



## INTRODUCTION

The Department of Health and Ageing welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Economics Inquiry into the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011. In this submission, information is provided about Australia's food regulatory system and the role of the portfolio within that system. The submission then comments on how the Bill relates to the current food regulatory arrangements.

### **Australia's food regulation system**

Australia's food regulation system is a cooperative bi-national arrangement between the Australian Government, the States and Territories, and New Zealand. Australia and New Zealand have a well deserved reputation for a safe and clean food supply, and the food regulation system is critical to the maintenance of that reputation. A whole-of-government approach is taken in developing food standards, with health, agriculture, trade and other portfolios being consulted before policy advice is issued or decisions made.

The cooperative system aims to:

- Protect the health and safety of consumers by reducing risks related to food;
- Enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled;
- Support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific public health issues; and
- Enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply and also for the general economic benefit of Australia and New Zealand.

Key components of the system are set out diagrammatically at [Attachment A](#).

Underpinning the food regulation system are:

- The [Food Regulation Agreement \(FRA\)](#) signed by the Council of Australian Governments (COAG), which gives effect to this commitment by the Australian, State and Territory governments to a national approach to food regulation within Australia. The FRA (at [Attachment B](#)) aims to:
  - provide a national system of safe food controls to protect public health and safety;
  - reduce the regulatory burden on the food industry and provide cost-effective compliance and enforcement arrangements;
  - provide a consistent regulatory approach across the country;
  - support Australian and New Zealand efforts to harmonise food standards; and
  - facilitate harmonised domestic and export standards with New Zealand and other international standards.
- The Agreement between the Governments of Australia and New Zealand concerning a Joint Food Standards [System \(the Food Treaty\)](#) (at [Attachment C](#)) aims to:
  - reduce unnecessary barriers to trade;

- adopt a joint system for the development and promulgation of food standards;
- provide for the timely development, adoption and review of food standards appropriate to both Treaty Parties; and
- facilitate the sharing of information between the Treaty Parties on matters relating to food.

One of the most important features of Australia's food regulation system is the separation of policy decision making from the development of food standards. This is achieved through the mechanisms of the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council), which is responsible for food regulation policy in Australia and New Zealand; and through Food Standards Australia New Zealand (FSANZ), which is an independent agency that develops food standards and administers the Australia New Zealand Food Standards Code.

The Ministerial Council's responsibilities are defined in the FRA and confirmed in the Food Treaty. As well as setting policy, they include:

- the development of policy guidelines for setting domestic food standards;
- the promotion of harmonised food standards within Australia and New Zealand;
- the general oversight of the implementation of domestic food regulations and standards; and
- the promotion of a consistent approach to compliance with, and enforcement of, food standards, and for amending or rejecting food standards that FSANZ develops.

The Ministerial Council comprises ministerial representatives from all Australian Governments and the New Zealand Government.

FSANZ's role in developing food standards is open and transparent. Standards are based on risk analysis using the best available scientific evidence. They promote consistency with international standards, an efficient and internationally competitive food industry, and fair trading in food products. FSANZ also relies on input from industry, consumers, governments and the broader community to inform its standards development work. It undertakes a regulatory impact assessment in developing standards. FSANZ does not have an enforcement role; the States and Territories reference the Food Standards Code in their food laws, which enables them to enforce food standards developed by FSANZ.

The Department of Health and Ageing plays a leadership role in the food regulatory system, promoting a nationally consistent approach to food policy and regulation through its coordinating role for Australian Government views. It manages the national food regulatory framework by working closely with FSANZ, the Department of Agriculture, Fisheries and Forestry, the States and Territories, and the New Zealand Government. The Department oversees the FRA and the Food Treaty between Australia and New Zealand. It also provides Secretariat services to the Ministerial Council and its subcommittees.

In addition, the Department manages national nutrition policies and non-regulatory approaches to health. For example, the Food and Health Dialogue provides a framework for government, public health groups and industry to work collaboratively to improve dietary intakes. This includes improving the nutritional profile of foods by setting targets for reducing the saturated fats, trans-fatty acids, sugar and salt and increasing the fibre, wholegrain, fruit and vegetable content of commonly consumed foods.

The Department strongly supports options that will assist consumers to make healthier food choices, and this is one reason that an independent review of food labelling law and policy was commissioned. The review was chaired by Dr Neal Blewett AC and the Department is leading the process for developing a whole-of-government response to the report, *Labelling Logic: Review of Food Labelling Law and Policy*. This response is expected to be considered by the Ministerial Council on 9 December 2011.

The whole-of-government consideration of the report's recommendations is guided by three principles:

- (i) Consumers are entitled to have the best possible information and food labelling should help Australians make informed decisions when it comes to food;
- (ii) That information, in line with the Government's commitment to improving health outcomes, should help consumers to make healthy food choices; and
- (iii) That we continue to support an innovative, vibrant and sustainable food industry in Australia that actively supports the Government's health agenda.

The diagram at Attachment A depicts the relationships and respective responsibilities for Australia's food regulation system.

## **HOW THE BILL RELATES TO THE CURRENT FOOD REGULATORY ARRANGEMENTS**

The Food Standards Amendment (Truth in Labelling Laws – Palm Oil) Amendment Bill (the Bill) seeks to establish a Standard in a manner that is inconsistent with the arrangements that are described above. This raises several concerns, which are described below.

### *1. The Bill undermines Australia's food regulation system*

As described above, the food regulation system in Australia is based on a cooperative bi-national system with agreed processes for developing, reviewing, monitoring and enforcing food standards. Passage of the Bill would circumvent this system and have the following implications:

- Potential breach of the FRA with the States and Territories

The FRA commits the Australian and State and Territory governments to a national approach to food regulation within Australia. The Bill would bypass the agreed processes for developing and reviewing food standards and potentially breach the Commonwealth's obligations with the States and Territories under this Agreement.

- Potential breach of the Food Treaty, and potential damage to the bi-lateral relationship

The Food Treaty with New Zealand will be breached if Government amendments to the Bill are moved without consulting New Zealand, or if the Bill is passed without Australia using its best endeavours to reach agreement with New Zealand on the amendments proposed by the Bill. This situation may jeopardise the successful, longstanding bilateral relationship that Australia shares with New Zealand for food regulation, to the detriment of both countries' populations.

- The Bill is unlikely to be enforceable under the food regulation system

Under current arrangements, once a standard is developed following the processes outlined above, it then becomes part of the Food Standards Code. Food standards developed by FSANZ do not have a direct legal effect. Rather, the FRA provides that the States and Territories will adopt or incorporate the Food Standards Code into State or Territory law,

enabling them to enforce food standards developed by FSANZ. States and territories have enacted food laws to implement their part of the agreement. As the Bill proposes the development of a standard outside this process, it would not become part of the Food Standards Code, and the States and Territories may not feel obligated to implement an anomalous standard that has circumvented the agreed regulatory system. Without this agreed action by the States and Territories, the Bill could not be enforced. There are similar enforcement issues with regard to the amendments the Bill proposes to the *Competition and Consumer Act 2010*. The Department is aware that the Treasury is making a separate submission to the Committee.

2. *The Bill pre-empts the whole-of-government response to “Labelling Logic”, the Review of Food Labelling Law and Policy*

Recommendation 12 of this report addresses the labelling of palm oil and recommends ‘that where sugars, fats or vegetable oils are added as separate ingredients in a food, the terms ‘added sugars’ and ‘added fats’ and/or ‘added vegetable oils’ be used in the ingredient list as the generic term, followed by a bracketed list (e.g., added sugars (fructose, glucose syrup, honey), added fats (palm oil, milk fat) or added vegetable oils (sunflower oil, palm oil))’.

The development of the whole-of government response to the report is a collegiate undertaking with the States, Territories and New Zealand, and it is desirable that this task proceed with due consideration of all 61 recommendations, and the interrelationships between recommendations.

The whole-of government response is expected to be considered by the Ministerial Council at its meeting on 9 December 2011, and to be provided to COAG early in 2012.

3. *The Bill is likely to have significant compliance costs for the food manufacturing industry, which has not been consulted about the Bill’s requirements*

The Bill has not been subjected to a regulatory impact statement, putting it at odds with the COAG and Australian Government principles for best practice regulation. As noted above, a key component of FSANZ’s standards development processes is an assessment of the regulatory impact of the proposed standard, which involves extensive consultation with industry and other stakeholders.

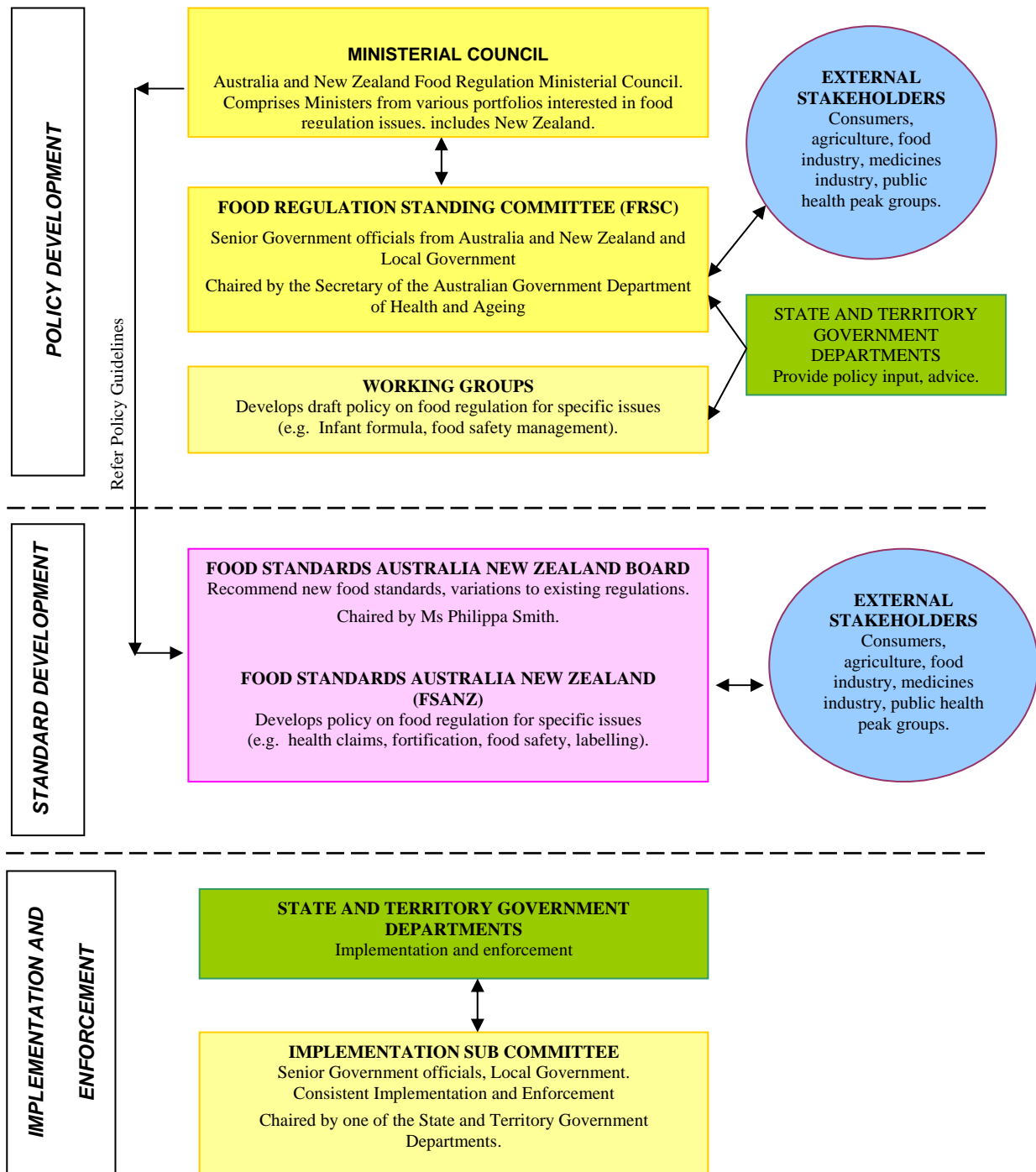
4. *The Bill’s proposal to single out palm oil for labelling is not consistent with the approach of other countries*

The USA and Canada require the identification of specific oils in the food ingredients list, whereas the Bill requires the labelling of palm oil only, and not other types of oil. The current European Commission regulations mirror the requirements of the Australia New Zealand Food Standards Code, that is the source of the fat or oil is required to be qualified as either animal or vegetable. However, new EU regulations propose that specific oils be labelled, and this proposed regulation will be considered by the European Council in October 2011. No country is considering mandating the labelling of palm oil alone, as is proposed by this Bill.

## **SUMMARY**

The Department is concerned that the Bill in its current form would undermine the successful and cooperative food regulation scheme and in so doing, set an undesirable precedent of taking unilateral action which could undermine the integrity of the food regulation system.

### The Australia New Zealand Food Regulatory System



# **Food Regulation Agreement**

**AN AGREEMENT** made the third day of July 2008 between:

The COMMONWEALTH OF AUSTRALIA ('the Commonwealth') and

The STATE OF NEW SOUTH WALES;

The STATE OF VICTORIA;

The STATE OF QUEENSLAND;

The STATE OF WESTERN AUSTRALIA;

The STATE OF SOUTH AUSTRALIA;

The STATE OF TASMANIA;

The AUSTRALIAN CAPITAL TERRITORY; and

The NORTHERN TERRITORY OF AUSTRALIA  
collectively called 'the States and Territories'.

## **WHEREAS -**

A. The Commonwealth and the States and Territories agree that there is a need to maintain a co-operative national system of food regulation with the following objectives:

(a) providing safe food controls for the purpose of protecting public health and safety;

(b) reducing the regulatory burden on the food sector;

(c) facilitating the harmonisation of Australia's domestic and export food standards and their harmonisation with international food standards;

(d) providing cost effective compliance and enforcement arrangements for industry, government and consumers;

(e) providing a consistent regulatory approach across Australia through nationally agreed policy, standards and enforcement procedures;

(f) recognising that responsibility for food safety encompasses all levels of government and a variety of portfolios; and

(g) supporting the joint Australia and New Zealand efforts to harmonise food standards.

B. The Commonwealth and the States and Territories agree that there is a need to ensure that all sectors in the food supply chain manage their food safety risks but recognise that the mechanisms for ensuring that this happens will vary from sector to sector.

C. This Agreement constitutes the agreement made between the Commonwealth and the States and Territories on 3 November 2000 as amended in the agreement dated 6 December 2002 and as now amended.

Note: The Agreement between the Commonwealth of Australia, the States, the Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards made on 30 July 1991 ceased to operate upon the commencement of the 2000 Agreement.

D. Under this Agreement, the Parties have established a Council, known as the Australia and New Zealand Food Regulation Ministerial Council, with the functions set out in Part III of this Agreement and roles and responsibilities set out under the *Food Standards Australia New Zealand Act 1991* (the Commonwealth Act).

E. The Commonwealth has established the authority entitled Food Standards Australia New Zealand under the Commonwealth Act, to give effect to the Food Regulation Agreement as in force on 1 July 2002, with the functions set out in Part 2 of that Commonwealth Act and managed by the Board as constituted under Part 4, Division 1 of that Commonwealth Act.

F. The Government of Australia and the Government of New Zealand entered into an Agreement that came into force on 1 July 2002 entitled 'Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system'.

Note: This Agreement replaced the agreement between the Government of Australia and the Government of New Zealand that came into force on 5 July 1996 for establishing a system for the development of joint food standards.

## **IT IS AGREED THAT -**

### **PART I - PURPOSE**

1. The purpose of this Agreement is to give effect to a national approach to food regulation within Australia.

### **PART II - INTERPRETATION**

2. In this Agreement -

(a) 'COAG' means the Council of Australian Governments;

'Commonwealth Act' means the *Food Standards Australia New Zealand Act 1991* (Cth), which was previously known as the *Australia New Zealand Food Authority Act 1991*, as in force from time to time;

'Codex Alimentarius' means the code of international food standards set by the Codex Alimentarius Commission to guide and promote the elaboration and establishment of definitions and requirements for foods, to assist their harmonisation and, in doing so, to facilitate international trade;

'consistent' means that the wording of the jurisdiction's provision may differ, if necessary, from the provision in Annex A or Annex B to this Agreement. However, the provision must deal with the same subject matter, in a manner appropriate for the legal regime of the jurisdiction, and must have the same intent and effect as the particular provision being enacted;



'draft standard or variation' has the same meaning as that phrase in Part 3, Division 3 of the Commonwealth Act;

'food legislation' means the laws regulating the packaging, labelling, sale, handling and distribution of food;

'food standard', where the context permits, includes a draft standard or variation and an urgent standard;

'FSANZ' means Food Standards Australia New Zealand, formerly established under this Agreement and continued in existence under Part 2 of the Commonwealth Act;

'in the same terms' means that the same words must be used in the provision in the jurisdiction's Food Legislation as is used in the provision in Annex A to this Agreement, subject to the Parliamentary conventions of the jurisdiction;

'jurisdiction' means the Parties to this Agreement and the Government of New Zealand;

'lead Minister' means a Minister who is a member of the Ministerial Council and is nominated by each of the Parties to be responsible to the Ministerial Council for the responses of that Party, or is nominated by the Government of New Zealand to be responsible to the Ministerial Council for the responses of the Government of New Zealand, pursuant to Part III of the Agreement;

'Ministerial Council' means the Australia and New Zealand Food Regulation Ministerial Council, established under this Agreement;

'Party' means a party to this Agreement;

'Standing Committee' means the Standing Committee of Senior Officials to the Ministerial Council, known as the Food Regulation Standing Committee and established under this Agreement; and

'urgent standard' means a standard or variation approved by FSANZ as a result of an 'urgent application' or an 'urgent proposal', as those terms are defined in the Commonwealth Act.

(b) a reference to a Part is a reference to a Part of this Agreement;

(c) a reference to a clause is a reference to a clause of this Agreement;

(d) words importing the singular include the plural and vice versa; and

(e) words importing a gender include the other gender.

## **PART III - ADMINISTRATIVE ARRANGEMENTS**

### **Australia and New Zealand Food Regulation Ministerial Council**

3. The Australia and New Zealand Food Regulation Ministerial Council, established under this Agreement:

- (a) has responsibility for:
  - (i) the development of domestic food regulatory policy;
  - (ii) the development of policy guidelines for setting domestic food standards;
  - (iii) the promotion of harmonised food standards within Australia between the Parties (harmonisation of domestic standards between States and Territories and of domestic standards with export standards) and with Codex Alimentarius (harmonisation of domestic and export standards with international food standards set by Codex Alimentarius);
  - (iv) the general oversight of the implementation of domestic food regulation and standards; and
  - (v) the promotion of a consistent approach to the compliance with, and enforcement of, food standards;
- (b) consists of one or more members representing each Party, and the Government of New Zealand, being the Minister for Health of each Party or Government and other Ministers nominated by that Party or Government with prime responsibility for matters with which this agreement is concerned;
- (c) is chaired by a Minister with responsibility for the Commonwealth Health portfolio and supported by a Secretariat provided by that Minister's portfolio;
- (d) will operate under the following arrangements:
  - (i) each Party, and the Government of New Zealand, shall have one vote on a proposed resolution of the Ministerial Council and this vote shall represent the views of all Ministers of the Party, or Government of New Zealand;
  - (ii) only a lead Minister representing a Party (or his or her designated proxy for a particular meeting) and the lead Minister representing the Government of New Zealand shall have the right to vote on a resolution proposed by the Ministerial Council;
  - (iii) where the lead Minister representing a Party on the Ministerial Council is unable to be present at a meeting at which a vote is to be taken, that lead Minister may:
    - (A) advise the Chairperson of the voting intentions of his or her Party, in writing by mail, teleprinter, facsimile or other mode of electronic communication prior to the meeting; or
    - (B) if the lead Minister has not advised the Chairperson of his or her voting intentions in accordance with clause 3(d)(iii)(A), by notice in writing to the Chairperson appoint another person to act as his or her proxy at that meeting and to vote on that resolution in the lead Minister's place;

- (iia) where the lead Minister representing the Government of New Zealand on the Ministerial Council is unable to be present at a meeting at which a vote is to be taken, that lead Minister may advise the Chairperson of the voting intentions of his or her Government, in writing by mail, teleprinter, facsimile or other mode of electronic communication prior to the meeting;
  - (iv) a vote under clause 3(d)(iii) or 3(d)(iia) will have the same effect as if the lead Minister representing a Party or the Government of New Zealand (as the case may be), were present and voting at the meeting;
  - (v) a decision of the Ministerial Council may be made without a meeting being convened and held;
  - (vi) a vote on a resolution, either at a meeting or out-of-session, will be carried by a simple majority of all jurisdictions;
  - (vii) subject to this Agreement, the Ministerial Council may determine its own procedures and for that purpose make rules of procedure, including rules relating to notice of meeting, quorum and conduct of business at meetings, and may from time to time alter such rules; and
  - (viii) the Ministerial Council shall hold a meeting at least once in each calendar year;
- (e) will request FSANZ to review the draft standard or variations if:
- (a) FSANZ notifies the Ministerial Council that FSANZ has approved a draft standard or variation; and
  - (b) a Party or the Government of New Zealand informs the Ministerial Council that the Party or Government considers that one or more of the following criteria apply to the draft standard or variation:
    - (i) it is not consistent with existing policy guidelines set by the Ministerial Council;
    - (ii) it is not consistent with the objectives of the legislation which establishes FSANZ;
    - (iii) it does not protect public health and safety;
    - (iv) it does not promote consistency between domestic and international food standards where these are at variance;
    - (v) it does not provide adequate information to enable informed choice;
    - (vi) it is difficult to enforce or comply with in both practical or resource terms;
    - (vii) it places an unreasonable cost burden on industry or consumers;
- (f) will ensure that a request made by the Ministerial Council under clause 3(e) includes details of:
- (i) the criterion, or criteria, that the Party or the Government of New Zealand informed the Ministerial Council that they considered to be applicable to the draft standard or variation; and
  - (ii) the rationale provided by the Party or Government of New Zealand to the Ministerial Council for asserting that the criterion or criteria is, or are (as the case may be), applicable.

(g) has the power to amend or reject the draft standard or variation if:

- (i) it receives notice from FSANZ that, subsequent to a review undertaken under clause 3(e), FSANZ has decided to reaffirm a draft standard or variation (either in its entirety or subject to amendments) and
- (ii) it is agreed, by a majority vote, that one or more of the criteria in clause 3(e) still applies to the draft standard or variation,

provided the Ministerial Council complies with the Commonwealth Act in doing so;

(h) has the same obligations and powers in relation to urgent standards as it has under clauses 3(e), 3(f) and 3(g) in relation to draft standards and variations, except that for urgent standards the reference in clause 3(g) to 'amend or reject' is replaced with a reference to 'amend or revoke'; and

(i) can request FSANZ review an existing standard if a Party or the Government of New Zealand considers that one or more of the criteria in clause 3(e) applies to that existing standard.

4. (a) Where:

- (i) the Ministerial Council notifies FSANZ that it does not intend to request FSANZ to review a draft standard or variation under clauses 3(e); or
- (ii) the Ministerial Council notifies FSANZ that it does not intend to amend or reject the draft standard or variation under clause 3(g); or
- (iii) the Ministerial Council informs FSANZ that it has amended the draft standard or variation under clause 3(g),

the Commonwealth Act shall require FSANZ to publish details about the draft standard or variation, as amended by the Ministerial Council if applicable, in various manners (including publication in the Commonwealth of Australia Gazette) as soon as practicable after receiving the notice from the Ministerial Council.

(b) The Parties agree that the Commonwealth Act will require FSANZ to publish in various manners (including publication in the Commonwealth of Australia Gazette), details about any amendment or revocation of an urgent standard if the Ministerial Council exercises its powers under clause 3(h).

5. The Parties shall invite the President of the Australian Local Government Association, or his delegate, to participate in the activities of the Ministerial Council as an observer.

### **Food Regulation Standing Committee**

6. The Food Regulation Standing Committee, established under this Agreement:

(a) has the functions of:

- (i) co-ordinating policy advice to the Ministerial Council; and
- (ii) ensuring a nationally consistent approach to the implementation and enforcement of food standards;

- (b) has a membership reflecting the Ministerial Council membership;
- (c) is to be chaired by the Secretary of the Department for which the Chairperson of the Ministerial Council has portfolio responsibility; and
- (d) is to be supported by the Ministerial Council secretariat.

7. The Parties shall invite the Australian Local Government Association to be a full participating member of the Standing Committee.

### **Consultative Mechanism**

8. For the development of policy on food regulation and to seek input and advice from 'Stakeholders' the Ministerial Council has established a flexible approach to consultation, known as the Consultative Mechanism. The Consultative Mechanism was established in accordance with the processes agreed by the Parties and set out in the Principles and Protocols document published on the food regulation website, [www.foodsecretariat.health.gov.au](http://www.foodsecretariat.health.gov.au).

9. The Consultative Mechanism:

(a) shall

- (i) provide for the views of stakeholders to be considered by the Ministerial Council when setting food regulation policy guidelines;
- (ii) inform the policy guideline development process;
- (iii) provide for increased accountability and transparency in decision making on policy guidelines; and
- (iv) enhance stakeholder confidence in the food regulatory system and build relationships with those developing policy.

(b) shall accommodate the diversity of stakeholders across Australia and New Zealand including:

- (i) Primary production;
- (ii) Processed food;
- (iii) Food retail;
- (iv) Food service;
- (v) Consumers;
- (vi) Public health professionals;
- (vii) Small business.

## **PART IV - FOOD LEGISLATION AND ADOPTION OF FOOD STANDARDS**

### **State and Territory Food Acts**

10. The States and Territories will use their best endeavours to ensure that their respective Parliaments retain in force, legislation that complies with clause 13 and which gives effect to the provisions listed at Annex A and Annex B of this Agreement which provide for the effective and consistent administration and enforcement of the Food Standards Code (including the Food Safety Standards).

11. The legislation that each State and Territory must make their best endeavours to keep current and retain in force:

(a) must contain provisions that are either:-

(i) in the same terms as all of those contained in Annex A of this Agreement, noting that the words in square brackets are optional; or

(ii) if the State or Territory has separate legislation governing safe primary food production, consistent with all of those contained in Annex A of this Agreement noting that the words in square brackets are optional;

(b) may contain whichever provisions it chooses to include from those contained in Annex B of this Agreement. These provisions are administrative in nature and, because of the differing administrative or enforcement arrangements of particular jurisdictions, do not need to be adopted in the same terms by the States and Territories but, rather, can be adopted in a manner consistent with the relevant provision in Annex B; and

(c) may contain additional provisions that do not conflict with any of the provisions enacted pursuant to clause 11(a) or 11(b).

12. Where a State or Territory prescribes a food production activity for the purposes of the definition of 'primary food production' in Annex A of this Agreement, it will advise the Ministerial Council of its intentions in order to promote national consistency.

13. States and Territories shall set penalties, whether by dollar amounts or by penalty units, for offences in the legislation submitted in accordance with clause 11 that are the same as, or as close as possible to (recognising the limits imposed by that jurisdiction's general penalty provisions scheme), the penalties for offences that are contained in Annex A of this Agreement and the penalties for offences that have been included from Annex B.

#### **Amendment of the Annexes**

14. Where a Party considers that Annex A or the intent of any of the provisions of Annex B should be amended, that jurisdiction will recommend its proposed amendments to the Ministerial Council.

15. Where the Ministerial Council agrees, by a majority vote, to a recommendation under clause 14, it will refer the proposed amendments to the Parliamentary Counsels' Committee for drafting.

16. Where the Ministerial Council does not agree, by a majority vote, with the proposed amendment, the amendment will not be made.

17. A State or Territory may introduce into Parliament, a Bill to amend its Act if it is necessary to do so as a matter of urgency in order to ensure continuous and effective administration or enforcement of its Act. The State or Territory must immediately report any such Bill introduced to the Ministerial Council. The Ministerial Council, at its next meeting, will consider any inconsistencies between the introduced Bill and the Annex A provisions and may agree, by majority vote, to include appropriate amendments to the relevant Annex of this Agreement in order to maintain national consistency.

18. After amendment of an Annex under clause 15, States and Territories will use their best endeavours to submit to their respective Parliaments in accordance with clause 11, legislation which gives effect to the amendment.

### **Adoption of Food Standards**

19. The States and Territories will take such legislative or other steps as are necessary to adopt or incorporate as food standards in force under the food legislation of the State or Territory, the food standards (including variations to those standards) that are from time to time:

- (a) developed by FSANZ; and
- (b) published in the Commonwealth of Australia Gazette.

20. Such standards are to take effect on the date specified in the Gazette.

21. Subject to clause 24, no State or Territory shall, subsequent to the steps taken pursuant to clause 19, amend the food standards referred to in that clause.

22. No State or Territory shall, by legislation or other means, establish or amend a food standard other than in accordance with this Agreement.

23. It is hereby agreed that a food standard, developed by FSANZ and published in the Commonwealth of Australia Gazette, may include a provision in respect of a State or Territory or part of a State or Territory where the Ministerial Council is satisfied that the provision is necessary because of exceptional conditions in that State or Territory and that the provision would not present a risk to public health or safety or contravene Australia's international treaty obligations.

24. Where a State or Territory determines that an issue affecting public health and safety requires a new food standard, or variation of a standard adopted pursuant to clause 19, and that the circumstances affecting public health and safety would not allow time for the steps pursuant to clause 19 to be taken, the State or Territory may, under the food legislation of the State or Territory, adopt or vary a food standard accordingly, provided that:

- (a) the lead Minister for that State or Territory notifies FSANZ of its intention to adopt or vary the food standard;
- (b) the new or varied food standard applies for a period of no longer than twelve months from the date of its adoption or variation; and
- (c) the lead Minister for that State or Territory makes, on so determining, an immediate application to FSANZ to adopt the new food standard or to vary the relevant food standard.

25. An application to FSANZ pursuant to clause 24(c) shall be expedited by FSANZ so that it must notify the Ministerial Council of any approved standard arising from its consideration of that application within six months of the application being made.

26. Where a State or Territory determines that requirements relating to mandatory food safety programs are necessary in that State or Territory, the State or Territory may amend its food legislation to require mandatory food safety programs.

27. To promote national consistency, the States and Territories will work towards a best practice model for food safety programs.

## **PART V - COMMENCEMENT OF THIS AGREEMENT**

28. The Parties acknowledge and agree that the amendments to Part III clause 3(f), (g) and 4(a) of this amended Agreement cannot be given full effect unless and until the day on which an amendment of the 'Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system', that came into force on 1 July 2002, enters into force to reduce from two to one the number of occasions on which the Council may request FSANZ to review a draft standard or variation.

29. Until the agreement between Australia and New Zealand referred to in clause 28 comes into force, the Parties shall retain clause 3(f), (g) and 4(a) in the following terms:

*3(f) if the Ministerial Council receives notice from FSANZ that, subsequent to a review undertaken under clause 3(e), FSANZ has decided to reaffirm a draft standard or variation (either in its entirety or subject to amendments), request FSANZ to review the draft standard or variation a second time if it is agreed, by a majority vote, that one or more of the criteria in clause 3(e) applies to the standard;*

*3(g) have the power to amend or reject a draft standard or variation that has been reviewed a second time under clause 3(f) if it is agreed, by a majority vote, that one or more of the criteria in clause 3(e) still applies to the standard, provided the Ministerial Council complies with the Commonwealth Act in doing so;*

*4(a) Where:*

- (i) the Ministerial Council notifies FSANZ that it does not intend to request FSANZ to review a draft standard or variation under clauses 3(e) or 3(f); or*
- (ii) the Ministerial Council notifies FSANZ that it does not intend to amend or reject the draft standard or variation under clause 3(g); or*
- (iii) the Ministerial Council informs FSANZ that it has amended the draft standard or variation under clause 3(g),*

*the Commonwealth Act shall require FSANZ to publish details about the draft standard or variation, as amended by the Ministerial Council if applicable, in various manners (including publication in the Commonwealth of Australia Gazette) as soon as practicable after receiving the notice from the Ministerial Council.*



## **PART VI - REVIEW OF IMPLEMENTATION AND EFFECTIVENESS**

30. The Parties shall submit each year an update on key issues and associated outcomes deliberated by the Ministerial Council and Standing Committee during the preceding financial year to COAG.

31. Where a Party considers that this Agreement should be reviewed, it may request consultation with the other Parties to agree to conduct and conclude jointly a review of the effectiveness of this Agreement at a time mutually agreed by the Parties.

## **PART VII - AMENDMENT OR VARIATION OF AGREEMENT**

32. Where a Party considers that this Agreement should be amended, it may request consultations with the other Parties to this end, except in respect of amendments to Annexes A and B which may only be amended in accordance with clauses 14 to 18.

33. Amendments to this Agreement, other than amendments to Annex A or B, may only be made with the written consent of all Parties.

34. Any agreed amendments to the Agreement shall be contained in a document distributed to all Parties and which shall include a reference to the date on which the amendment shall come into force.

## **PART VIII - DISPUTE RESOLUTION**

35. Where a dispute (other than a dispute in connection with the contents of a food standard or variation of a food standard) arises under this Agreement:

- (a) the Parties shall require the members of the Ministerial Council to attempt to resolve the dispute in the first instance;
- (b) if this fails, the Parties may refer the dispute to COAG to seek a resolution to the dispute through COAG processes.

## **PART IX - WITHDRAWAL AND TERMINATION**

36. Any Party may withdraw from this Agreement provided it gives not less than 12 months notice in writing to each of the other Parties.

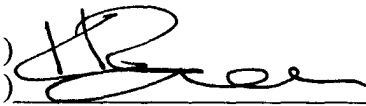
37. Withdrawal from the Agreement by any Party shall result in the Agreement being terminated.

38. Upon receiving notice from a Party that they wish to withdraw from the Agreement, the Commonwealth shall notify the Government of New Zealand to this effect.

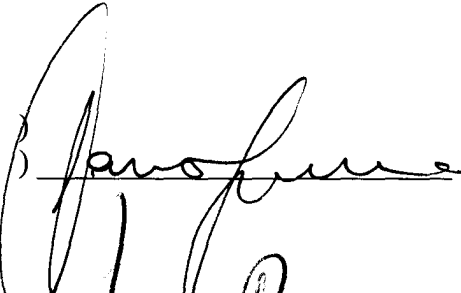
IN WITNESS WHEREOF this Agreement has been executed as at the day and year first written above.

SIGNED by:

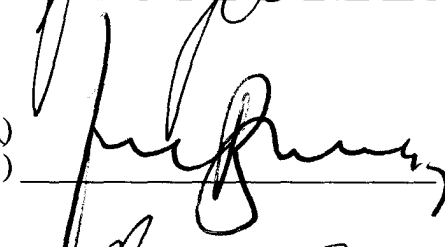
The Honourable Kevin Rudd MP  
Prime Minister of the Commonwealth of Australia

)   
\_\_\_\_\_

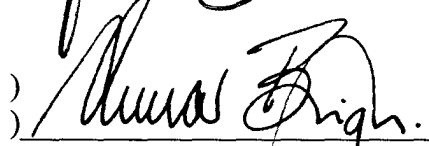
The Honourable Morris Iemma MP  
Premier of the State of New South Wales

)   
\_\_\_\_\_


The Honourable John Brumby MP  
Premier of the State of Victoria

)   
\_\_\_\_\_


The Honourable Anna Bligh MP  
Premier of the State of Queensland

)   
\_\_\_\_\_

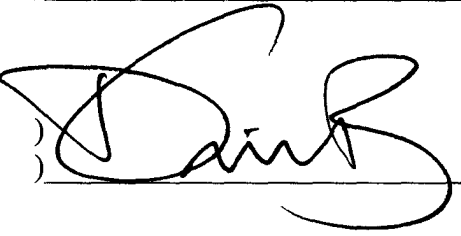
The Honourable Alan Carpenter MLA  
Premier of the State of Western Australia

)   
\_\_\_\_\_

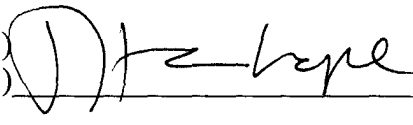
The Honourable Michael Rann MP  
Premier of the State of South Australia

)   
\_\_\_\_\_

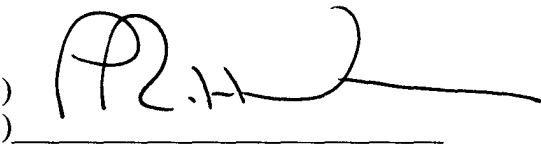
The Honourable David Bartlett MP  
Premier of the State of Tasmania

)   
\_\_\_\_\_

Mr Jon Stanhope MLA  
Chief Minister of the Australian Capital Territory

)   
\_\_\_\_\_

The Honourable Paul Henderson MLA  
Chief Minister of the Northern Territory of Australia

)   
\_\_\_\_\_

**Paste up**

**Food Regulation Treaty**

**Agreement between the Government of Australia  
and the  
Government of New Zealand  
Concerning a Joint Food Standards System**

**Entry into force: 6 July 2010**

---

Incorporating changes from 6 July 2010 exchange of letters amending the Agreement (3 March 2010) with the original 1996 Treaty. Documents sourced from Australian Treaties Library Austlii/DFAT internet database.

Australian Treaty Series, [2008] ATS 15  
National Interest Analysis reference: [2010] ATNIA 6

A copy of the exchange of letters signed by the NZ Food Safety Minister (24 February 2010) and the Parliamentary Secretary for Health (3 March 2010) is attached.

**This is an internal working document created by the  
Food Governance Section,  
Research, Regulation and Food Branch,  
Regulatory Policy and Governance Division  
Department of Health and Ageing**

# **AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND CONCERNING A JOINT FOOD STANDARDS SYSTEM**

**AUSTRALIA AND NEW ZEALAND** (hereinafter called “the Member States”):

**CONSCIOUS** of the longstanding friendship and close historic, political, economic and geographic relationship;

**RECOGNISING** the development of a closer economic relationship and the strengthening of their ties since the commencement of the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983;<sup>[1]</sup>

**AWARE** that this relationship will be significantly strengthened through the development of a system for establishing joint food standards in Australia and New Zealand;

**ACKNOWLEDGING** their commitment to securing trade liberalisation and an outward-looking approach to trade;

**CONSCIOUS** of the need to avoid the development of unnecessary barriers to trade and of their obligations in this regard under the Agreement establishing the World Trade Organization done at Marrakesh on 15 April 1994;<sup>[2]</sup>

**AFFIRMING** their commitment to an assessment process for food standards characterised by transparency, timeliness and accountability, including a commitment to consultation and public involvement;

**DESIRING** to establish, maintain, and strengthen a framework for the harmonisation of food standards and the elaboration of a joint Australia New Zealand Food Standards Code; and

**ACKNOWLEDGING** the existence and operation of the Food Regulation Agreement and noting that it has replaced the 1991 Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards;

**HAVE AGREED as follows:**

---

<sup>1</sup> ATS 1983 No. 2 and 1984 No. 1, p. iii (erratum); ILM 22 p. 945; NZTS 1983 No. 1; UNTS 1329 p. 175.

<sup>2</sup> ATS 1995 No. 8, ILM 33 p. 1125.

## **Article 1**

### **Definitions**

For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “Australia New Zealand Food Standards Code” means the joint food standards code to be established pursuant to this Agreement;
- (b) the term “Australia New Zealand Food Standards System” means the joint system for determining food standards established pursuant to this Agreement;
- (c) the term “Council” means the Australia and New Zealand Food Regulation Ministerial Council established pursuant to the Food Regulation Agreement;
- (d) the term “Standing Committee” means the Food Regulation Standing Committee established pursuant to the Food Regulation Agreement;
- (e) the term “Board” means the Board of Food Standards Australia New Zealand established by Australian legislation and referred to in Annex B of this Agreement;
- (f) the term “Authority” means the statutory authority Food Standards Australia New Zealand established by Australian legislation and referred to in Annex B of this Agreement;
- (g) the term “Food Regulation Agreement” means the Food Regulation Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory signed on 3 November 2000, as amended from time to time;
- (h) the term “lead Minister” means a member of the Council who has been nominated by that member’s government to have the right to vote on a resolution proposed by the Council;
- (i) the term “Australian Minister” means the Minister of the Commonwealth Government of Australia who is responsible for the Commonwealth health portfolio;
- (j) the term “New Zealand Minister” means the Minister of the Government of New Zealand nominated by the Government of New Zealand to be the New Zealand lead Minister on the Council responsible for representations to the Council in relation to matters with which the Australia New Zealand Food Standards System is concerned;
- (k) the term “food standard” includes a food standard developed as a result of an urgent application or an urgent proposal;
- (l) the term “approved food standard” means a draft food standard that has been approved by the Authority and notified to the Council but has not been published by the Authority; and
- (m) the terms “New Zealand Food Standard(s)” and “Australian Food Standard(s)” mean any standard(s) or requirement(s) under New Zealand or Australian law respectively relating to matters which fall within the scope of the Australia New Zealand Food Standards System.

## **Article 2**

### **Objectives**

The objectives of the Member States in concluding this Agreement are:

- (a) to reduce unnecessary barriers to trade;
- (b) to adopt a joint system for the development and promulgation of food standards;
- (c) to provide for the timely development, adoption, and review of food standards appropriate for both Member States in accordance with the principles in Annex A of this Agreement; and
- (d) to facilitate the sharing of information between the Member States on matters relating to food.

## **Article 3**

### **Scope**

- (1) This Agreement shall apply to the development of the Australia New Zealand Food Standards System.
- (2) Subject to paragraph (3) of this Article, the Member States agree that the Australia New Zealand Food Standards System will include the development and maintenance of joint food standards and may include any related guidelines, codes of practice, and any supporting material, that relate to any of the following:
  - (a) the safety of food, including its microbiological status;
  - (b) the composition of food, including the maximum or minimum amounts, where appropriate, of contaminants, residues, additives or other substances that may be present in food;
  - (c) the method of sampling and testing the food to determine its composition and safety;
  - (d) the production, manufacture or preparation of food;
  - (e) materials, containers, appliances or utensils used in relation to food;
  - (f) the packaging, storage, carrying, delivery, or handling of food;
  - (g) any information about food including labelling, promotion and advertising;
  - (h) such other matters affecting food as may affect the health of persons consuming food; and
  - (i) the interpretation of other standards.
- (3) Unless otherwise agreed in accordance with paragraph (4) of this Article, the scope of the Australian New Zealand Food Standards System does not include:
  - (a) the specification of maximum residue limits for agricultural and veterinary chemicals in food;
  - (b) the specification of food hygiene provisions including requirements for food safety programs or other means of demonstrating the safety and compliance of foods; or

- (c) export requirements relating to third country trade.

However, the Member States agree that all food standards contained in the Australian Food Standards Code as at the date of signature of this Agreement, other than Standard A14 (Residues in Food) to the extent that it relates to matters contained in subparagraph (a) of this paragraph, are included within the scope of the Australia New Zealand Food Standards System.

- (4) The Member States acknowledge that the scope of the Australia New Zealand Food Standards System may be extended and developed by mutual agreement following consultations within the Council.
- (5) The provisions of this Agreement shall in no way affect the cooperation between the Member States and their agencies on health and food-related issues falling outside the Australia New Zealand Food Standards System established by this Agreement.

#### **Article 4**

##### **The Australia New Zealand Food Standards System**

- (1) The Annexes to this Agreement constitute integral parts of this Agreement.

##### *Principles:*

- (2) The Member States agree that food standards developed under the Australia New Zealand Food Standards System shall be consistent with the “Principles Underpinning the Australia New Zealand Food Standards System” attached as Annex A of this Agreement.

##### *Organisation of the Australia New Zealand Food Standards System:*

- (3) The Member States agree that the procedures applicable to the determination and implementation of food standards shall be in accordance with the arrangements set out in Annex B of this Agreement.

##### *Consultation between the Member States regarding relevant legislation:*

- (4) Australia shall not introduce any amendments to the Australian legislation establishing the Authority, or move government amendments to that legislation, without effective consultation with New Zealand during their development. Australia shall use its best endeavours, including reflection of New Zealand’s position in any relevant papers for the Australian Commonwealth government, to reach agreement with New Zealand on these, and any other, amendments to the Australian legislation.
- (5) New Zealand shall consult with Australia before introducing any amendments to the New Zealand Food Act concerning issues within the scope of this Agreement and New Zealand shall take these views into consideration when developing these amendments.

##### *Review of approved or existing food standards:*

- (6) Member States may only request the Authority to review an approved or existing food standard in accordance with the process set out in Annex C of this Agreement.

*Principles and procedures to be followed where different conditions in Australia or New Zealand indicate that variations to standards are required:*

- (7) The Member States agree that the obligation of New Zealand to implement food standards is subject to the principles and procedures attached as Annexes D and E of this Agreement.

*Transitional provisions:*

- (8) Prior to the adoption of the Australia New Zealand Food Standards Code transitional arrangements shall apply as set out in Annex F of this Agreement.

## **Article 5**

### **Adoption of food standards**

- (1) Subject to Annexes D, E and F of this Agreement, each Member State shall take such legislative or other steps as are necessary to adopt or incorporate, without amendments, as food standards in force under the law of that Member State, the food standards that are from time to time:
  - (a) developed and approved by the Authority that are not the subject of review by the Authority at the request of the Council or that have not been rejected by the Council; and
  - (b) notified in the Commonwealth of Australia Gazette and the New Zealand Gazette;

such food standards to take effect without undue delay in both Member States on a date, which may be different for each Member State, as specified in the Commonwealth of Australia Gazette and the New Zealand Gazette.

- (2) Subject to Annexes D and E of this Agreement, neither Member State shall, subsequent to the steps taken pursuant to paragraph (1) of this Article, amend the food standards referred to in that paragraph other than in accordance with this Agreement.
- (3) Subject to Annexes D and E of this Agreement, neither Member State shall by legislation or by other means establish or amend a food standard falling within the scope of this Agreement other than in accordance with this Agreement.
- (4) To the extent possible, Australia will implement its obligations under this Article in accordance with the provisions of the Food Regulation Agreement.

## **Article 6**

### **Funding, performance, and accountability**

- (1) The Australia New Zealand Food Standards System will be funded jointly by Australia and New Zealand based on a pro rata to population share of the total agreed cost as determined in writing pursuant to paragraph (3) of this Article.
- (2) The Member States shall consult in advance of any final decision on funding for the Authority, at a timely point in the budget cycle of each Member State.
- (3) By the end of February of any year in which this Agreement remains in force, officials of the New Zealand Minister and officials of the Authority shall



commence consultations regarding the funding and performance arrangements under the Australia New Zealand Food Standards System relating to:

- (a) the services to be provided by the Authority to New Zealand;
  - (b) the performance and accountability requirements pertaining to those services;
  - (c) the total agreed cost; and
  - (d) the payments to be made by New Zealand for the services provided by the Authority.
- (4) The New Zealand Minister and the Chairperson of the Authority shall agree in writing on the arrangements referred to in paragraph (3) of this Article by the end of June of that year.

## **Article 7**

### **Relationship of this Agreement to the Trans-Tasman Mutual Recognition Arrangement**

Member States acknowledge their intention that the provisions of the Trans-Tasman Mutual Recognition Arrangement apply to food, subject to any necessary exemptions determined in accordance with the procedures laid down in that Arrangement.

## **Article 8**

### **Consultations**

- (1) The Member States shall, at the written request of either, promptly enter into consultations with a view to seeking an early, equitable and mutually satisfactory solution, if the Member State which requested the consultations considers that:
  - (a) an obligation under this Agreement has not been, is not being, or may not be fulfilled; or
  - (b) the achievement of any of the objectives of this Agreement is being or may be frustrated.
- (2) In addition to any consultations that might be held pursuant to paragraph (1) of this Article, Member States shall consult at the written request of either in relation to any provisions in respect of which Annex D of this Agreement applies.

## **Article 9**

### **Review**

- (1) Member States agree to conduct, and conclude, no later than three years after the date of entry into force of this Agreement, a review of the effectiveness of the Australia New Zealand Food Standards System with a view to agreeing to and implementing any necessary improvements. Thereafter, Member States agree to conduct and conclude such reviews at any time mutually agreed by an exchange of letters between the New Zealand Minister and the Australian Minister. Such a review shall be conducted and concluded before the conclusion of the review of the Food Regulation Agreement.

- (2) In participating in the review, Australia, in recognition of the operation of the Food Regulation Agreement, shall ensure the effective input and representation of the views of the parties to that Agreement.

### **Article 10**

#### **Amendment**

If either of the Member States considers that an amendment to this Agreement would be desirable, it may request consultations with the other Member State to this end. Any agreed amendments shall be comprised in an exchange of letters between the Member States which shall include a reference to the date on which the amendments shall come into force.

### **Article 11**

#### **Participation of third parties**

- (1) The Member States may agree to the association of any other State with this Agreement.
- (2) The terms of such association shall be negotiated between the Member States and the other State.

### **Article 12**

#### **Termination**

- (1) Either Member State may at any time give notice in writing through diplomatic channels to the other Member State of its decision to terminate this Agreement.
- (2) The Agreement shall terminate twelve months after the date of receipt of notice by the other Member State.

### **Article 13**

#### **Entry into force**

The Member States shall notify each other through diplomatic channels of the completion of their respective statutory and constitutional requirements for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later notification or such later date as may be agreed between the Member States.[3]

---

<sup>3</sup> Notes to this effect were exchanged 1-5 July 1996. The Agreement entered into force 5 July 1996.

**IN WITNESS WHEREOF** the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

**DONE** in duplicate at Wellington this 5th day of December, 1995.

FOR THE GOVERNMENT OF  
AUSTRALIA:

[Signed:]

ANDREW THEOPHANOUS

FOR THE GOVERNMENT OF  
NEW ZEALAND:

[Signed:]

KATHERINE O'REGAN

---

## ANNEX A

### PRINCIPLES UNDERPINNING THE AUSTRALIA NEW ZEALAND FOOD STANDARDS SYSTEM

- (1) Food standards shall be developed under the Australia New Zealand Food Standards System in accordance with the following principles:
  - (a) the protection of public health and safety;
  - (b) the provision of adequate information relating to food to enable consumers to make informed choices;
  - (c) the prevention of misleading or deceptive conduct;
  - (d) the facilitation of access to markets, including:
    - (i) the promotion of fair trading;
    - (ii) the promotion of consistency between the domestic food standards of the Member States and international food standards; and
    - (iii) the desirability of efficient and internationally competitive food industries; and
  - (e) the need for standards to be based on risk analysis using the best available scientific evidence and risk management principles.
- (2) In addition, food standards developed under the Australia New Zealand Food Standards System shall be:
  - (a) developed with regard to any written policy guidelines formulated by the Council for this purpose and notified to the Authority.
  - (b) developed with regard to the objective of promoting trade and commerce;
  - (c) consistent with the obligations of both Member States under the Agreement establishing the World Trade Organization done at Marrakesh on 15 April 1994;
  - (d) consistent with domestic laws and regulations of both Member States, other than existing food standards that are intended to be superseded by food standards developed under the Australia New Zealand Food Standards System;
  - (e) of a generic nature where possible; and
  - (f) subject to the principles set out in Parts B, C and D of the Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies endorsed by the Council of Australian Governments and the New Zealand Code of Good Regulatory Practice.

---

**ANNEX B**  
**ORGANISATION OF THE AUSTRALIA NEW ZEALAND**  
**FOOD STANDARDS SYSTEM**

**I Essential elements**

- (1) The Australia New Zealand Food Standards System will be based on an extension of the existing Australian system to include New Zealand.
- (2) The Australian system comprises the system specified in the Food Regulation Agreement and in the Australian Food Standards Australia New Zealand Act 1991.
- (3) The Australia New Zealand Food Standards System includes, in particular, the development of the Australia New Zealand Food Standards Code.
- (4) Consultation arrangements will permit equal participation in the Australia New Zealand Food Standards System by Australian and New Zealand industry, government, and community stakeholders.
- (5) The Australia New Zealand Food Standards System shall identify and evaluate any differing health and safety, trade, environmental or cultural factors in the development of appropriate food standards.
- (6) Amendments to this Agreement, the Australian Food Standards Australia New Zealand Act 1991, or the Food Regulation Agreement, shall maintain the level of influence of New Zealand in the Australia New Zealand Food Standards System.

**II Definitions and Membership of Bodies**

- (1)(a) The Government of New Zealand shall appoint one or more Ministers who have responsibility for matters with which the Food Regulation Agreement is concerned to be a member or members of the Council.
- (b) The Government of New Zealand shall have one vote on a proposed resolution of the Council, as do each of the Parties to the Food Regulation Agreement.
- (c) The vote of the Government of New Zealand may only be cast by the New Zealand Minister.
- (2)(a) Three members of the Board shall be appointed by the Australian Minister on the nomination of the New Zealand Minister. They shall have expertise in one or more of the following fields:
  - (i) public health;
  - (ii) consumer affairs;
  - (iii) food science;
  - (iv) food allergy;
  - (v) human nutrition;
  - (vi) medical science;
  - (vii) microbiology;
  - (viii) food safety;
  - (ix) biotechnology;
  - (x) veterinary science;
  - (xi) the food industry;

- (xii) food processing or retailing;
- (xiii) primary food production;
- (xiv) small business;
- (xv) international trade;
- (xvi) government;
- (xvii) food regulation.

Two of these members shall have expertise in one or more of any of the fields listed above. The third member shall have expertise in one or more of the fields listed in (i) to (x) above.

- (b) When determining nominees for the Board, the New Zealand Minister shall give due consideration to, amongst other things, the Board's having an appropriate balance of skills covering the above areas of expertise.
  - (c) The Council shall be consulted by the Australian Minister in relation to the nominations made by the New Zealand Minister but the Council's agreement shall not be necessary for the appointments to be made.
  - (d) The members of the Board to be appointed by the Australian Minister, other than those nominated by the New Zealand Minister, shall be appointed after consultation with, and the agreement of, the Council.
  - (e) Nominations shall be accepted from both New Zealand and Australian public bodies and organisations, including consumer organisations, for the purposes of appointments to the Board by the Australian Minister.
  - (f) The number of Board members from New Zealand is not restricted to those nominated by the New Zealand Minister.
- (3)(a) The Council shall be supported by the Standing Committee. The Standing Committee shall provide advice to the Council in relation to the Council's policy development role. Policy development will take place within Working Groups established by the Standing Committee and comprising representatives of all interested jurisdictions. The Standing Committee will comprise the heads of Departments or Ministries for which Ministers on the Council have portfolio responsibility, and a senior representative of the Australian Local Government Association.
- (b) New Zealand shall be represented, where it considers appropriate, on any committee or other body established by the Standing Committee or the Ministerial Council.
  - (c) The Council and Standing Committee shall be supported by a secretariat with an administrative function only. The Secretariat shall be provided by the Australian Commonwealth Department of Health and Aged Care, or its successor.

### III Operations of the Authority

The Authority shall maintain an office in New Zealand and undertake activities in New Zealand to permit full participation by New Zealand industry, government and community stakeholders in the process of development of food standards.

### IV Implementation under Australian and New Zealand domestic law

The Member States shall implement the obligations expressed in this Agreement under appropriate domestic legislation.

---

**ANNEX C**  
**REVIEW OF APPROVED OR EXISTING FOOD STANDARDS**

**I Identification of Need for Review**

- (1) The Council shall request the Authority to review an approved food standard or an existing food standard if the Council considers that:
  - (a) it is not consistent with existing policy guidelines set by the Council;
  - (b) it is not consistent with the objectives of the legislation which establishes the Authority;
  - (c) it does not protect public health and safety;
  - (d) it does not promote consistency between domestic and international food standards where these are at variance;
  - (e) it does not provide adequate information to enable informed choice;
  - (f) it is difficult to enforce and/or comply with in both practical or resource terms;
  - (g) it places an unreasonable cost burden on industry or consumers;
  - (h) it is not consistent with the principles for the establishment of food standards set down in this Agreement, including consistency with both countries' World Trade Organization obligations and consistency with the domestic laws and regulations of both countries; and/or
  - (i) it is inappropriate on the grounds of exceptional environmental or cultural factors.
- (2) For existing standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may request the Authority to take any action the Council considers appropriate (including, without limitation, requesting the Authority to prepare a proposal for the development of a food standard to replace, amend, or revoke the food standard or advising the Authority that no further action is required).
- (3) For approved standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may decide to amend or reject the food standard.
- (4) The Council shall publicly announce its reasons for rejecting a standard under paragraph (3).

---

**ANNEX D**  
**EXCEPTIONAL CIRCUMSTANCES**

- (1) For the purposes of this Annex, the Member States acknowledge that:
- (a) their joint objective is for the same standards to apply in both Member States wherever possible; and
  - (b) in light of that objective they will pursue all available avenues to ensure a joint standard applies in both countries before utilising any of the measures under this Annex.

The following provisions set out the principles and procedures to be followed in exceptional circumstances where different conditions in Australia or New Zealand necessitate a modification, separate standard, or an opt-out.

- (2) In this Annex, ‘prescribed grounds’ means exceptional health, safety, third country trade, environmental, or cultural grounds.
- (3) A standard or part of a standard may be inappropriate for New Zealand and in the case of a separate standard a separate standard may be required for Australia or New Zealand only on prescribed grounds.
- (4) The following notification procedure applies when an exceptional circumstance necessitates different conditions in Australia or New Zealand:
- (a) where the New Zealand Minister informs the Council under paragraph (7) that a modification for New Zealand is required, the New Zealand Minister shall:
    - (i) inform the Council of the relevant prescribed grounds for the modification; and
    - (ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand;
  - (b) where a Member State informs the Council under paragraph (11) that a separate standard will be required for that Member State, the Member State shall:
    - (i) inform the Council of the relevant prescribed grounds on which the separate standard will be required; and
    - (ii) provide a note detailing those prescribed grounds and the reasons why a separate standard will be required for the Member State; and
    - (iii) in the case of New Zealand, provide in the note referred to in subparagraph (ii), the reasons why a modification would not be adequate to deal with the exceptional circumstance;
  - (c) where the New Zealand Minister informs the Council that New Zealand will need to opt out of a food standard under paragraph (14), the New Zealand Minister shall:
    - (i) inform the Council of the relevant prescribed grounds for the opt out; and
    - (ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand; andprovide in the note referred to in subparagraph (ii), the reasons why a modification or separate standard would not be adequate to deal with the exceptional circumstance.



- (5) The Council shall make public any note provided under paragraph (4)(a), (b), or (c).
- (6) Measures taken under this Annex shall not create a barrier to trade unless exceptional health, safety or environmental concerns exist.

#### I New Zealand modification

- (7) If, while a food standard is under development by the Authority, the New Zealand Minister considers that a part or parts of the food standard would be inappropriate for New Zealand on one or more of the prescribed grounds or the Authority advises the New Zealand Minister that a part or parts of the food standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds, the New Zealand Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(a) that a modification for New Zealand is required.
- (8) The New Zealand Minister shall, after informing the Council of the need for a modification, request the Authority to prepare a modification to the relevant part or parts of the standard under development so as to make them appropriate for New Zealand.
- (9) Where notification is given under paragraph (7), the Authority shall develop a modification for New Zealand.
- (10) Any resulting modification that comes into effect for New Zealand shall be included in the food standard in the Australia New Zealand Food Standards Code.

#### II Separate Standard

- (11) If, while a food standard is under development by the Authority, the New Zealand Minister or the Australian Minister considers that on one or more of the prescribed grounds a separate food standard is needed for that Member State or the Authority advises the New Zealand Minister or the Australian Minister that a separate standard may be needed for the Member State on exceptional health, safety, or environmental grounds, the Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(b) that a separate food standard will be required for that Member State.
- (12) Where notification is given under paragraph (11) the Authority shall also develop a separate food standard for that Member State, subject to agreement being reached on any necessary modifications to the funding and performance arrangements.
- (13) Any resulting food standard that comes into effect shall apply only in the Member State for which it was ultimately developed.

#### III New Zealand opt-out

- (14) Where the New Zealand Minister considers that a standard under development or an approved food standard would be inappropriate for New Zealand on one or more of the prescribed grounds and that the process for a modification or separate standard is not appropriate or the Authority advises the New Zealand Minister that the standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds and the process for a modification or separate standard

is not appropriate, the New Zealand Minister may, in a timely manner, inform the Council in accordance with the notification procedure in paragraph (4)(c) that New Zealand needs to opt out of the food standard.

- (15) In the event of the New Zealand Minister informing the Council that New Zealand needs to opt out of a food standard in accordance with paragraph (14) then:
  - (a) in the case of a food standard under development, the Authority shall continue to develop the food standard for Australia only; and
  - (b) in the case of a food standard from which New Zealand opted out while it was either under development or an approved food standard, the food standard shall be applicable only in Australia.
- (16) Where New Zealand has opted out of a food standard under this Part of this Annex, the food standard in the Australia New Zealand Food Standards Code shall include an annotation to indicate that the standard does not apply in New Zealand.

---

**ANNEX E**  
**TEMPORARY FOOD STANDARDS**

- (1) For the purposes of this Annex, the Member States acknowledge that in some instances issues affecting public health and safety or environmental conditions may need to be addressed urgently by a Member State or an Australian jurisdiction on a temporary basis.
- (2) Where a Member State or Australian jurisdiction represented on the Council determines that there is an issue affecting public health and safety or environmental conditions that needs to be addressed urgently, and that the circumstances do not allow time for the steps pursuant to paragraph (1) of Article 5 of this Agreement to be taken, the Member State or Australian jurisdiction may adopt a temporary food standard under its own food laws.
- (3) Paragraph (2) only applies if the relevant lead Minister notifies the Council of the intention of that Member State or Australian jurisdiction to adopt the temporary food standard and of the reasons and available evidence.
- (4) The relevant Member State or Australian jurisdiction shall, on adopting the temporary food standard, make an immediate request to the Authority to raise a proposal relating to the matters covered in the temporary food standard.
- (5) The Authority shall, on receiving that request, expeditiously raise a proposal and give appropriate priority to its progression.
- (6) The temporary food standard adopted under paragraph (4) shall apply only until a draft food standard developed as a consequence of the proposal raised under paragraph (5) is either adopted or rejected or the proposal is abandoned.

---

**ANNEX F**  
**TRANSITIONAL PROVISIONS**

Until the Australia New Zealand Food Standards Code referred to in paragraph (3) of this Annex comes into effect the following provisions will apply to facilitate trade between the Member States.

- (1) Where the New Zealand Minister considers that an Australian Food Standard is appropriate for adoption in New Zealand, such Australian Food Standard may be adopted in New Zealand as a New Zealand Food Standard.
- (2) On the date that this Agreement enters into force, Australian Food Standards in the Australian Food Standards Code shall be adopted in New Zealand and as a result dual standards shall apply in New Zealand. From this date, food may be produced and/or sold in New Zealand in accordance with either Australian Food Standards or New Zealand Food Standards. Existing arrangements relating to matters falling outside the scope of the Australia New Zealand Food Standards System shall continue to apply.
- (3) On a date to be mutually determined between the Member States by an exchange of letters between the New Zealand Minister and the Australian Minister, the food standards in Vol. II of the Australian Food Standards Code within the scope of this Agreement shall be adopted by New Zealand and Australia as the Australia New Zealand Food Standards Code. Those provisions in New Zealand Food Standards which correspond to standards in the Australia New Zealand Food Standards Code shall cease to apply.

## LETTERS EXCHANGED BETWEEN NEW ZEALAND AND AUSTRALIA

Hon Mark Butler  
Parliamentary Secretary for Health and Ageing  
Australia

Dear Parliamentary Secretary Butler,

I have the honour to refer to the *Agreement between the Government of New Zealand and the Government of Australia Concerning a Joint Food Standards System* done at Wellington on 5 December 1995, as amended, (hereinafter referred to as “the Agreement”), the review of the Agreement pursuant to its Article 9, and consultations between our two Governments convened under its Article 10 with a view to amendment of the Agreement.

I have the further honour to inform you that at the conclusion of the aforementioned review and consultations between our two Governments, the following amendments to the text of the Agreement were agreed:

1. The eighth paragraph of the Preamble to the Agreement shall be replaced with the following:

**ACKNOWLEDGING** the existence and operation of the Food Regulation Agreement and noting that it has replaced the 1991 Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards;

2. Sub-paragraph (g) of Article 1 (Definitions) of the Agreement shall be replaced with the following:

(g) the term “Food Regulation Agreement” means the Food Regulation Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory signed on 3 November 2000, as amended from time to time;

and the term “Food Regulation Agreement 2000” shall be replaced with the term “Food Regulation Agreement” throughout the Agreement.

3. The words “Annex D” in paragraph 7 of Article 4 (The Australia New Zealand Food Standards System) of the Agreement shall be replaced with the words “Annexes D and E”.

4. The words “Annex E” in paragraph 8 of Article 4 (The Australia New Zealand Food Standards System) of the Agreement shall be replaced with the words “Annex F”.

5. The words “Annex D and E” in paragraph 1 Article 5 (Adoption of Food Standards) shall be replaced with the words “Annexes D, E and F”.

6. The words “Annex D” in paragraphs 2 and 3 of Article 5 (Adoption of Food Standards) shall be replaced with the words “Annexes D and E”.

7. Paragraph 2 of Article 8 (Consultations) of the Agreement shall be replaced with the following:

(2) In addition to any consultations that might be held pursuant to paragraph (1) of this Article, Member States shall consult at the written request of either in relation to any provisions in respect of which Annex D of this Agreement applies.

8. Sub-paragraph (2)(f) of Annex A (Principles Underpinning the Australia New Zealand Food Standards System) shall be replaced with the following:

(f) subject to the principles set out in Parts B,C and D of *the Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies* endorsed by the Council of Australian Governments and the New Zealand Code of Good Regulatory Practice.

9. Annex C (Review of Approved or Existing Standards) of the Agreement shall be replaced with the following:

## **“ANNEX C**

### **REVIEW OF APPROVED OR EXISTING FOOD STANDARDS**

#### I Identification of Need for Review

(1) The Council shall request the Authority to review an approved food standard or an existing food standard if the Council considers that:

- (a) it is not consistent with existing policy guidelines set by the Council;
- (b) it is not consistent with the objectives of the legislation which establishes the Authority;
- (c) it does not protect public health and safety;
- (d) it does not promote consistency between domestic and international food standards where these are at variance;
- (e) it does not provide adequate information to enable informed choice;
- (f) it is difficult to enforce and/or comply with in both practical or resource terms;
- (g) it places an unreasonable cost burden on industry or consumers;
- (h) it is not consistent with the principles for the establishment of food standards set down in this Agreement, including consistency with both countries' World Trade Organization obligations and consistency with the domestic laws and regulations of both countries; and/or
- (i) it is inappropriate on the grounds of exceptional environmental or cultural factors.

(2) For existing standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may request the Authority to take any action the Council considers appropriate (including, without limitation, requesting the Authority to prepare a proposal for the development of a food standard to replace, amend, or revoke the food standard or advising the Authority that no further action is required).

(3) For approved standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may decide to amend or reject the food standard.

(4) The Council shall publicly announce its reasons for rejecting a standard under paragraph (3).”

10. Annex D (Principles and Procedures to be Followed where Different Conditions in Australia or New Zealand Indicate Variations to Standards are Required) of the Agreement shall be replaced with the following:

## **“ANNEX D**

### **EXCEPTIONAL CIRCUMSTANCES**

(1) For the purposes of this Annex, the Member States acknowledge that:

(a) their joint objective is for the same standards to apply in both Member States wherever possible; and

(b) in light of that objective they will pursue all available avenues to ensure a joint standard applies in both countries before utilising any of the measures under this Annex.

The following provisions set out the principles and procedures to be followed in exceptional circumstances where different conditions in Australia or New Zealand necessitate a modification, separate standard, or an opt-out.

(2) In this Annex, ‘prescribed grounds’ means exceptional health, safety, third country trade, environmental, or cultural grounds.

(3) A standard or part of a standard may be inappropriate for New Zealand and in the case of a separate standard a separate standard may be required for Australia or New Zealand only on prescribed grounds.

(4) The following notification procedure applies when an exceptional circumstance necessitates different conditions in Australia or New Zealand:

(a) where the New Zealand Minister informs the Council under paragraph (7) that a modification for New Zealand is required, the New Zealand Minister shall:

(i) inform the Council of the relevant prescribed grounds for the modification; and

(ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand;

(b) where a Member State informs the Council under paragraph (11) that a separate standard will be required for that Member State, the Member State shall:

(i) inform the Council of the relevant prescribed grounds on which the separate standard will be required; and

(ii) provide a note detailing those prescribed grounds and the reasons why a separate standard will be required for the Member State; and

(iii) in the case of New Zealand, provide in the note referred to in subparagraph (ii), the reasons why a modification would not be adequate to deal with the exceptional circumstance;

(c) where the New Zealand Minister informs the Council that New Zealand will need to opt out of a food standard under paragraph (14), the New Zealand Minister shall:

(i) inform the Council of the relevant prescribed grounds for the opt out; and

(ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand; and

(iii) provide in the note referred to in subparagraph (ii), the reasons why a modification or separate standard would not be adequate to deal with the exceptional circumstance.

(5) The Council shall make public any note provided under paragraph (4)(a), (b), or (c).

(6) Measures taken under this Annex shall not create a barrier to trade unless exceptional health, safety or environmental concerns exist.

### I New Zealand modification

(7) If, while a food standard is under development by the Authority, the New Zealand Minister considers that a part or parts of the food standard would be inappropriate for New Zealand on one or more of the prescribed grounds or the Authority advises the New Zealand Minister that a part or parts of the food standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds, the New Zealand Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(a) that a modification for New Zealand is required.

(8) The New Zealand Minister shall, after informing the Council of the need for a modification, request the Authority to prepare a modification to the relevant part or parts of the standard under development so as to make them appropriate for New Zealand.

(9) Where notification is given under paragraph (7), the Authority shall develop a modification for New Zealand.

(10) Any resulting modification that comes into effect for New Zealand shall be included in the food standard in the Australia New Zealand Food Standards Code.

### II Separate Standard

(11) If, while a food standard is under development by the Authority, the New Zealand Minister or the Australian Minister considers that on one or more of the prescribed grounds a separate food standard is needed for that Member State or the Authority advises the New Zealand Minister or the Australian Minister that a separate standard may be needed for the Member State on exceptional health, safety, or environmental grounds, the Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(b) that a separate food standard will be required for that Member State.

(12) Where notification is given under paragraph (11) the Authority shall also develop a separate food standard for that Member State, subject to agreement being reached on any necessary modifications to the funding and performance arrangements.

(13) Any resulting food standard that comes into effect shall apply only in the Member State for which it was ultimately developed.

### III New Zealand opt-out

(14) Where the New Zealand Minister considers that a standard under development or an approved food standard would be inappropriate for New Zealand on one or more of the prescribed grounds and that the process for a modification or separate standard is not appropriate or the Authority advises the New Zealand Minister that the standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds and the process for a modification or separate standard is not appropriate, the New Zealand Minister may, in a timely manner, inform the Council in accordance with the notification procedure in paragraph (4)(c) that New Zealand needs to opt out of the food standard.



(15) In the event of the New Zealand Minister informing the Council that New Zealand needs to opt out of a food standard in accordance with paragraph (14) then:

(a) in the case of a food standard under development, the Authority shall continue to develop the food standard for Australia only; and

(b) in the case of a food standard from which New Zealand opted out while it was either under development or an approved food standard, the food standard shall be applicable only in Australia.

(16) Where New Zealand has opted out of a food standard under this Part of this Annex, the food standard in the Australia New Zealand Food Standards Code shall include an annotation to indicate that the standard does not apply in New Zealand.”

11. The title of present Annex E of the Agreement shall be replaced with the following:

**“ANNEX F  
TRANSITIONAL PROVISIONS”**

12. A new Annex E shall be inserted in the Agreement as follows:

**“ANNEX E  
TEMPORARY FOOD STANDARDS**

(1) For the purposes of this Annex, the Member States acknowledge that in some instances issues affecting public health and safety or environmental conditions may need to be addressed urgently by a Member State or an Australian jurisdiction on a temporary basis.

(2) Where a Member State or Australian jurisdiction represented on the Council determines that there is an issue affecting public health and safety or environmental conditions that needs to be addressed urgently, and that the circumstances do not allow time for the steps pursuant to paragraph (1) of Article 5 of this Agreement to be taken, the Member State or Australian jurisdiction may adopt a temporary food standard under its own food laws.

(3) Paragraph (2) only applies if the relevant lead Minister notifies the Council of the intention of that Member State or Australian jurisdiction to adopt the temporary food standard and of the reasons and available evidence.

(4) The relevant Member State or Australian jurisdiction shall, on adopting the temporary food standard, make an immediate request to the Authority to raise a proposal relating to the matters covered in the temporary food standard.

(5) The Authority shall, on receiving that request, expeditiously raise a proposal and give appropriate priority to its progression.

(6) The temporary food standard adopted under paragraph (4) shall apply only until a draft food standard developed as a consequence of the proposal raised under paragraph (5) is either adopted or rejected or the proposal is abandoned.”

I have the honour to propose that, if the foregoing is acceptable to the Government of Australia, then this letter and your letter in reply to that effect shall together constitute an exchange of letters amending the Agreement, which shall enter into force on the date on which both Governments have notified each other through an exchange of notes that their respective domestic processes necessary for the entry into force of the exchange of letters have been completed.

Please accept the assurances of my highest consideration.

(signed)

**Hon Kate Wilkinson**  
Minister for Food Safety  
New Zealand

Wellington, 24 February 2010

The Hon Kate Wilkinson MP  
Minister for Food Safety  
Private Bag 18 888  
Parliament Buildings  
Wellington New Zealand 6160

Dear Minister Wilkinson

I have the honour to refer to your letter of 24 February 2010, which reads as follows:

"I have the honour to refer to the *Agreement between the Government of New Zealand and the Government of Australia Concerning a Joint Food Standards System* done at Wellington on 5 December 1995, as amended, (hereinafter referred to as "the Agreement"), the review of the Agreement pursuant to its Article 9, and consultations between our two Governments convened under its Article 10 with a view to amendment of the Agreement.

I have the further honour to inform you that at the conclusion of the aforementioned review and consultations between our two Governments, the following amendments to the text of the Agreement were agreed:

1. The eighth paragraph of the Preamble to the Agreement shall be replaced with the following:

**ACKNOWLEDGING** the existence and operation of the Food Regulation Agreement and noting that it has replaced the 1991 Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards;

2. Sub-paragraph (g) of Article 1 (Definitions) of the Agreement shall be replaced with the following:

(g) the term "Food Regulation Agreement" means the Food Regulation Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory signed on 3 November 2000, as amended from time to time;

and the term "Food Regulation Agreement 2000" shall be replaced with the term "Food Regulation Agreement" throughout the Agreement.

3. The words "Annex D" in paragraph 7 of Article 4 (The Australia New Zealand Food Standards System) of the Agreement shall be replaced with the words "Annexes D and E".

4. The words "Annex E" in paragraph 8 of Article 4 (The Australia New Zealand Food Standards System) of the Agreement shall be replaced with the words "Annex F".

5. The words "Annex D and E" in paragraph 1 Article 5 (Adoption of Food Standards) shall be replaced with the words "Annexes D, E and F".

6. The words "Annex D" in paragraphs 2 and 3 of Article 5 (Adoption of Food Standards) shall be replaced with the words "Annexes D and E".

7. Paragraph 2 of Article 8 (Consultations) of the Agreement shall be replaced with the following:

(2) In addition to any consultations that might be held pursuant to paragraph (1) of this Article, Member States shall consult at the written request of either in relation to any provisions in respect of which Annex D of this Agreement applies.

8. Sub-paragraph (2)(f) of Annex A (Principles Underpinning the Australia New Zealand Food Standards System) shall be replaced with the following:

(f) subject to the principles set out in Parts B,C and D of *the Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies* endorsed by the Council of Australian Governments and the New Zealand Code of Good Regulatory Practice.

9. Annex C (Review of Approved or Existing Standards) of the Agreement shall be replaced with the following:

## **“ANNEX C**

### **REVIEW OF APPROVED OR EXISTING FOOD STANDARDS**

#### I Identification of Need for Review

(1) The Council shall request the Authority to review an approved food standard or an existing food standard if the Council considers that:

- (a) it is not consistent with existing policy guidelines set by the Council;
- (b) it is not consistent with the objectives of the legislation which establishes the Authority;
- (c) it does not protect public health and safety;
- (d) it does not promote consistency between domestic and international food standards where these are at variance;
- (e) it does not provide adequate information to enable informed choice;
- (f) it is difficult to enforce and/or comply with in both practical or resource terms;
- (g) it places an unreasonable cost burden on industry or consumers;
- (h) it is not consistent with the principles for the establishment of food standards set down in this Agreement, including consistency with both countries' World Trade Organization obligations and consistency with the domestic laws and regulations of both countries; and/or
- (i) it is inappropriate on the grounds of exceptional environmental or cultural factors.

(2) For existing standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may request the Authority to take any action the Council considers appropriate (including, without limitation, requesting the Authority to prepare a proposal for the development of a food standard to replace, amend, or revoke the food standard or advising the Authority that no further action is required).

(3) For approved standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may decide to amend or reject the food standard.

(4) The Council shall publicly announce its reasons for rejecting a standard under paragraph (3).”

10. Annex D (Principles and Procedures to be Followed where Different Conditions in Australia or New Zealand Indicate Variations to Standards are Required) of the Agreement shall be replaced with the following:

## **“ANNEX D**

### **EXCEPTIONAL CIRCUMSTANCES**

(1) For the purposes of this Annex, the Member States acknowledge that:

(a) their joint objective is for the same standards to apply in both Member States wherever possible; and

(b) in light of that objective they will pursue all available avenues to ensure a joint standard applies in both countries before utilising any of the measures under this Annex.

The following provisions set out the principles and procedures to be followed in exceptional circumstances where different conditions in Australia or New Zealand necessitate a modification, separate standard, or an opt-out.

(2) In this Annex, ‘prescribed grounds’ means exceptional health, safety, third country trade, environmental, or cultural grounds.

(3) A standard or part of a standard may be inappropriate for New Zealand and in the case of a separate standard a separate standard may be required for Australia or New Zealand only on prescribed grounds.

(4) The following notification procedure applies when an exceptional circumstance necessitates different conditions in Australia or New Zealand:

(a) where the New Zealand Minister informs the Council under paragraph (7) that a modification for New Zealand is required, the New Zealand Minister shall:

(i) inform the Council of the relevant prescribed grounds for the modification; and

(ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand;

(b) where a Member State informs the Council under paragraph (11) that a separate standard will be required for that Member State, the Member State shall:

(i) inform the Council of the relevant prescribed grounds on which the separate standard will be required; and

(ii) provide a note detailing those prescribed grounds and the reasons why a separate standard will be required for the Member State; and

(iii) in the case of New Zealand, provide in the note referred to in subparagraph (ii), the reasons why a modification would not be adequate to deal with the exceptional circumstance;

(c) where the New Zealand Minister informs the Council that New Zealand will need to opt out of a food standard under paragraph (14), the New Zealand Minister shall:

(i) inform the Council of the relevant prescribed grounds for the opt out; and

(ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand; and

(iii) provide in the note referred to in subparagraph (ii), the reasons why a modification or separate standard would not be adequate to deal with the exceptional circumstance.

(5) The Council shall make public any note provided under paragraph (4)(a), (b), or (c).

(6) Measures taken under this Annex shall not create a barrier to trade unless exceptional health, safety or environmental concerns exist.

#### I New Zealand modification

(7) If, while a food standard is under development by the Authority, the New Zealand Minister considers that a part or parts of the food standard would be inappropriate for New Zealand on one or more of the prescribed grounds or the Authority advises the New Zealand Minister that a part or parts of the food standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds, the New Zealand Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(a) that a modification for New Zealand is required.

(8) The New Zealand Minister shall, after informing the Council of the need for a modification, request the Authority to prepare a modification to the relevant part or parts of the standard under development so as to make them appropriate for New Zealand.

(9) Where notification is given under paragraph (7), the Authority shall develop a modification for New Zealand.

(10) Any resulting modification that comes into effect for New Zealand shall be included in the food standard in the Australia New Zealand Food Standards Code.

#### II Separate Standard

(11) If, while a food standard is under development by the Authority, the New Zealand Minister or the Australian Minister considers that on one or more of the prescribed grounds a separate food standard is needed for that Member State or the Authority advises the New Zealand Minister or the Australian Minister that a separate standard may be needed for the Member State on exceptional health, safety, or environmental grounds, the Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(b) that a separate food standard will be required for that Member State.

(12) Where notification is given under paragraph (11) the Authority shall also develop a separate food standard for that Member State, subject to agreement being reached on any necessary modifications to the funding and performance arrangements.

(13) Any resulting food standard that comes into effect shall apply only in the Member State for which it was ultimately developed.

#### III New Zealand opt-out

(14) Where the New Zealand Minister considers that a standard under development or an approved food standard would be inappropriate for New Zealand on one or more of the prescribed grounds and that the process for a modification or separate standard is not appropriate or the Authority advises the New Zealand Minister that the standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds and the process for a modification or separate standard is not appropriate, the New Zealand Minister may, in a timely manner, inform the Council in accordance with the notification procedure in paragraph (4)(c) that New Zealand needs to opt out of the food

standard.

(15) In the event of the New Zealand Minister informing the Council that New Zealand needs to opt out of a food standard in accordance with paragraph (14) then:

(a) in the case of a food standard under development, the Authority shall continue to develop the food standard for Australia only; and

(b) in the case of a food standard from which New Zealand opted out while it was either under development or an approved food standard, the food standard shall be applicable only in Australia.

(16) Where New Zealand has opted out of a food standard under this Part of this Annex, the food standard in the Australia New Zealand Food Standards Code shall include an annotation to indicate that the standard does not apply in New Zealand.”

11. The title of present Annex E of the Agreement shall be replaced with the following:

**“ANNEX F  
TRANSITIONAL PROVISIONS”**

12. A new Annex E shall be inserted in the Agreement as follows:

**“ANNEX E  
TEMPORARY FOOD STANDARDS**

(1) For the purposes of this Annex, the Member States acknowledge that in some instances issues affecting public health and safety or environmental conditions may need to be addressed urgently by a Member State or an Australian jurisdiction on a temporary basis.

(2) Where a Member State or Australian jurisdiction represented on the Council determines that there is an issue affecting public health and safety or environmental conditions that needs to be addressed urgently, and that the circumstances do not allow time for the steps pursuant to paragraph (1) of Article 5 of this Agreement to be taken, the Member State or Australian jurisdiction may adopt a temporary food standard under its own food laws.

(3) Paragraph (2) only applies if the relevant lead Minister notifies the Council of the intention of that Member State or Australian jurisdiction to adopt the temporary food standard and of the reasons and available evidence.

(4) The relevant Member State or Australian jurisdiction shall, on adopting the temporary food standard, make an immediate request to the Authority to raise a proposal relating to the matters covered in the temporary food standard.

(5) The Authority shall, on receiving that request, expeditiously raise a proposal and give appropriate priority to its progression.

(6) The temporary food standard adopted under paragraph (4) shall apply only until a draft food standard developed as a consequence of the proposal raised under paragraph (5) is either adopted or rejected or the proposal is abandoned.”

I have the honour to propose that, if the foregoing is acceptable to the Government of Australia, then this letter and your letter in reply to that effect shall together constitute an exchange of letters amending the Agreement, which shall enter into force on the date on which both Governments have notified each other through an exchange of notes that their respective domestic processes necessary for the entry into force of the exchange of letters have been completed.

Please accept the assurances of my highest consideration.”

I have the honour to advise that the foregoing is acceptable to the Government of Australia and that, accordingly, your letter and this letter in reply shall together constitute an exchange of letters amending the Agreement, which shall enter into force on the date on which both Governments have notified each other through an exchange of notes that their respective domestic processes necessary for the entry into force of this exchange of letters have been completed.

Please accept the assurances of my highest consideration.

(signed)

**MARK BUTLER**  
Parliamentary Secretary for Health  
Australia  
3 March 2010