is able to set its own meeting procedures and is able to hold meetings by telephone, video or other means of communication.

Clause 49 - Resolutions without formal meetings

This clause outlines a procedure for resolving questions without a formal meeting.

Clause 50 - Disclosure of interests

A member of the Authority who has a direct or indirect pecuniary interest in a matter before the Authority must disclose that interest and, unless otherwise determined by the Authority or the Minister, take no part in any Authority decision on that matter.

Clause 51 - Resignation

Provides for a member to resign his or her appointment.

Clause 52 - Termination of appointment

The Minister may terminate an appointment on grounds specified in the clause which are standard for this type of body. They include, in the case of the Chairperson, undertaking other paid employment without the approval of the Minister and, in the case of a part-time member, undertaking paid employment that in the Minister's opinion would conflict with the member's duties as part of the Authority.

Clause 53 - Staff of Authority

This clause provides that the staff of the Authority are employees under the Public Service Act and that the Chairperson has the powers of a Secretary under that Act.

Clause 54 - Consultants

The Authority can engage persons as consultants and determine their terms and conditions.

PART 5 - FINANCE

Clause 55 - Money to be appropriated

This clause provides that the Parliament may appropriate funds for the operation of the Authority.

Clause 56 - Estimates

The Authority is required to prepare for the Minister's approval, estimates of its receipts and expenditures for each financial year and when the Minister requires, and to expend its funds only in accordance with that approved budget.

Clause 57 - Money of Authority

This clause provides that the Authority may only apply its funds to meet liabilities and obligations incurred in accordance with the Act.

Clause 58 - Taxation

This clause provides that the Authority's income, property and transactions are not to be subject to taxation under any law of the Commonwealth, States or Territories.

Clause 59 - Application to the Authority of Division 3 of Part XI of Audit Act

By virtue of this clause the Authority will be required to:-

- \* open at least one account at an approved bank into which it must pay all the funds it receives;
- \* keep proper records and accounts of all its transactions and ensure that there is adequate control over its assets and in incurring liabilities; and
- \* prepare an annual report of its operations together with financial statements

The Auditor-General will inspect and audit the accounts and records of the Authority.

Clause 69 of the Bill provides that the annual report include details of the numbers of applications or proposals for new or amended food standards that are received or initiated each year and of the outcomes, including reasons for any failures to deal with the standards within the prescribed times.

Clause 60 - Trust Money

The clause provides that the Authority may receive money on trust to be applied towards a particular purpose within its functions.

Such trust monies are to be paid into a bank account set up exclusively for trust monies. The money may only be invested as is authorised under the terms of the trust or in a manner in which trust monies may be lawfully invested.

The clause also applies sections 63K and 63L of the Audit Act to trust money held by the Authority. This has the effect of requiring the Authority to keep records of all transactions using the trust money and to maintain adequate control over the asset and over the incurring of liabilities.

These accounts and records will also be audited by the Auditor-General.

## PART 6 MISCELLANEOUS

### Clause 61 - False or misleading information or evidence

It will be an offence to provide the Authority with any information or documents, or give any evidence or produce any document at an inquiry knowing it to be false or misleading.

However it would not be an offence to provide a document to the Authority which contains false or misleading information if the person providing the document identifies to the Authority any information that may be false or misleading.

### Clause 62 - Documents and samples become Commonwealth property

This clause provides that any documents or food samples provided to the Authority for the purposes of an assessment or inquiry under the Act become the property of the Commonwealth.

### Clause 63 - Review of Decisions

This clause provides the Administrative Review Tribunal with the jurisdiction to review a decision of the Authority to:

- . reject under clause 13 or clause 15 an application for a new food standard or a variation to a standard, or
- . under clause 36, to shorten or simplify the process for consideration of an application or proposal for a standard.

The Administrative Appeals Tribunal would have no jurisdiction to review a decision of the National Food Standards Council.

### Clause 64 - Statement accompanying notification of decisions

Where under clause 13 or 15 the Authority rejects an application it must notify the applicant of the right to have that decision reviewed by the Administration Appeals Tribunal. The applicant may ask for a statement of the reasons for the decision to reject the application.

Where under Clause 36 the Authority decides to simplify or shorten the process for consideration of an application or proposal for a new or amended standard the notice of that decision published in the Gazette must include details of the right to have the decision reviewed by the AAT. A person aggrieved by such a decision may ask for a statement of the reasons for the decision.



Clause 65 - Conduct by directors, servants or agents

For the purposes of this Act, conduct engaged in, or on behalf of the Authority, by a member, servant or agent acting within his or her authority is deemed to be conduct of the Authority. Similarly, conduct engaged on behalf of such a person by a servant or agent shall be deemed to be the conduct of that person.

Clause 66 - Fees

This clause provides that the regulations may prescribe fees for matters relating to the performance of the Authority's functions. Fees are to be due and payable as prescribed. The regulations would also be able to prescribe circumstances in which fees can be waived.

Clause 67 - Delegation by Authority

The Authority may delegate any of its powers under the Act to a member of the Authority or to a member of its staff.

Clause 68 - Exemption from suit

No action or proceeding can be taken against the Commonwealth, a member of the Authority or a person assisting the Authority for any loss or injury sustained from consuming food in respect of which there is a food standard.

Where a person takes action against a food supplier for any loss or injury sustained from consuming food, it is not a defence to that action that a standard had been made in relation to the food.

Clause 69 - Annual Report

The Annual Report of the Authority must include certain details about the outcomes of applications and proposals for new or amended food standards as well the information required under the Audit Act.

The details which must be included are:-

- \* the numbers of applications received and proposals initiated by the Authority;
- \* the numbers dealt with during the year and the outcomes;
- \* the occasions when extensions to the time limit for dealing with applications were granted and when the time limit was not met and the reasons;

- \* the number of decisions to reject applications referred to the Administrative Appeals Tribunal and the outcomes.

Clause 70 - Regulations

Authorises the making of Regulations under the Act.

Clause 71 - Applications continue in force

This is a transitional provision deeming all applications for new food standards or for amendments that are received but not finalised before the commencement of this legislation to have been, upon the commencement of this legislation, received by the Authority under this Act.

The time limit for finalising this 'back-log' of applications will be 24 months.











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