

# FOOD AMENDMENT BILL

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## EXPLANATORY NOTE

### 1. GENERAL POLICY STATEMENT

#### *Introduction*

THIS Bill makes changes to elements of the New Zealand Food Administration. These changes will help to achieve safer food for New Zealanders, and enable the setting of food standards by a more responsive mechanism.

Firstly, the Bill will give legislative recognition to food safety programmes developed and implemented by food operators by allowing the Director-General of Health to grant exemptions from the requirements of the Food Hygiene Regulations 1974. There will also be provision for—

- (a) The registration of independent auditors for food safety programmes; and
- (b) The development of regulations specifying the services and related fees that officers designated by the Director-General of Health provide to industry.

Secondly, the Bill will establish a streamlined, administratively based, food standard setting process, that will in turn facilitate the establishment of a joint food standards setting system with Australia. Included in this new standards setting mechanism are also provisions for—

- (a) The transitional arrangements needed to move from the current regime of standards in the Food Regulations 1984 to a comprehensive regime of food standards, that includes joint New Zealand Australia food standards issued under the administrative process proposed in this Bill; and
- (b) The “prescribing” of high risk foods, including imported foods, with requirements for those dealing with these foods to provide evidence that the food safety risks have been addressed; and
- (c) The making of emergency food standards.

The development of industry based food safety programmes is an important element in the move to encourage industry to take responsibility for the safety of their products while allowing them to develop a wider range of products through more generic and broadly based food standards. Overall, the changes introduced by this Bill will assist in improving the co-ordination, efficiency, effectiveness, consistency, and alignment of statutory food administration functions in New Zealand by—

- (a) Alignment and updating of legislation including penalties and offences, as appropriate, between the health and agriculture sectors; and
- (b) Streamlining of the process for setting food standards; and
- (c) Increasing the role for industry in ensuring standards are met.

#### *Economic Benefits of the Proposed Changes*

The changes proposed in this Bill have clear economic benefits, and will assist in the development of a competitive enterprise economy. It will also advance the Government's strategic result areas for "*achieving improvements in the public health, consumer safety ... regulatory frameworks so that they better protect the health and safety of New Zealanders while minimising industry compliance costs*". The benefits rest largely with industry and consumers, although there will also be potential savings in terms of health related expenditure. The proposed changes will encourage industry innovation and allow substantial gains in terms of product development. The flow-on effects in terms of the ability to increase the size and scope of sectors of the food industry should have a positive impact on employment and the economy generally.

The domestic food sector is estimated to have an annual value of \$9 billion. Growth in the food sector has been constrained because food legislation has been slow to recognise the use of new technologies. This has prevented industry meeting consumer needs in some market areas.

The potential benefits of reducing food-borne illness as food safety programmes become more widely used will also benefit the economy as losses in productivity and health sector costs reduce.

New Zealand has one of the highest reported incidence of food-borne illness in the Western world. There was a 240 percent increase in reported cases of food-borne illness between 1980 and 1990. It is difficult to measure the costs of food-borne illness in terms of human suffering and lost productivity. The majority of people who suffer a possible food poisoning episode do not seek medical assistance. However, based on overseas research the current cost to the New Zealand economy can be estimated at up to \$100 million annually.

#### *Food Safety Programmes*

Internationally and in New Zealand there is recognition that the most effective method for assuring food safety is by applying the Hazard Analysis Critical Control Point (HACCP) system. This is a process of identifying the hazards associated with a particular food operation, establishing the most efficient method to control or eliminate those hazards, putting those controls in place, and ensuring that those controls are maintained in place. The process, therefore, constitutes a significantly different way for food business owners to address food safety. Compliance with prescriptive food hygiene legislation is recognised, by both government and industry, as not effectively addressing all the actual food safety hazards associated with different food businesses.

The need to address food safety in a more effective way is highlighted by the steady rise in the known number of food-borne illnesses in recent years. Research suggests that about 9 percent of consumers experience an episode of food-borne illness in any given year. The financial cost to New Zealand has been estimated to be as high as \$100 million annually, and outbreaks have destroyed the financial viability of businesses.

Because the application of HACCP systems in the form of food safety programmes is such a radical change from compliance with food hygiene requirements, a transition period is appropriate. Further, the development and use of food safety programmes needs to be methodically worked through to ensure that the most effective, economic, and practical programme is developed. Before the use of food safety programmes can be fully implemented in all food

businesses and the Food Hygiene Regulations 1974 revoked, both industry and regulators need to gain experience in developing effective and cost efficient mechanisms which promote increased food safety. This Bill provides for a voluntary transition process and provides safeguards to ensure that there is integrity in that process.

Key benefits of the mechanism set out in this Bill are—

- (a) Recognition of food safety programmes will initially be voluntary, therefore the changes initiated by this Bill will not impact wider than those food businesses ready to make the change at this time:
- (b) Existing food hygiene requirements in industries, such as dairy, meat, and fish, covered by other legislation administered by the Ministry of Agriculture will not be affected by this Bill:
- (c) This Bill will provide an opportunity for both industry and regulators to gain experience. Such experience will therefore facilitate full implementation of food safety programmes, in all food businesses, in the future.

The Bill provides for the Director-General of Health to grant exemptions from the Food Hygiene Regulations 1974. Before granting any exemption, the Director-General must be satisfied that the applicant has adopted an appropriate food safety programme, and further, that the applicant will take all reasonable steps to ensure compliance with all other relevant provisions of the Food Act 1981.

The principal feature of the exemption is that the owner of the food business sets down, in the form of a food safety programme, the process by which the safety of the food products that are in the control of that person can be assured. It is this programme which will be subject to audit. Any exemption may be unconditional or have such conditions as the Director-General thinks fit. This provides a further mechanism for ensuring a food safety programme is appropriate and effectively applied.

A wide variety of factors influence food safety. Therefore, each food safety programme is likely to be different when tailored to the specific food operation or process in each business. The Ministry of Health is working with sectors of the food industry to encourage industry development of generic codes of practice. Food operators in those sectors can customise such codes to their business when they develop their individual food safety programme. To cater for changes in the food operation, the Director-General of Health will also have the power to vary an exemption.

A feature of HACCP as detailed in food safety programmes is the independent audit of the programme and its application. The contracting of the independent auditor is the responsibility of the programme owner. Auditors will be approved by the Director-General of Health after the Director-General is satisfied that the person has the relevant technical skills and experience, and that the person is reputable. The Director-General may set conditions on the approval to ensure the integrity of the auditor's functions.

#### *Streamlining the Standard Setting Process*

The Government recognised that a new food standards setting mechanism was needed for New Zealand. A regulations based system for setting food standards is slow; unresponsive to technical innovation within the food industry; and has limited transparency. This Bill will address these issues by providing a framework within which food standards are considered. For the first time there is an explicit purpose statement in respect of food standards. There is a clear obligation to—

- (a) Protect public health; and
- (b) Align with international standards whenever possible; and
- (c) Fulfil New Zealand's international obligations in respect of trade facilitation.

The two clearest examples of New Zealand's desire to support free and open trade are the Closer Economic Relations (CER) agreement with Australia and our support for the World Trade Organization Agreement (WTO). The move to a joint standards setting system with Australia, which will be facilitated by this Bill, further demonstrates New Zealand's commitment to support free trade.

In December 1995, the Government of New Zealand signed a treaty with the Government of Australia to establish a joint food standards setting system. The ultimate outcome of this joint system will be a Joint New Zealand Australia Food Standards Code. The vast majority of food standards will apply on both sides of the Tasman. Only a small number of standards will be outside the scope of the joint system, these being largely related to maximum levels for pesticides, veterinary and animal remedies, and some food safety issues.

The process of food standard setting which will be underpinned by this Bill complements the food standard setting system in place in Australia. While the Australian legislation to establish the joint system sets out in specific detail the process to be followed when developing food standards, it was seen as more appropriate for this enabling New Zealand legislation to specify only the key features. These are—

- (a) A requirement for consultation with interested parties on any proposed standards; and
- (b) Ministerial approval of standards; and
- (c) Promulgation by *Gazette* notice.

It should be noted that the 1991 Australian legislation which established the Australian National Food Authority responsible for developing food standards and associated Advisory Committees has been amended. As the joint New Zealand Australia system is based on the Australian system, the legislation has been amended to reflect New Zealand's involvement in the food standards setting process.

The provisions of this Bill, and the joint system with Australia that the Bill facilitates, will see benefits accrue to New Zealand and New Zealanders. The food industry generally is already New Zealand's largest employer. In terms of trade and consumer access to a wider range of products, the benefits will be substantial.

Key benefits of the new standards setting mechanism and the joint system with Australia can be summarised as follows:

- (a) Facilitation of domestic trade by providing a better food standards setting system for New Zealand at relatively low cost; and broadly based and timely standards that will assist industry innovation and thereby industry expansion and economic growth. This will further assist in the development of a competitive enterprise economy - an element of the Government's growth strategy:
- (b) Facilitation of international trade by assisting the achievement of reduced compliance costs for exporters to New Zealand's largest market for processed food - (Australia); alignment with international moves towards compatible and efficient regulation; and potential growth in the wider Asia Pacific region. Strengthening New Zealand's international linkages is also an element of the Government's growth strategy:
- (c) Improvement of food safety by allowing rapid review of policy and change to standards to control/prevent unsafe practices:
- (d) Improvement of health status by assisting in achieving a reduction in nutrition/diet related illness by promoting diets that meet nutrition guidelines through increasing consumer choice in products.

*Transitional Provisions for Food Standards*

It is important that there is an orderly transition from the current regime of standards contained in the Food Regulations 1984 to a comprehensive regime of food standards issued under the administrative process proposed in the Bill. In time this regime of food standards will largely be made up of standards that are joint Australia New Zealand food standards.

The Bill allows the Minister of Health to designate food standards which are an alternative to one or more particular provisions in the Food Regulations 1984. It also requires the Minister when issuing those alternative standards to identify or declare in those food standards which provisions in the Food Regulations 1984 those food standards are an alternative to. Manufacturers, importers, etc., who wish to comply with alternative food standards must make a specific election that they wish to use alternative food standards.

It is intended that the Australian Food Standards Code will be adopted as alternative food standards to certain provisions in the New Zealand Food Regulations 1984 until a joint food standards code is completed. The Australian Code will be amended over the next 2 to 4 years as joint food standards are developed and will eventually become the Australia New Zealand Food Standards Code. By recognising the Australian Food Standards Code now, New Zealand manufacturers will have immediate access to more up-to-date standards and timely access to joint standards as they are developed. Further, under the provisions of the treaty signed between Australia and New Zealand, products manufactured to New Zealand standards will have access to the Australian market, and vice versa.

The standards in the Food Regulations 1984 are an integrated package, with the provisions of many food standards having application to a particular food. Because of this, it is not seen as appropriate or practical to permit food products to be available that comply with a mixture of New Zealand food regulations and Australian food standards. Therefore, if a manufacturer elects to produce to the Australian Food Standards Code (specified as alternative food standards in this Bill) all composition and labelling standards applicable to that particular product in the Australian Food Standards Code must be complied with. Manufacturers may elect to produce all their products to the alternative food standards regime from the beginning of the transition period or they may decide to make elections gradually over the transition period. This should allow businesses to move to the joint New Zealand Australian Food Standards Code at a pace suited to the dictates of their individual business, market, and consumer requirements.

There are likely to be certain provisions in the Food Regulations 1984 that the food industry will need to comply with in addition to alternative food standards, for example provisions on issues that are outside the scope of the joint Australian New Zealand food standards system. There may be instances during the transition period where it is found that standards in the Food Regulations 1984 are so inadequate that they need to be altered as quickly as possible (e.g. a standard does not adequately protect public health). The Bill provides that the Minister can declare food standards to be mandatory. Thus the new standards setting mechanism can be used to issue standards that would replace or, as necessary, supplement provisions in the Food Regulations 1984. In such instances, the outdated provisions in the Food Regulations 1984 can be gradually phased out and revoked and replaced with contemporary mandatory food standards.

Thus during the transition there will be—

- (a) Food standards that are declared to be alternative to specified provisions in the Food Regulations 1984 so that the food industry can elect which set of these standards they wish a food to comply with; and

- (b) Provisions of the Food Regulations 1984 that all products must comply with;  
and
- (c) Food standards which are declared to be mandatory and must also be complied with.

To help alleviate any possible consumer confusion and to assist in enforcement, this Bill will require all manufacturers to keep a record when they elect to use alternative food standards. Many manufacturers currently keep records relating to their products in respect of batch numbers, product runs, etc., to assist with product recall if this should ever prove necessary. Therefore, the addition of one additional record item should not attract unreasonable compliance costs, especially given the benefits available in terms of potential product innovation.

There will be instances where a food operator wishes to repackage a bulk product into retail packs, or use a food as a food ingredient in another food product, where that original food has been produced in accordance with alternative food standards. If the food operator is merely onselling the original food in the same package in which the operator received the product, it is not necessary for that operator to also make an election that the product complies with alternative food standards or keep notice of such election in a register in relation to that food. If the operator deals with that food in any other way, for example uses it to prepare another food, it may be necessary in order for that person to deal with that food lawfully for alternative food standards to apply to the finished food. In such a case the food operator must have made an election that the operator will use alternative food standards before the operator can manufacture that food.

#### *Prescribed Foods (Including Imported Foods)*

This Bill introduces the concept of “prescribed foods”. These are foods which, because of their nature or the conditions in which they are stored, transported, etc., have a greater potential to cause illness or harm to human health. While certain aspects of “risk foods”, and in particular some imported foods, are dealt with in the Food Regulations 1984, there has not necessarily been a consistent approach across both domestically produced and imported risk foods. Further, the measures that have been in place have not necessarily addressed the relevant “risks” associated with those particular foods.

The requirements detailed in regulation 258 of the Food Regulations 1984 for importers to satisfy an officer that the imported food complies with current food standards only applies to a limited list of foods. The mechanism to alter this list of foods, an amendment to the Food Regulations 1984, is recognised as being slow and therefore unresponsive to changing needs. With imports increasing at a rate of 15 percent per annum, a transparent, flexible, and risk assessment based process is needed to afford New Zealand a reasonable level of robustness to meet our World Trade Organization (WTO) obligations.

The Bill introduces the ability to designate a prescribed food by food standards. This will allow the extension of a risk based identification approach to cover the circumstances in which foods are dealt with as well as the foods themselves. This also provides a mechanism to respond to emergent public health issues, because the Minister of Health will be able to make standards detailing which foods are high risk and also the conditions or circumstances in which foods are dealt with that make them high risk. However, in cases when urgent action is required, an emergency food standard may be a more appropriate mechanism.

Another important issue is the changed relationship with Australia. This has two aspects. Firstly, the impact joint food standard setting will have on the movement of food between the two countries. Secondly, how food imported from third countries is handled. The flexibility that may be provided by the use of food

standards to identify prescribed foods could allow equivalent levels of surveillance to be afforded on high risk imported food entering either country. Clearly there are efficiencies for both New Zealand and Australia if we have a co-ordinated trans-Tasman approach for dealing with high risk food. A co-ordinated trans-Tasman approach should also provide confidence that food from any third country meets the equivalent standards.

The "prescribed food" provisions in the Bill will require people dealing with those foods, including importers, to provide such evidence as an officer may require that the food complies with the relevant food standards. This evidence may be provided in the form of certification, laboratory tests, or safety assurance system reports that the importers have available to them. Because these requirements will be based on the risks associated with a particular food or group of foods, this also provides a mechanism to ensure equivalence of treatment for determining safety and compliance in both domestically produced and imported product. If a food is accompanied by the appropriate evidence to satisfy an officer that the risks associated with that food or method of dealing with that food have been identified and controlled, the food will be cleared for entry onto the New Zealand market.

The features proposed in this Bill are those promoted by the Food and Agriculture Organization of the United Nations and the World Health Organization Manual of Food Quality Control and Import Inspection (1993).

It is also intended that the "prescribed food" provisions would permit the recognition of existing bilateral trade agreements which have been developed as a method of facilitating trade between countries, such as those with Canada and the United States of America on fish and fishery products.

#### *New Power to Make Regulations Relating to Fees*

This Bill will enable regulations to be made which prescribe fees for a wider range of work undertaken by the Ministry of Health and designated officers in Crown health enterprises. The services for which fees may be payable would include, for example, work in relation to—

- (a) The registration of food safety programmes:
- (b) The registration or accreditation of auditors:
- (c) The administrative clearance of imported food, including administrative fees, and when necessary inspection and analysis costs and issuing any certification documentation.

The regulations in respect of fees and services will be developed in consultation with all interested parties.

#### 2. CLAUSE BY CLAUSE ANALYSIS

*Clause 1* relates to the Short Title and commencement. The Bill (other than *clauses 8 and 31*) is to come into force on **1 July 1996**. *Clause 8* is to come into force on a date appointed by the Governor-General by Order in Council. *Clause 31* comes into force on the day after assent.

*Clause 2* amends section 2 of the principal Act, which relates to interpretation. Three new definitions are inserted into the principal Act.

*Clause 3* inserts *new sections 8A to 8Q* into the principal Act.

*New sections 8A to 8I* provide for the Director-General of Health to grant exemptions from compliance with the Food Hygiene Regulations 1974 to persons who adopt a suitable food safety programme.

*New sections 8J to 8Q* provide for the Director-General of Health to approve persons to carry out periodic audits of food safety programmes adopted by

persons to whom exemptions from the Food Hygiene Regulations 1974 are granted pursuant to *new section 8B*.

*Clause 4* repeals section 9 of the principal Act (which prohibits the sale of food that does not comply with certain standards), and substitutes a new section. The effect of the amendment is to extend the provision to require compliance with standards imposed by food standards, and to increase the maximum penalties for offences against the provision.

*Clause 5* repeals subsection (2) of section 10 of the principal Act (which relates to the labelling and packing of food), and substitutes new subsections (2) and (3). The effect of the amendment is to increase the maximum penalties for offences against the provision.

*Clause 6* amends section 11 of the principal Act (which imposes certain requirements in relation to the advertising of food). The effect of the amendment is to extend the provision to require compliance with standards imposed by food standards, and to increase the maximum penalties for offences against the provision.

*Clause 7* inserts a *new section 11AA* into the principal Act. The new section makes it an offence to wilfully act in contravention of, or fail or refuse to comply with, any provision of the principal Act, or any regulations made under that Act, or any food standard, knowing that the action, failure, or refusal may create, directly or indirectly, a risk to human health. The offence is punishable by imprisonment for up to 12 months, or a fine of up to \$100,000. The new offence is an indictable offence, but is triable summarily.

*Clause 8* repeals section 11A of the principal Act, which imposes restrictions on the sale of raw (unpasteurised) milk. The repeal is to come into force on a date to be appointed by the Governor-General by Order in Council.

*Clause 9* inserts a *new Part IIA* (comprising *new sections 11B to 11ZE*) into the principal Act. The *new Part IIA* provides for the issuing of food standards.

*New section 11B* sets out the purpose of *new Part IIA*, which is to provide 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 regard to—

- (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, especially between those of New Zealand and Australia:
- (d) The need to give effect to New Zealand's international obligations under any relevant international treaty, agreement, convention, or protocol.

*New section 11c* empowers the Minister of Health to issue food standards in respect of food manufactured or prepared for sale or sold in New Zealand, or imported into New Zealand.

*New section 11D* empowers the Minister of Health to issue food standards declaring a food to be a prescribed food for the purposes of *new section 11P*. The consequence of a food being declared to be a prescribed food is essentially that a person may not deal with that food without first satisfying an officer (as defined in section 2 of the principal Act),—

- (a) In the case of a food that is a prescribed food when imported into New Zealand, that the food complies with the requirements of all relevant



provisions of the principal Act, all relevant regulations made under the principal Act, and all applicable food standards:

- (b) In any other case, that the person, in dealing with food of that kind, will comply with those requirements.

*New section 11E* sets out certain matters that the Minister of Health must take into account in issuing any food standards. The provision also requires the Minister to be satisfied that appropriate consultation has been carried out with respect to the food standards.

*New section 11F* permits material to be incorporated into a food standard by reference.

*New section 11G* relates to the verification, notification, availability, and commencement of food standards.

*New section 11H* contains further general provisions relating to food standards.

*New section 11I* deems food standards to be regulations for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989.

*New section 11J* prohibits the Minister of Health from delegating the power to issue food standards.

*New section 11K* sets out how food standards may be proved.

*New section 11L* provides for the amendment and revocation of food standards.

*New section 11M* authorises the Director-General of Health to issue emergency food standards. The requirements relating to consultation and notification of emergency food standards are less onerous than those for ordinary food standards, and emergency food standards may be in force for no longer than 6 months.

*New section 11N* prohibits the Director-General of Health from delegating the power to issue emergency food standards. However, the power may be exercised by an acting Director-General.

*New section 11O* requires persons dealing with food to comply with all applicable food standards.

*New section 11P* sets out the consequences of a food being declared to be a prescribed food. These consequences are explained above in relation to *new section 11D*.

*New section 11Q* makes it an offence to contravene *new section 11O* or *new section 11P*.

*New sections 11R to 11ZE* set out transitional arrangements relating to the phasing in of food standards and consequent phasing out of standards set by the Food Regulations 1984.

*New section 11R* defines certain terms for the purposes of the transitional provisions contained in *new sections 11S to 11ZE*. Of particular importance is the definition of the term "transition period". The length of the transitional period is to be determined by the Governor-General by Order in Council.

*New section 11S* provides that except as otherwise provided, food standards have no application during the transition period, and the principal Act and the Food Regulations 1984 apply accordingly during that period.

*New section 11T* relates to "alternative food standards". During the transition period, a person may choose to have such food standards apply in respect of a particular food dealt with by that person. In that case, certain specific provisions of the Food Regulations 1984 will not apply in respect of that food. *New section 11T* requires the Minister of Health, when issuing food standards that are intended to operate as alternatives to compliance with the Food Regulations 1984 during the transition period, to identify the particular provisions of the regulations that are superseded by those food standards.

*New section 11u* provides that persons may elect that alternative food standards are to apply, during the transition period, in respect of a particular food dealt with by that person. Such an election must be recorded in a register kept by that person.

*New section 11v* provides for the revocation of an election under *new section 11u*.

*New section 11w* sets out the effect of a person's election to have alternative food standards apply, during the transition period, in respect of a particular food. In such a case, the food standards apply in respect of that food, those provisions of the Food Regulations 1984 that are identified as superseded by those food standards do not apply in respect of that food, and the principal Act applies accordingly.

*New section 11x* clarifies the downstream effect of the adoption of alternative food standards in the case of prepackaged food. Where a person who has adopted alternative food standards in respect of a particular food disposes of that food in a package, subsequent sellers of that food are not required to comply with those food standards as long as the food has not been repackaged.

*New section 11y* makes it clear that, although an election to adopt alternative food standards is optional, a person wishing to deal with food in a particular way may have to adopt such food standards in order to deal lawfully with that food in that way.

*New section 11z* provides that the Minister of Health may declare that compliance with particular food standards during the transition period is mandatory.

*New section 11zA* makes compliance with mandatory food standards an exception to the general rule in *new section 11s* that food standards do not apply during the transition period.

*New section 11zB* clarifies the position where, during the transition period, there are inconsistencies between food standards and the Food Regulations 1984, or between mandatory food standards and alternative food standards.

*New section 11zc* imposes a duty on persons dealing with food during the transition period to disclose whether or not they have elected that alternative food standards are to apply in respect of that food.

*New section 11zd* requires persons who elect to have alternative food standards apply in respect of food dealt with by them during the transition period to keep a register recording such elections, and any revocation of such elections.

*New section 11ze* makes it an offence to fail to comply with the requirements of *new section 11zc* or *new section 11zd*.

*Clauses 10 to 12* make consequential amendments to sections 12, 13, and 14 of the principal Act.

*Clause 13* inserts a *new section 15A* into the principal Act. The new section provides that a search warrant may be issued under section 198 of the Summary Proceedings Act 1957 in respect of an offence against section 9, 10, or 11 of the principal Act (as amended by *clauses 4, 5, and 6*), or against *new sections 11Q or 11ze* (as inserted by *clause 9*), even though the offence is not punishable by imprisonment. Offences against sections 9, 10, and 11 of the principal Act are currently punishable by imprisonment.

*Clauses 14 to 16* make consequential amendments to sections 17, 23, and 24 of the principal Act.

*Clauses 17 and 18* make amendments to section 27 of the principal Act (which provides that offences against the principal Act and regulations made under the Act are punishable on summary conviction), and insert a *new section 27A* into the principal Act. The amendments are consequential on the insertion, by *clause 7*, of

*new section 11AA*, which creates an indictable offence (but which is to be triable summarily). Sections 23 (2) and 33 (1) of the principal Act are also amended as a consequence of the amendment to section 27.

*Clauses 19 to 24* make consequential amendments to sections 28, 29, 30, 31, 35, and 41 of the principal Act.

*Clause 25* amends section 42 of the principal Act, which empowers the making of regulations. The amendment to section 42 (1) (y), and the repeal of section 42 (1) (zb), are consequential. The substitution of a *new section 42 (1) (zc)*, which empowers the making of regulations prescribing offences in respect of contravention of or non-compliance with regulations made under the principal Act, aligns the maximum penalties that may be imposed in respect of such offences with the maximum penalties that may be imposed in respect of offences in respect of food standards.

*Clause 26* inserts a *new section 42A* into the principal Act. The new section provides a substantially wider power to make regulations prescribing, or providing for the fixing of, fees or charges in respect of the exercise or performance of functions, powers, or duties, or the provision of services, under the principal Act.

*Clause 27* makes a consequential amendment to the Dairy Industry Act 1952. The amendment repeals section 15A of that Act, and substitutes a *new section 15A*. The existing section relates to ingredients that may be mixed with, added to, or used in the manufacture of, dairy produce. These are common salt, sugar, and water; certain ingredients (such as coagulants and colouring agents) whose use in the manufacture of dairy produce is permitted by the Food Regulations 1984; and additives, constituents, or ingredients whose use is permitted by the chief executive of the Ministry of Agriculture.

The *new section 15A* is limited to dairy produce that is intended to be exported, and allows only ingredients that are permitted by the chief executive of the Ministry of Agriculture. In giving such permission, the chief executive will be required to take into account New Zealand's obligations under any international treaty, agreement, convention, or protocol.

*Clause 28* makes a consequential amendment to the Summary Proceedings Act 1957 to make the new indictable offence created by *new section 11AA* (as inserted by *clause 7*) triable summarily.

*Clause 29* makes consequential amendments to the Wine Makers Act 1981.

*Clause 30* makes consequential amendments to the Sale of Liquor Act 1989.

*Clause 31* empowers the issuing of food standards under the principal Act between the passage and commencement of this Bill. The provision is necessary in order to enable New Zealand to comply with its obligations under the Agreement Between the Government of New Zealand and the Government of Australia Establishing a System for the Development of Joint Food Standards. Annex D (3) (a) of that Agreement requires that as from 1 July 1996, Australian Food Standards in the Australian Food Standards Code be adopted in New Zealand. To allow that timetable to be met, *clause 31* waives or relaxes the consultation and notice requirements otherwise applying with respect to the issuing of food standards.

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Hon. Jenny Shipley

## FOOD AMENDMENT

### ANALYSIS

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8. Repeal of section 11A (relating to raw milk)	<i>Transitional Provisions</i>
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## A BILL INTITULED

### An Act to amend the Food Act 1981

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:

“ ‘Exemption’ means an exemption granted under section 8B of this Act:

\*1981, No. 45

Amendment: 1985, No. 18

5 “‘Food safety programme’ means a programme that consists of or includes requirements, measures, or procedures to be followed, put in place, or adopted for the purpose of identifying and controlling food safety risk factors (whether in relation to the production, manufacture, preparation, packaging, storage, handling, transport, distribution, or sale of food) in order to establish and maintain food safety in relation to a particular part of the food industry or in relation to a particular person or group of persons within the food industry:

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

15 **3. New sections inserted**—The principal Act is hereby amended by inserting in Part I, immediately after section 8, the following headings and sections:

*“Exemptions from Food Hygiene Regulations*

20 “**8A. Purpose of sections 8B to 8I**—The purpose of sections 8B to 8I of this Act is to encourage the food industry to make a voluntary transition from compliance with the Food Hygiene Regulations 1974 (S.R. 1974/169) to the adoption of food safety programmes.

25 “**8B. Exemptions from Food Hygiene Regulations 1974**—(1) Any person may apply to the Director-General for an exemption from all of the provisions of the Food Hygiene Regulations 1974 in respect of any premises of the applicant, or any vehicle of the applicant, or both.

“(2) Every application for an exemption shall—

30 “(a) Be made in writing to the Director-General; and

“(b) Be in the form provided or approved by the Director-General for that purpose; and

“(c) Be accompanied by the prescribed fee (if any).

“(3) On receiving an application made under this section, the Director-General, if he or she is satisfied—

35 “(a) That the applicant has adopted an appropriate food safety programme; and

40 “(b) That the applicant will take all reasonable steps to comply with all relevant provisions of this Act, of all relevant provisions of regulations made under this Act (other than the Food Hygiene Regulations 1974), and with all applicable food standards; and

“(c) That the granting of the exemption is appropriate, having regard to all relevant circumstances,—  
may exempt the applicant from all of the provisions of the Food Hygiene Regulations 1974 in respect of any premises of the applicant, or any vehicle of the applicant, or both. 5

“(4) Nothing in this section limits section 42 (1) (z) of this Act or any regulations made pursuant to that provision.

“8c. **Terms of exemption**—(1) Every exemption shall specify the terms of the exemption.

“(2) Subject to **subsection (5)** of this section, the Director-General may from time to time vary the terms of an exemption, by endorsement on the exemption or otherwise in writing. 10

“(3) An exemption may be unconditional or subject to such conditions as the Director-General thinks fit and specifies in the exemption. 15

“(4) Subject to **subsection (5)** of this section, the Director-General may at any time, by written notice to the holder of an exemption, revoke, amend, or add to any conditions imposed pursuant to **subsection (3)** of this section. 20

“(5) Except where any variation to any exemption is made, pursuant to **subsection (2)** or **subsection (4)** of this section, on the application of the holder of the exemption and in accordance with the terms of that application, the Director-General shall not vary any exemption under this section without first giving the holder of the exemption a reasonable opportunity to make written submissions to the Director-General in relation to the matter. 25

“8d. **Duration of exemption**—(1) The Director-General may specify in any exemption that the exemption is to have effect indefinitely or for a stated period. 30

“(2) Every exemption—

“(a) Shall come into force on the date of its issue; and

“(b) Shall continue in force until,—

“(i) It is revoked pursuant to **section 8e** of this Act; 35

or

“(ii) In the case of a exemption granted for a stated period, the expiry of that period; or

“(iii) It is surrendered pursuant to **section 8f** of this Act. 40

“8e. **Revocation of exemption**—(1) Subject to **subsection (3)** of this section, the Director-General may at any time, by notice in writing to the holder of an exemption, revoke an exemption.

“(2) Without limiting the generality of **subsection (1)** of this section, the Director-General may revoke an exemption if the Director-General is satisfied—

5           “(a) That the holder of the exemption has failed to comply with any condition imposed by the Director-General in respect of the exemption; or

          “(b) That the holder of the exemption has contravened, or failed to comply with, any provision of this Act, or of any regulations made under this Act (other than the Food Hygiene Regulations 1974), or of any applicable food standard.

10           “(3) The Director-General shall not revoke an exemption unless the Director-General has first given the holder of the exemption a reasonable opportunity to be heard.

15           “**8F. Surrender of exemption**—(1) Subject to this section, the holder of an exemption may at any time surrender that exemption by notice in writing to that effect sent to the Director-General.

20           “(2) The surrender shall take effect on the expiry of 3 months after the date of the receipt of the notice by the Director-General, or on such earlier date as the Director-General may approve.

25           “(3) On or before the surrender takes effect, the holder of the exemption shall send the exemption to the Director-General.

          “**8G. Substituted exemption**—Notwithstanding anything in this Part of this Act, the Director-General may, if he or she thinks fit, cancel an existing exemption and issue a new exemption in substitution for it,—

30           “(a) Where the terms or conditions of the existing exemption are to be or have been varied under **section 8c** of this Act:

35           “(b) Where the existing exemption has become disfigured or dilapidated, or contains a mistake, or where the Director-General is satisfied that the existing exemption has been lost or destroyed.

          “**8H. Non-compliance with exemption an offence**—(1) Every person commits an offence against this Act who, being the holder of an exemption, acts in contravention of, or fails or refuses to comply with, any condition of that exemption, in any case where that action, failure, or refusal may create, directly or indirectly, a risk to human health.

40           “(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. 5

“(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: 10

“(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. 15

“8I. **Director-General to maintain register of exemptions**—(1) The Director-General shall cause to be kept and maintained a register in which is recorded, in respect of every exemption granted under section 8B of this Act, the following particulars: 20

“(a) The name of the person to whom the exemption was granted:

“(b) The date on which the exemption was granted:

“(c) The terms of the exemption: 25

“(d) The premises or vehicle to which the exemption relates:

“(e) Any conditions imposed in respect of the exemption:

“(f) The details of any variation of the exemption:

“(g) The date on which the exemption was revoked, where applicable: 30

“(h) Such other particulars as may be required by this Act or any regulations made under this Act to be recorded in the register.

“(2) The Director-General—

“(a) Shall keep the register open for public inspection, without fee, during ordinary office hours at the head office of the Ministry of Health at Wellington; and 35

“(b) Shall supply to any person copies of all or part of the register on request and payment of a reasonable charge for the production of the copy. 40

“(3) The register may be kept in such manner as the Director-General 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; and

5 “(c) That permits the information in the register to be accessed by electronic means, including (without limitation) by means of remote logon access.

“*Approval of Persons to Audit Food Safety Programmes*

10 “**8J. Approval of persons to audit food safety programmes adopted by holders of exemptions**—(1) The Director-General may from time to time, on application by any person, approve that person to carry out periodic audits of food safety programmes adopted by persons who hold exemptions.

15 “(2) Every application for approval under this section shall—

“(a) Be made in writing to the Director-General; and

“(b) Be in the form provided or approved by the Director-General for that purpose; and

“(c) Be accompanied by the prescribed fee (if any).

20 “(3) The Director-General shall not grant an approval under this section unless the Director-General is satisfied that the applicant is a fit and proper person to carry out such audits, having regard to—

25 “(a) The relevant technical skills and experience possessed by the applicant; and

“(b) The applicant’s character or reputation.

30 “**8K. Conditions of approval**—(1) An approval granted under **section 8J** of this Act may be unconditional or subject to such conditions as the Director-General thinks fit and specifies in the approval.

“(2) Subject to **subsection (3)** of this section, the Director-General may at any time, by written notice to the holder of an approval, revoke, amend, or add to any conditions imposed pursuant to **subsection (1)** of this section.

35 “(3) Except where any variation to any approval is made, pursuant to **subsection (2)** of this section, on the application of the holder of the approval and in accordance with the terms of that application, the Director-General shall not vary any approval under this section without first giving the holder of the approval a reasonable opportunity to make written  
40 submissions to the Director-General in relation to the matter.

**“8L. Duration of approval—**(1) The Director-General may specify in any approval granted under **section 8J** of this Act that the approval is to have effect indefinitely or for a stated period.

**“(2) Every such approval—**

**“(a) Shall come into force on the date of its issue; and** 5

**“(b) Shall continue in force until,—**

**“(i) It is revoked pursuant to **section 8M** of this Act;**  
or

**“(ii) In the case of an approval granted for a stated period, the expiry of that period; or** 10

**“(iii) It is surrendered pursuant to **section 8N** of this Act.**

**“8M. Revocation of approval—**(1) Subject to **subsection (2)** of this section, the Director-General may at any time, by notice in writing to the holder of an approval granted under **section 8J** of this Act, revoke that approval if the Director-General is satisfied— 15

**“(a) That the holder of the approval is not a fit and proper person to carry out audits of food safety programmes adopted by persons who hold exemptions; or** 20

**“(b) That the holder of the approval has failed to comply with any condition imposed by the Director-General in respect of the approval; or**

**“(c) That the holder of the approval has contravened, or failed to comply with, any provision of this Act, or of any regulations made under this Act, or of any applicable food standard.** 25

**“(2) The Director-General shall not revoke an approval unless he or she has first given the holder of the approval a reasonable opportunity to be heard.** 30

**“(3) Where an approval is revoked pursuant to this section, the former holder of that approval shall, as soon as practicable after that revocation, take all reasonable steps to notify the fact of that revocation to each person who was a client of that former holder (in that former holder’s capacity as a person approved to audit food safety programmes) immediately before that revocation.** 35

**“8N. Surrender of approval—**(1) Subject to this section, the holder of an approval granted under **section 8J** of this Act may at any time surrender that approval by notice in writing to that effect sent to the Director-General. 40

**“(2) The surrender shall take effect on the expiry of 3 months after the date of the receipt of the notice by the**

Director-General, or on such earlier date as the Director-General may approve.

“(3) On or before the surrender takes effect, the holder of the approval shall send the approval to the Director-General.

5     “**8O. Substituted approval**—Notwithstanding anything in this Part of this Act, the Director-General may, if he or she thinks fit, cancel an existing approval granted under **section 8J** of this Act and issue a new approval in substitution for it,—

10     “(a) Where the conditions of the approval are to be or have been varied under **section 8K** of this Act:

   “(b) Where the existing approval has become disfigured or dilapidated, or contains a mistake, or where the Director-General is satisfied that the existing approval has been lost or destroyed.

15     “**8P. Offence**—(1) Every person commits an offence against this Act who fails to comply with the requirements of **section 8M (3)** of this Act.

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

20     “(a) In any case where the Court is satisfied that the individual intended to commit the offence, to a fine not exceeding \$2,000:

   “(b) In any other case, to a fine not exceeding \$1,000.

25     “(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 \$10,000:

   “(b) In any other case, to a fine not exceeding \$2,000.

30     “**8Q. Director-General to keep list of approved auditors**—(1) The Director-General shall cause to be kept and maintained a list of every holder of an approval granted under **section 8J** of this Act.

   “(2) The Director-General—

35     “(a) Shall make the list maintained pursuant to **subsection (1)** of this section available for public inspection, without fee, during ordinary office hours at the head office of the Ministry of Health at Wellington; and

40     “(b) Shall supply to any person, on request and without fee, a copy of that list.”

**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. 5

“(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. 10 15

“(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— 20

“(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 25

“(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,— 30

“(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— 35

“(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 40

“(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 45

“(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,—

5     “(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.

10   “(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.”

15   **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,—

20   “(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.

25   “(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.”

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

35   “(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—

40   “(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 5
- “(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 10
- “(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 15
- “(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 20
- “(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.” 25

(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,— 30

“(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. 35

“(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: 40

“(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 45

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

“*Purpose of this Part*

“11B. **Purpose of this Part**—The purpose of this Part of this Act is 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:

“(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, especially between those of New Zealand and Australia:

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



*“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. 5

“(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)— 10

“(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: 15

“(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: 20

“(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: 25

“(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: 30

“(m) Such other matters relating to food as may affect public health. 35

“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 40

“(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,—

5 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:

10 “(a) The need to protect public health:

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

15 “(c) The desirability of maintaining consistency between New Zealand’s food standards and those applying internationally, especially between those of New Zealand and Australia:

“(d) New Zealand’s obligations under any international treaty, agreement, convention, or protocol:

20 “(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)—

25 “(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

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

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

*“Incorporation of Material by Reference*

35 “**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:

40 “(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.

5

“(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.

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“(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

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

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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.

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“(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).

30

*“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—

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“(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

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“(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—

5 “(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,—

10 “(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:

15 “(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:

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

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

30 “(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

35 “(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:

40 “(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:

45 “(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

“(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. 10

“(2) Nothing in this section limits section 40 of the State Sector Act 1988. 15

*“Offences and Penalties*

“**11O. 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 20

“(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— 25

“(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 30

“(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 35

“(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 40

“(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.

5 “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—

10 “(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.

15 “(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—

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

25 “(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

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

“(e) All applicable food standards.

“**(3)** Without limiting subsections (1) and (2) of this section, where,—

35 “(a) In order to satisfy the requirements of either of those subsections, a person would normally be required to satisfy an officer with respect to compliance with the Food Hygiene Regulations 1974; and

40 “(b) By virtue of an exemption granted to that person pursuant to **section 8B** of this Act, that person is exempt from compliance with those regulations,—  
that person shall, in addition to satisfying that officer with respect to the other requirements of that subsection, also satisfy that officer, by the production of such evidence as the



officer may reasonably require, that the person will comply in all respects with all relevant conditions of that exemption.

**“11Q. Offences and penalties—**(1) Every individual who contravenes any of the provisions of **section 110 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 110 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 \$1000 for every day or part of a day during which the offence continues.

#### *“Transitional Provisions*

**“11R. Definitions—**In this section and **sections 11s to 11z** of this Act, unless the context other 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.

5 “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—

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

15 “(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

20 “(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

25 “(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,—

30 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.

35 “(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  
40 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: 5
- “(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 in respect of a particular food dealt with by that person. 10
- “(3) Any person who wishes to make an election shall record an entry in a register kept by that person for the purpose. 15
- “(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: 20
- “(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. 25
- “(2) Every such entry made pursuant to **subsection (1)** of this section—
- “(a) Shall be in the prescribed form (if any); and 30
- “(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 in respect of a particular food dealt with by that person, then, while that election has effect,— 35
- “(a) Those food standards shall apply, in accordance with the terms of the election, in respect of— 40
- “(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

5

“(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.

10 “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—

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

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“(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

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“(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—

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

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“(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),—

40

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. 5

“(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,— 10

“(a) That food standard shall apply, in accordance with the terms of that food standard, in respect of— 15

“(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. 20 25

“(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. 30

“11ZC. **Duty to disclose which food regime applies**—Where, during the transition period,— 35

“(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,— 40

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—

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

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

10 “(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

15 “(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,—

20 “(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.

25 “(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.

30 “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,—

35 “(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.

40 “(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”. 5

**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 110 of this Act”. 10

**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”. 15

**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 110 or section 112 of this Act or which is believed to be intended to be so committed, even though the offence is not punishable by imprisonment.” 20 25

**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”. 30

**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”. 35

**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,”.

5 (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:

10 “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.

15 “(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—

20 “(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.”

25 (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)**”.

30 (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—

35 (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  
40 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”.

5

**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”.

10

(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:

15

“(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”.

20

(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 II A**”.

25

**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”.

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35

**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:

5 “(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—

10 “(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,—

15 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,—  
20 “(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,—

25 and, where the offence is a continuing one, a further amount not exceeding \$1000 for every day or part of a day during which the offence continues:”.

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

35 “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 make regulations prescribing, or providing for the fixing of, fees or charges, or both, for the purpose of meeting, or assisting in meeting, the costs and expenses incurred by the Director-General, analysts, or the Crown in the exercise of functions or powers, or the performance of duties, or the provision of services under this Act.

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

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

- “(b) Prescribe, or provide for the fixing of, additional fees or charges, or both, for services or work provided or carried out outside normal working hours, at weekends, or on statutory holidays:
- “(c) Prescribe, or provide for the fixing of, charges for reimbursement of travelling time and other expenses: 5
- “(d) Provide for the refund, waiver, or rebate, or enable the refund, waiver, or rebate, of any fee or charge, or both: 10
- “(e) Fix, or enable the fixing, of a date by which any fee or charge is to be paid:
- “(f) Provide, or enable the fixing of, a discount for early payment of any fee or charge or a penalty for late payment, or both: 15
- “(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) Different rates of fees or charges, or both, may be prescribed or fixed under **subsection (1)** of this section in respect of different classes of persons, foods, or other matters.” 20

**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: 25

“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. 30

“(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. 35

“(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.” 40

**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.”

5     **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  
10 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”.

15     (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:

20     “(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”.

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

30     **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—

35     “(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

40     “(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 5

“(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 10 15

“(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.” 20

(2) The following enactments are hereby consequentially repealed:

(a) Subsections (2) and (3) of section 2 of the Sale or Liquor (Off-Licence) Amendment Act 1992: 25

(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. 30

(2) The following provisions apply with respect to the issuing of food standards in reliance on this section: 35

(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 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: 40

- (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**:
- 5 (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:
- 10 (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:
- 15 (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.
- 20 (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.
- 25 (4) Nothing in this section limits section 12 of the Acts Interpretation Act 1924.
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