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1996, No. 41

An Act to amend the Food Act 1981

[24 June 1996]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Food Amendment Act 1996, and shall be read together with and deemed part of the Food Act 1981 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section and in section 8 (2) of this Act, this Act shall come into force on the 1st day of July 1996.

(3) Section 31 of this Act shall come into force on the day after the date on which this Act receives the Royal assent.

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“Australia - New Zealand Joint Food Standards Agreement’ means the Agreement Between the Government of New Zealand and the Government of Australia Establishing a System for the Development of Joint Food Standards, done at Wellington on the 5th day of December 1995:

“Food safety programme’ has the meaning given to it in section 4A of this Act:

“Food standard’ means a food standard issued under section 11C of this Act and for the time being in force.”.

3. Meaning of “food safety programme”—The principal Act is hereby amended by inserting, after section 4, the following section:

“4A. (1) In this Act, unless the context otherwise requires, ‘food safety programme’ means a programme designed to identify and control food safety risk factors in order to establish and maintain food safety.

“(2) The food safety risk factors may relate to the production, manufacture, preparation, packaging, storage, handling, transport, distribution, or sale of food.

“(3) A food safety programme may relate to—

“(a) A particular part of the food industry:

“(b) A particular person or group of persons within the food industry.”

4. General prohibitions on sales—The principal Act is hereby amended by repealing section 9, and substituting the following section:

“9. (1) If, in respect of the composition of any kind of food, a standard is prescribed—

“(a) By or under regulations made under this Act; or

“(b) By any food standard,—

no person shall sell any article under such a name or description as to lead an intending purchaser to believe that the intending purchaser is purchasing that kind of food unless the article complies with the standard.

“(2) If a person sells an article to a purchaser in response to a request for a food of a kind for which a standard is prescribed by or under regulations made under this Act or by any food standard, the first-mentioned person shall be deemed to sell a food of that kind and under such description as is specified in subsection (1) of this section unless that person clearly notifies the purchaser at the time of sale that the article is not of that kind.

“(3) Notwithstanding that a food otherwise complies with the standard prescribed for that kind of food by or under regulations made under this Act or by any food standard, it shall be deemed not to comply with that standard if anything has been added to it—

“(a) The addition of which to that kind of food is not expressly required or permitted by regulations made under this Act or by any food standard; or

“(b) In a quantity or proportion greater than that so required or permitted; or

“(c) That does not comply with the standard, if any, prescribed for that kind of food by or under regulations made under this Act or by any food standard.

“(4) No person shall prepare or pack for sale, or sell,—

“(a) Any food that is unsound or unfit for human consumption or contaminated; or

“(b) Any food containing, or having attached to it or enclosed with it or in contact with it, any extraneous thing—

“(i) That is injurious to health or harmful; or

“(ii) That is offensive; or

“(iii) The presence of which would be unexpected and unreasonable in food of that description prepared or packed for sale in accordance with good trade practice; or

“(c) Any food in any package, or any package intended to contain food, if that package is made wholly or partly of a material that may render the food injurious to health or that may taint the food; or

“(d) Any appliance that may render the food injurious to health or that may taint the food.

“(5) Every individual who contravenes any of the provisions of this section commits an offence and is liable,—

“(a) In any case where the Court is satisfied that the individual intended to commit the offence, to a fine not exceeding \$5,000:

“(b) In any other case, to a fine not exceeding \$3,000.

“(6) Every body corporate who contravenes any of the provisions of this section commits an offence and is liable,—

“(a) In any case where the Court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding \$20,000:

“(b) In any other case, to a fine not exceeding \$5,000.”

5. Misleading labelling and packaging—Section 10 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) Every individual who contravenes any of the provisions of this section commits an offence and is liable,—

“(a) In any case where the Court is satisfied that the individual intended to commit the offence, to a fine not exceeding \$5,000:

“(b) In any other case, to a fine not exceeding \$3,000.

“(3) Every body corporate who contravenes any of the provisions of this section commits an offence and is liable,—

“(a) In any case where the Court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding \$20,000:

“(b) In any other case, to a fine not exceeding \$5,000.”

6. Restrictions on advertising—(1) Section 11 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) No person shall, for the purpose of effecting or promoting the sale of a food, publish or cause to be published, either on that person’s own account or as the servant or agent of the person seeking to effect or promote the sale, any advertisement relating or likely to cause any person to believe that it relates to the food, or to any ingredient or nutrient or other constituent of the food, that—

“(a) Directly or by implication qualifies or is contrary to any particulars required, by regulations made under this Act or by any food standard, to be marked on or attached to that kind of food or on or to packages containing that kind of food; or

“(b) Is prohibited, by any regulations made under this Act or by any food standard, from being marked on or attached to that kind of food or on or to packages containing that kind of food; or

“(c) Omits from the name or description of the food any word or words required, by any regulations made under this Act or by any food standard, to be included in the name or description marked on or attached to that kind of food or on or to packages containing that kind of food; or

“(d) Fails to make any statement required, by any regulations made under this Act or by any food standard, to be made in an advertisement relating to any food of that description, kind, or class; or

“(e) Makes any statement prohibited, by any regulations made under this Act or by any food standard, to be made in an advertisement relating to any food of that description, kind, or class; or

“(f) Is false, or is likely to deceive a purchaser, with regard to the nature, quality, strength, purity, composition, origin, age, or effects of the food or of any ingredient or nutrient or other constituent of the food.”

(2) Section 11 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsections:

“(3) Every individual who contravenes any of the provisions of subsection (1) of this section commits an offence and is liable,—

“(a) In any case where the Court is satisfied that the individual intended to commit the offence, to a fine not exceeding \$5,000:

“(b) In any other case, to a fine not exceeding \$3,000.

“(4) Every body corporate who contravenes any of the provisions of subsection (1) of this section commits an offence and is liable,—

“(a) In any case where the Court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding \$20,000:

“(b) In any other case, to a fine not exceeding \$5,000.”

7. Contravention of Act, etc., knowing that will create risk to human health—The principal Act is hereby amended by inserting, immediately after section 11, the following section:

“11AA. (1) Every person commits an offence against this Act who wilfully acts in contravention of, or fails or refuses to comply with any provision of, this Act or any regulations made under this Act or any food standard, knowing that the action, failure, or refusal may create, directly or indirectly, a risk to human health.

“(2) Every person who commits an offence against subsection (1) of this section is liable on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine not exceeding \$100,000, and, where the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues.”

8. Repeal of section 11A (relating to raw milk)—(1) Section 11A of the principal Act (as inserted by section 27 (1) of the Milk Act 1988) is hereby repealed.

(2) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

9. New Part IIA inserted—The principal Act is hereby amended by inserting, after Part II, the following Part:

“PART IIA

“FOOD STANDARDS

“*Purposes of this Part*

“11B. **Purposes of this Part**—The purposes of this Part of this Act are—

“(a) To provide for greater flexibility in the regulatory arrangements relating to food manufactured or prepared for sale or sold in New Zealand, or imported into New Zealand, having due regard to the following matters:

 “(i) The need to protect public health:

 “(ii) The desirability of avoiding unnecessary restrictions on trade:

 “(iii) The desirability of maintaining consistency between New Zealand’s food standards and those applying internationally:

 “(iv) The need to give effect to New Zealand’s obligations under any relevant international treaty, agreement, convention, or protocol; and

“(b) In particular, to give effect to the Australia - New Zealand Joint Food Standards Agreement.

“*Power to Issue Food Standards*

“11C. **Minister may issue food standards**—(1) The Minister may from time to time issue standards in respect of food manufactured or prepared for sale or sold in New Zealand, or imported into New Zealand.

“(2) Without limiting the generality of subsection (1) of this section, standards may be issued under that subsection for the purposes of, or in relation to, all or any of the following:

 “(a) Food safety:

 “(b) The composition of food, including (without limitation)—

 “(i) The maximum amounts of contaminants or residues that may be present in food:

 “(ii) The maximum or minimum amounts of additives or other substances that must or may be present in food:

 “(iii) The microbiological status of food:

 “(c) The production, manufacture, and preparation of food:

 “(d) The genetic modification of food:

 “(e) The sampling and testing of food to determine its composition or safety:

 “(f) The packaging, storage, and handling of food:

- “(g) Materials, containers, appliances, and utensils used, or designed for use, in relation to food:
- “(h) The carriage and delivery of food:
- “(i) The sale of food:
- “(j) Information about food, including (without limitation) the labelling, promotion, and advertising of food:
- “(k) Food safety programmes:
- “(l) The keeping of records by persons who import, produce, manufacture, prepare, pack, store, handle, carry, deliver, or sell food, and the inspection of such records:
- “(m) Such other matters relating to food as may affect public health.

“11D. **Prescribed foods**—(1) Without limiting the generality of section 11C of this Act, food standards may be issued under that section—

- “(a) Declaring a food to be a prescribed food for the purposes of section 11P of this Act; and
- “(b) Specifying the circumstances and conditions in which that food is to be or not to be a prescribed food.

“(2) The Minister shall not declare a food to be a prescribed food unless the Minister is satisfied that, because of—

- “(a) The food’s nature; or
- “(b) Particular circumstances in which the food is dealt with,—

it is necessary or desirable that the provisions of section 11P of this Act apply in respect of the food in order to minimise the risk of illness or injury posed by the food.

“11E. **Preconditions for issuing food standard**—(1) In issuing any food standard, the Minister shall take into account the following:

- “(a) The need to protect public health:
- “(b) The desirability of avoiding unnecessary restrictions on trade:
- “(c) The desirability of maintaining consistency between New Zealand’s food standards and those applying internationally:
- “(d) New Zealand’s obligations under any relevant international treaty, agreement, convention, or protocol, and, in particular, under the Australia-New Zealand Joint Food Standards Agreement:
- “(e) Such other matters as the Minister considers appropriate.

“(2) The Minister shall not issue any food standard unless the Minister is satisfied that appropriate consultation has been carried out with respect to the food standard, including (without limitation)—

“(a) Adequate and appropriate notice of the intention to issue the food standard; and

“(b) A reasonable opportunity for interested persons to make submissions; and

“(c) Adequate and appropriate consideration of any such submissions.

Cf. 1994, No. 104, s. 39 (2)

“Incorporation of Material by Reference

“11F. **Food standards may incorporate material by reference**—(1) The following material may be incorporated by reference into a food standard:

“(a) Standards, requirements, or recommended practices of international or national organisations:

“(b) Standards, requirements, or recommended practices of any country or jurisdiction:

“(c) Any other material or document that, in the opinion of the Minister, is too large or impractical to be printed as part of the food standard.

“(2) Any such material may be so incorporated in a food standard either in whole or in part, and either unmodified or with such additions or variations as are specified in the food standard.

“(3) Subject to subsection (4) of this section, any material incorporated in a food standard by reference under subsection (1) of this section (as it existed on the date of the inclusion but with such additions or variations (if any) as are specified in the food standard) shall be deemed for all purposes to form part of the food standard.

“(4) Every reference in any food standard to the current edition of any specified standard work of reference (such as the Food Chemicals Codex or the Pharmaceutical Codex) shall be construed at any particular time as the latest edition of that work available at that time, together with any amendments, additions, and deletions made to or from it up to that time.

“(5) The Director-General shall make available for inspection free of charge or for purchase at a reasonable price, at such place or places as he or she shall from time to time appoint,

copies of all material incorporated in a food standard by reference under subsection (1) of this section.

Cf. 1994, No. 104, s. 452

“General Provisions Relating to Food Standards

“11G. Verification, notification, availability, and commencement of food standards—(1) Every food standard issued under this Act—

“(a) Shall be signed by the Minister; and

“(b) Shall show on it the date of its issue.

“(2) Where a food standard is issued under this Act,—

“(a) The Minister shall ensure that there is published in the *Gazette*, as soon as practicable after the food standard is issued, a notice—

“(i) Indicating that the food standard has been issued; and

“(ii) Showing the place or places at which copies of the food standard are available for inspection free of charge, or for purchase, or both; and

“(b) The Director-General shall ensure that so long as the food standard remains in force, copies of the food standard are available—

“(i) For inspection by members of the public free of charge; and

“(ii) For purchase by members of the public at a reasonable price.

“(3) Every food standard issued under this Act shall come into force on the 28th day after the date of its notification in the *Gazette* or on such later day as may be specified for that purpose in the standard.

Cf. 1993, No. 28, s. 49

“11H. Further general provisions relating to food standards—(1) Any food standard may apply generally or in relation to any one or more of the following:

“(a) Any specified food, person, activity, or matter:

“(b) Any specified class or classes of food, person, activity, or matter:

“(c) The same class of food, person, activity, or matter in different circumstances.

“(2) Without limiting the generality of subsection (1) (b) of this section, a class of food may be defined by reference to the country, region, or locality in which the food is produced, or from which that food is imported or otherwise obtained.

“(3) No food standard shall be invalid because it—

“(a) Confers any discretion upon, or allows any matter to be determined or approved by, the Minister or any other person; or

“(b) Allows the Minister, the Director-General, or any other person to impose requirements as to the performance of any activities.

“(4) Subject to section 11G(3) of this Act, the commencement of any food standard may be wholly suspended until it is applied by the Minister by notice in the *Gazette*.

Cf. 1994, No. 104, s. 451 (1), (3), (4)

“11I. **Food standards subject to disallowance**—Every food standard is hereby deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989, but shall not be a regulation for the purposes of the Acts and Regulations Publication Act 1989.

Cf. 1994, No. 104, s. 451 (6)

“11J. **Minister not to delegate power to issue food standards**—Notwithstanding anything in section 28 of the State Sector Act 1988, the Minister shall not delegate to any other person the Minister’s power to issue food standards.

Cf. 1994, No. 104, s. 451 (8)

“11K. **Proof of food standards**—(1) Without affecting any other method of proof, the production in any proceedings of a copy of any food standard purporting to have been issued by the Minister shall, in the absence of evidence to the contrary, be sufficient evidence that it has been issued under the authority of section 11C of this Act, on the date shown on it as the date of issue.

“(2) Without affecting any other method of proof, the production in any proceedings of a copy of an emergency food standard purporting to have been issued by the Director-General shall, in the absence of evidence to the contrary, be sufficient evidence that it has been issued under the authority of section 11M of this Act, on the date shown on it as the date of issue.

“(3) In any proceedings, and without affecting any other method of proof,—

“(a) Any material incorporated in a food standard by reference under section 11F(1) of this Act may be proved by the production of a copy of that material certified to be correct by the Director-General; and

“(b) Judicial notice shall be taken of the signature of the Director-General.

Cf. 1992, No. 122, s. 42

“11L. **Amendment and revocation of food standards—**

(1) The Minister may at any time amend or revoke any food standard.

“(2) Subject to subsection (3) of this section, the provisions of sections 11E to 11K of this Act shall apply in respect of any amendment or revocation of any food standard.

“(3) Nothing in section 11E (2) of this Act applies in respect of any amendment to any food standard to correct any obvious mistake (including, without limitation, grammatical and typographical errors or omissions).

“*Emergency Food Standards*

“11M. **Emergency food standards—**(1) The Director-General may from time to time exercise the powers conferred on the Minister by section 11C or section 11L of this Act to issue food standards or amend food standards, or both, if the Director-General considers that—

“(a) The issue or amendment of a food standard is necessary to alleviate or minimise any risk of the death of, or serious harm to, any person; and

“(b) It is not practicable in the circumstances of the particular case for the Minister to issue or amend a food standard to effectively alleviate or minimise that risk.

“(2) Every food standard or amendment of a food standard issued under this section shall—

“(a) Be identified as an emergency food standard; and

“(b) Be signed by the Director-General; and

“(c) Show the date on which it is issued.

“(3) Notwithstanding anything in section 11E or section 11G of this Act,—

“(a) Before issuing any emergency food standard under this section, the Director-General shall consult with such persons, representative groups within the food industry or elsewhere, Government departments, Crown entities, and local authorities as the Director-General in each case considers appropriate, but no other consultation shall be required with respect to the issuing of an emergency food standard:

“(b) Subject to paragraph (a) of this subsection, it shall not be necessary for the Director-General to give notice to

any person of the Director-General's intention to issue any emergency food standard:

“(c) Every emergency food standard shall be notified in the *Gazette*:

“(d) Subject to paragraph (e) of this subsection, an emergency food standard shall come into force immediately upon its being notified in the *Gazette*:

“(e) The Director-General may give notice of an emergency food standard to such person or persons as he or she considers appropriate or necessary in the circumstances, and in any such case—

“(i) Service of such notification may be effected by facsimile transmission, telephone, or in such other manner as the Director-General considers appropriate or necessary in the circumstances; and

“(ii) The emergency food standard shall come into force immediately upon service of such notification on the person or persons, but only in respect of that person or those persons:

“(f) Unless sooner revoked, every emergency food standard shall be in force for such period (not exceeding 6 months) as is specified for that purpose in the standard:

“(g) So far as any emergency food standard is inconsistent with or repugnant to any other food standard, the emergency food standard shall prevail.

“(4) Except as provided by subsection (3) of this section, all the provisions of this Act shall apply, with all necessary modifications, in relation to the issuing of emergency food standards under this section, and with respect to emergency food standards so issued, as they apply in relation to food standards that are not emergency food standards.

“(5) The Minister may revoke any emergency food standard, and the revocation shall be notified as if it were an emergency food standard.

“11N. **Director-General not to delegate power to issue emergency food standards**—(1) Notwithstanding anything in section 41 of the State Sector Act 1988, the Director-General shall not delegate to any other person the power conferred on the Director-General by section 11M of this Act.

“(2) Nothing in this section limits section 40 of the State Sector Act 1988.

“Offences and Penalties

“110. Contravention of food standards—No person shall—

“(a) Produce any food unless that person and that food complies with all applicable food standards relating to the production of that food; or

“(b) Manufacture, prepare for sale, or sell any food in New Zealand, or import any food into New Zealand, unless that person and that food complies with all applicable food standards relating to—

“(i) Food safety; and

“(ii) The composition of food; and

“(iii) The manufacture of food or, as the case may be, the preparation of food for sale; or

“(c) Sell or import any food that does not comply with all applicable food standards relating to the labelling of food; or

“(d) Advertise or promote any food unless that person complies with all applicable food standards relating to the advertising or promotion of food; or

“(e) Sell, or import into New Zealand, any material, container, appliance, or utensil used, or designed for use, in relation to food, unless the material, container, appliance, or utensil complies with all applicable food standards; or

“(f) Otherwise act in contravention of, or fail to comply with, any food standards relating to food manufactured or prepared for sale or sold in New Zealand, or imported into New Zealand.

“11P. Prescribed foods—(1) Where a food standard declares a food to be a prescribed food when it is imported into New Zealand, no person shall import that food into New Zealand unless that person has first satisfied an officer, by such means as the officer may reasonably require (including, without limitation and by way of example only, by the production of such evidence as the officer may reasonably require), that the food complies in all respects with—

“(a) All relevant provisions of this Act; and

“(b) All relevant provisions of any regulations made pursuant to this Act; and

“(c) All applicable food standards.

“(2) Where a food standard declares a food to be a prescribed food in any other circumstances and conditions specified in the food standard, no person shall deal with that

food in those circumstances and conditions unless that person has first satisfied an officer, by such means as the officer may reasonably require (including, without limitation and by way of example only, by the production of such evidence as the officer may reasonably require), that—

“(a) That person, in dealing with prescribed food of that kind in those circumstances and conditions; and

“(b) Where applicable, prescribed food of that kind so dealt with by that person—
will comply in all respects with—

“(c) All relevant provisions of this Act; and

“(d) All relevant provisions of any regulations made pursuant to this Act; and

“(e) All applicable food standards.

“11Q. **Offences and penalties**—(1) Every individual who contravenes any of the provisions of section 11O or section 11P of this Act commits an offence and is liable,—

“(a) In any case where the Court is satisfied that the individual intended to commit the offence, to a fine not exceeding \$5,000:

“(b) In any other case, to a fine not exceeding \$3,000,—
and, where the offence is a continuing one, to a further fine not exceeding \$500 for every day or part of a day during which the offence continues.

“(2) Every body corporate who contravenes any of the provisions of section 11O or section 11P of this Act commits an offence and is liable,—

“(a) In any case where the Court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding \$20,000:

“(b) In any other case, to a fine not exceeding \$5,000,—
and, where the offence is a continuing one, to a further fine not exceeding \$1,000, for every day or part of a day during which the offence continues.

“*Transitional Provisions*

“11R. **Definitions**—In this section and sections 11S to 11ZE of this Act, unless the context otherwise requires,—

“ ‘Alternative food standards’ means food standards that are identified, pursuant to section 11T of this Act, as food standards compliance with which is an alternative to compliance with one or more specified provisions of the Food Regulations 1984:

“ ‘Election’ means an election made pursuant to section 11U of this Act; and ‘to elect’ has a corresponding meaning:

“ ‘Mandatory food standard’ means a food standard in respect of which a declaration under section 11Z of this Act is for the time being in force:

“ ‘Superseded food regulation’ means a provision of the Food Regulations 1984 in respect of which food standards are identified, pursuant to section 11T of this Act, as alternative food standards:

“ ‘Transition period’ means the period beginning with the commencement of this section and ending with the close of such date as is specified for the purpose by the Governor-General by Order in Council.

“11S. Application of food standards and food regulations during transition period—Except as provided in section 11W or section 11Y or section 11ZA of this Act, during the transition period,—

“(a) No food standard shall apply in respect of any person or any food, and—

“(i) No person shall be liable to be prosecuted for, or convicted of, any offence relating to any food standard; and

“(ii) No power or duty conferred or imposed by any of sections 12, 13, 14, 15A, 17, or 20 of this Act in relation to the enforcement of, or any breach or alleged breach of, any food standard shall be exercised or performed in respect of any person or any food; and

“(b) Every provision of the Food Regulations 1984 shall apply in the normal way as if there were no food standards in force under this Act.

“11T. Minister to identify alternative food standards—

(1) Where—

“(a) Any food standards are issued under this Act; and

“(b) It is intended that compliance with those food standards, during the transition period, is to be an alternative to compliance with one or more particular provisions of the Food Regulations 1984,—

those food standards shall contain a provision (in this section referred to as a declaring provision) stating that compliance with those food standards is to be an alternative to compliance

with such provisions of the Food Regulations 1984 as are specified in the declaring provision.

“(2) It shall not be necessary, for the purposes of this section, for a declaring provision to identify, in respect of each and every provision of any food standards, which provision of the Food Regulations 1984 is a superseded food regulation, as long as the declaring provision contains sufficient detail to enable a reasonable person to ascertain which provisions of the Food Regulations 1984 need not be complied with if those food standards are complied with.

“11U. **Persons may elect to be governed by food standards**—(1) This section applies to the following persons:

“(a) Any person who is an importer of food or who intends to import any food:

“(b) Any person who manufactures or intends to manufacture any food:

“(c) Any person who prepares or intends to prepare food for sale:

“(d) Any person who sells or intends to sell any food:

“(e) Any other person to whom any provision of the Food Regulations 1984 applies.

“(2) Any person to whom this section applies may, at any time during the transition period, elect that alternative food standards are to apply, during the transition period, in respect of a particular food dealt with by that person.

“(3) Any person who wishes to make an election shall record an entry in a register kept by that person for the purpose.

“(4) Every such entry made pursuant to subsection (3) of this section—

“(a) Shall be in the prescribed form (if any); and

“(b) Shall specify the following particulars:

“(i) The particular food in respect of which the election is made:

“(ii) The date on and from which the election is to take effect.

“11V. **Revocation of election**—(1) Any person who makes an election may at any time revoke that election by recording an entry to that effect in the register in which the election is recorded.

“(2) Every such entry made pursuant to subsection (1) of this section—

“(a) Shall be in the prescribed form (if any); and

“(b) Shall specify the following particulars:

“(i) The particular election that is revoked:

“(ii) The date on and from which the revocation of that election is to take effect.

“11W. Application of alternative food standards adopted during transition period—(1) Notwithstanding section 11s of this Act, where a person elects that alternative food standards are to apply, during the transition period, in respect of a particular food dealt with by that person, then, while that election has effect,—

“(a) Those food standards shall apply, in accordance with the terms of the election, in respect of—

“(i) Any dealings by that person with food in respect of which that election applies; and

“(ii) Any such food dealt with by that person; and

“(b) No provision of the Food Regulations 1984 that, in relation to those alternative food standards, is a superseded food regulation shall apply in respect of that person’s dealings with such food or in respect of any such food dealt with by that person; and

“(c) This Act shall apply accordingly.

“(2) Nothing in subsection (1) of this section limits or affects the liability of that person for any offence committed before that election takes effect.

“11X. Effect of adoption of alternative food standards on persons subsequently selling food—The fact that, by virtue of an election made by any person, any food standards apply, in accordance with section 11W of this Act, during the transition period, in respect of any food dealt with by that person does not require any other person (in this subsection referred to as the seller) who sells that food to comply with those food standards, if—

“(a) The first-mentioned person disposed of that food in a package; and

“(b) The seller obtained that food (whether from the first-mentioned person or from any other person) in that same package; and

“(c) The seller sells that food in that same package; and

“(d) The food has at no time between its disposal by the first-mentioned person and its sale by the seller been repackaged.

“11Y. Adoption of alternative food standards may be necessary if person to deal with food lawfully—Where—

“(a) Any person deals with any food in any manner (other than in the manner permitted by section 11X of this Act); and

“(b) That person can lawfully deal with that food under this Act in that manner only by complying with the provisions of alternative food standards (whether or not that person must also comply with any provision of the Food Regulations 1984 or any mandatory food standards),—

then that person shall not deal with that food in that manner unless that person has elected that those alternative food standards are to apply in respect of that food.

“11Z. **Minister may declare mandatory food standard—**

(1) The Minister may from time to time during the transition period, by notice published in the *Gazette*, declare, in respect of any food standards specified in the notice, that compliance with those food standards, during the transition period, is mandatory.

“(2) A provision contained in any food standards and declaring that compliance with one or more provisions of those food standards, during the transition period, is mandatory, shall be deemed to be a declaration made under subsection (1) of this section.

“(3) The Minister may at any time, in like manner, amend or revoke any declaration made under this section.

“11ZA. **Application of mandatory food standard during transition period—**Notwithstanding section 11s of this Act, where a mandatory food standard applies in respect of any food, then, during the transition period,—

“(a) That food standard shall apply, in accordance with the terms of that food standard, in respect of—

“(i) That food; and

“(ii) Any dealings by any person with that food; and

“(b) This Act shall apply accordingly.

“11ZB. **Inconsistencies between food standards and Food Regulations 1984, and between mandatory and alternative food standards—**(1) In the event of any inconsistency between any provision of the Food Regulations 1984 and the provisions of any food standards, where that inconsistency arises during the transition period, the provisions of the food standards shall, to the extent of the inconsistency, prevail.

“(2) In the event of any inconsistency between any provisions of any mandatory food standards and the provisions of any alternative food standards, where that inconsistency arises during the transition period, the provisions of the

mandatory food standards shall, to the extent of the inconsistency, prevail.

“11ZC. Duty to disclose which food regime applies— Where, during the transition period,—

“(a) Any person deals with any food; and

“(b) In so dealing with that food, that person is required to comply with any requirements of the Food Regulations 1984, or any alternative food standards, or both,—

that person shall, on request by any other person, promptly tell the other person whether the first-mentioned person has elected that alternative food standards are to apply in respect of that food.

“11ZD. Register of elections—(1) During the transition period, and for a period of not less than 1 year after the expiry of the transition period, every person who makes an election shall cause to be kept and maintained a register in which is recorded—

“(a) The details of each such election made by that person; and

“(b) The details of any revocation of any such election.

“(2) Every such register may be kept in such manner as the person keeping it thinks fit, including, either wholly or partly, by means of a device or facility—

“(a) That records or stores information electronically or by other means; and

“(b) That permits the information so recorded to be readily inspected or reproduced in usable form.

“(3) Every person who is required by this section to keep a register shall, at all reasonable times, allow any officer to enter that person’s premises (not being a dwellinghouse) for the purpose of inspecting that register, and shall, on request,—

“(a) Provide the officer with access to the register so kept by that person; and

“(b) Permit the officer to examine the register; and

“(c) Permit the officer to produce or make a print-out or copy of the register or any part of the register.

“(4) Section 12 (3) of this Act applies, with all necessary modifications, in respect of the exercise by an officer of any powers under subsection (3) of this section.

“11ZE. Offences—(1) Every person commits an offence against this Act who fails to comply with the requirements of section 11ZC or section 11ZD of this Act.

“(2) Every individual who commits an offence against subsection (1) of this section is liable,—

“(a) In any case where the Court is satisfied that the individual intended to commit the offence, to a fine not exceeding \$5,000:

“(b) In any other case, to a fine not exceeding \$3,000,— and, where the offence is a continuing one, to a further fine not exceeding \$500 for every day or part of a day during which the offence continues.

“(3) Every body corporate who commits an offence against subsection (1) of this section is liable,—

“(a) In any case where the Court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding \$20,000:

“(b) In any other case, to a fine not exceeding \$5,000,— and, where the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues.”

10. Powers of officers—Section 12 (2) of the principal Act is hereby amended by inserting in paragraph (g), and also in paragraph (j), in each case after the word “regulations”, the words “or food standards”.

11. Powers of local authority inspectors—Section 13 (1) (d) of the principal Act is hereby amended by inserting, after the expression “section 9 (4) of this Act”, the words “or against section 11Q of this Act”.

12. Further provisions relating to seizure and detention of articles—Section 14 (3) (a) of the principal Act is hereby amended by inserting, after the word “regulations”, the words “and food standards”.

13. Power to issue search warrant even though offence not imprisonable—The principal Act is hereby amended by inserting, after section 15, the following section:

“15A. A search warrant may be issued under section 198 of the Summary Proceedings Act 1957 in respect of an offence which has been or is suspected to have been committed against section 9 or section 10 or section 11 or section 11Q or section 11ZE of this Act or which is believed to be intended to be so committed, even though the offence is not punishable by imprisonment.”

14. Power of Medical Officer of Health to require information—Section 17 (1) of the principal Act is hereby amended by inserting, after the word “regulations”, the words “or food standards”.

15. Evidence of analysis—Section 23 (4) of the principal Act is hereby amended by inserting, after the word “regulations”, the words “or food standards”.

16. Special provisions relating to imported consignments—Section 24 (1) (f) of the principal Act is hereby amended by inserting, after the word “regulations”, the words “or food standards”.

17. Jurisdiction of District Courts—(1) Section 27 (1) of the principal Act is hereby amended by inserting, immediately before the words “Every offence”, the words “Subject to section 11AA of this Act,”.

(2) Section 27 of the principal Act is hereby amended by repealing subsections (4) and (5).

18. Copy of analyst’s certificate or report to be served with summons—(1) The principal Act is hereby amended by inserting, after section 27, the following section:

“27A. (1) Where proceedings are brought for an offence against this Act or against any regulations made under this Act, there shall be served with the summons in any such proceedings a copy of the analyst’s certificate or report (if any) relating to the prosecution.

“(2) In any such proceedings, the Court shall, on the request of either party to the proceedings, and may if it thinks fit without such request, order that the part of the sample retained by the officer under section 21 of this Act be submitted, for analysis and report, to—

“(a) An analyst named by the Court; or

“(b) Two analysts together, of whom 1 shall be nominated by the defendant and the other shall be either the analyst whose certificate or report is before the Court or some other analyst appointed under this Act.”

(2) Section 23 (2) (a) of the principal Act is hereby amended by omitting the expression “section 27 (4)”, and substituting the expression “section 27A (1)”.

(3) Section 33 (1) of the principal Act is hereby amended by omitting the expression “section 27 (5)”, and substituting the expression “section 27A (2)”.

19. General penalty—Section 28 of the principal Act is hereby amended—

- (a) By omitting the expression “\$500”, and substituting the expression “\$2,000”; and
- (b) By omitting the expression “\$50”, and substituting the expression “\$100”.

20. Liability of principal for acts of agents, etc.—Section 29 (2) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) For an offence against section 9 or section 10 or section 11AA or section 11Q of this Act, knowledge shall not, for the purposes of section 9 (5) or section 9 (6) or section 10 (2) or section 10 (3) or section 11AA (1) or section 11Q (1) or section 11Q (2) of this Act, be imputed to the defendant by reason only of the knowledge of the agent or employee; or”.

21. Strict liability—(1) Section 30 (1) of the principal Act is hereby amended by inserting, after the word “regulations”, the words “or food standards”.

(2) Section 30 (2) (b) of the principal Act is hereby amended by inserting, after the word “regulations” in each place where it appears, the words “or food standards”.

(3) Section 30 of the principal Act is hereby amended by adding, as subsection (5), the following subsection:

“(5) Nothing in this section applies in respect of an offence against section 11AA of this Act.”

22. Further defences—(1) Section 31 (1) of the principal Act is hereby amended by inserting, after the word “regulations”, the words “or food standards”.

(2) Section 31 (3) of the principal Act is hereby amended by inserting, after the word “regulations”, the words “or food standards”.

23. Courts may order withdrawal of goods from circulation—Section 35 of the principal Act is hereby amended by inserting in subsection (1), and also in subsections

(4) and (5), in each case after the expression "Part II", the expression "or Part IIA".

24. Records—Section 41 (1) of the principal Act is hereby amended by omitting the words "prescribed and shall retain them for such period as may be prescribed", and substituting the words "required by any regulations or food standards made under this Act, and shall retain them for such period as may be specified in those regulations or food standards, as the case requires".

25. Regulations—(1) Section 42 (1) (y) of the principal Act is hereby amended by inserting, after the word "regulations", the words "or food standards".

(2) Section 42 (1) of the principal Act is hereby amended by repealing paragraphs (zb) and (zc), and substituting the following paragraph:

"(zc) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amount of the fines that may be imposed in respect of any such offences, which fines shall be,—

"(i) In the case of an individual,—

"(A) In any case where the Court is satisfied that the individual intended to commit the offence, an amount not exceeding \$5,000:

"(B) In any other case, an amount not exceeding \$3,000,—

and, where the offence is a continuing one, a further amount not exceeding \$500 for every day or part of a day during which the offence continues:

"(ii) In the case of a body corporate,—

"(A) In any case where the Court is satisfied that the body corporate intended to commit the offence, an amount not exceeding \$20,000:

"(B) In any other case, an amount not exceeding \$5,000,—

and, where the offence is a continuing one, a further amount not exceeding \$1,000, for every day or part of a day during which the offence continues:".

26. Regulations for fees and charges—The principal Act is hereby amended by inserting, after section 42, the following section:

“42A. (1) Without limiting the power to make regulations conferred by section 42 of this Act, but subject to the provisions of this Act, the Governor-General may from time to time, by Order in Council made on the advice of the Minister tendered after consultation with such organisations or bodies as appear to the Minister to be representative of persons likely to be substantially affected by the regulations, make regulations prescribing fees or charges, or both, for the purpose of meeting, or assisting in meeting, the costs and expenses incurred by the Director-General, analysts, the Crown, or any other person, in the exercise of functions or powers, or the performance of duties, or the provision of services, under this Act.

“(2) Any regulations made under subsection (1) of this section may—

“(a) Prescribe the matters in respect of which fees or charges, or both, are payable, which may include (without limitation)—

“(i) Additional fees or charges, or both, for services or work provided or carried out outside normal working hours, at weekends, or on statutory holidays:

“(ii) Charges for reimbursement of travelling time and other expenses:

“(b) Prescribe the amounts of the fees or charges, or the methods by which they are to be assessed:

“(c) Specify the persons by whom, and to whom, any fees or charges, or both, are payable:

“(d) Provide for the refund, waiver, or rebate, or enable the refund, waiver, or rebate, of any fee or charge, or both:

“(e) Fix, or enable the fixing, of a date by which any fee or charge is to be paid:

“(f) Provide a discount for early payment of any fee or charge or a penalty for late payment, or both:

“(g) Prescribe any returns, and the conditions relating to such returns, to be made by persons by whom any fees or charges are payable.

“(3) Any regulations made under subsection (1) of this section may—

“(a) Prescribe different rates of fees or charges, or both; or

“(b) Prescribe different methods by which fees or charges, or both, are to be assessed—
in respect of different classes of persons, foods, or other matters.”

27. Consequential amendment to Dairy Industry Act 1952—The Dairy Industry Act 1952 is hereby amended by repealing section 15A (as substituted by section 2 (1) of the Dairy Industry Amendment Act 1989), and substituting the following section:

“15A. **Certain ingredients permitted**—(1) This section applies in respect of any dairy produce that is intended to be exported and is not sold in New Zealand except in the course of, or for the purpose of, export.

“(2) Any person may, with the written consent of the chief executive of the Ministry of Agriculture, and subject to the conditions (if any) specified in the consent, mix with, add to, or use in the manufacture of any dairy produce (being dairy produce to which this section applies), during or after its manufacture, any additive, constituent, or ingredient specified in the consent.

“(3) In giving any consent pursuant to this section, the chief executive of the Ministry of Agriculture shall take into account New Zealand’s obligations under any international treaty, agreement, convention, or protocol.”

28. Amendment to Summary Proceedings Act 1957—Part II of the First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting, after the item relating to the Finance Act 1915, the following item:

“The Food Act 1981 ... 11AA Contravention of Act, etc., knowing that will create risk to human health”.

29. Consequential amendments to Wine Makers Act 1981—(1) Section 2 of the Wine Makers Act 1981 is hereby amended by omitting, from the definition of the term “wine-based drink”, the words “Food and Drug Act 1969 and any regulations”, and substituting the words “Food Act 1981 and regulations and food standards”.

(2) Section 15 (1) of the Wine Makers Act 1981 is hereby amended by repealing paragraph (e), and substituting the following paragraph:

“(e) The Food Act 1981; or”.

(3) Section 25 (1) of the Wine Makers Act 1981 is hereby amended by repealing paragraph (a) (as amended by section 2 of the Wine Makers Amendment Act 1982), and substituting the following paragraph:

“(a) The wine complies with all the provisions of any regulations or food standards for the time being in force under the Food Act 1981 relating to the composition of wine so far as they would be applicable to that wine if it were offered for sale in New Zealand; and”.

(4) Section 2 of the Wine Makers Amendment Act 1982 is hereby consequentially repealed.

30. Consequential amendments to Sale of Liquor Act 1989—(1) Section 37 of the Sale of Liquor Act 1989 is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) It shall be a condition of every off-licence granted in respect of any premises described in section 36 (1) (d) of this Act that no liquor be sold pursuant to the licence other than—

“(a) Wine that conforms to the standard prescribed by regulation 219 of the Food Regulations 1984 (S.R. 1984/262), or any other standard that may be set, by regulations made pursuant to the Food Act 1981 or by food standards issued pursuant to that Act, in substitution for that standard; and

“(b) Sparkling wine that conforms to the standard prescribed by regulation 220 of those regulations, or any other standard that may be set, by regulations made pursuant to the Food Act 1981 or by food standards issued pursuant to that Act, in substitution for that standard; and

“(c) Fruit wine that conforms to the standard prescribed by regulation 226 of those regulations, or any other standard that may be set, by regulations made pursuant to the Food Act 1981 or by food standards issued pursuant to that Act, in substitution for that standard; and

“(d) Sparkling fruit wine that conforms to the standard prescribed by regulation 227 of those regulations, or any other standard that may be set, by regulations made pursuant to the Food Act 1981 or by food standards issued pursuant to that Act, in substitution for that standard; and

“(e) Mead that conforms to the standard prescribed by regulation 226 of those regulations, or any other standard that may be set, by regulations made pursuant to the Food Act 1981 or by food standards issued pursuant to that Act, in substitution for that standard.”

(2) The following enactments are hereby consequentially repealed:

(a) Subsections (2) and (3) of section 2 of the Sale of Liquor (Off-Licence) Amendment Act 1992:

(b) Section 2 of the Sale of Liquor Amendment Act 1994.

31. Power to issue food standards between passage and commencement of this Act—(1) Subject to this section, the power conferred by section 11C of the principal Act (as inserted by section 9 of this Act) to issue food standards may be exercised at any time after the date of commencement of this section as if Part IIA of the principal Act (as so inserted) came into force on that date.

(2) The following provisions apply with respect to the issuing of food standards in reliance on this section:

(a) The Minister shall not issue food standards in reliance on this section unless the Minister is satisfied that it is necessary to do so for the purpose of giving effect to the provisions of Annex D (3) (a) of the Australia - New Zealand Joint Food Standards Agreement:

(b) No food standards may be issued in reliance on this section after the 1st day of July 1996:

(c) No food standards issued in reliance on this section may be expressed to come into force before the 1st day of July 1996:

(d) Nothing in section 11E (2) of the principal Act (as inserted by section 9 of this Act) shall apply with respect to the issuing of food standards in reliance on this section:

(e) It shall not be necessary for the Minister to give notice to any person of the Minister's intention to issue food standards in reliance on this section:

(f) Before issuing food standards in reliance on this section, the Minister shall undertake such consultation (if any) as the Minister considers appropriate and practicable in the circumstances with such persons, representative groups within the food industry or elsewhere, Government departments, Crown entities, and local authorities as the Minister considers

appropriate, but no other consultation shall be required with respect to the issuing of food standards in reliance on this section:

(g) Nothing in section 11G (3) of the principal Act (as so inserted) shall apply with respect to food standards issued in reliance on this section.

(3) Except as provided by subsection (2) of this section, all the provisions of Part IIA of the principal Act (as inserted by section 9 of this Act) apply in relation to the issuing of food standards in reliance on this section, and with respect to food standards so issued, as they apply in relation to food standards that are not so issued.

(4) Nothing in this section limits section 12 of the Acts Interpretation Act 1924.

This Act is administered in the Ministry of Health.
