

**Reprint
as at 1 March 2016**

Food Amendment Act 2002

Public Act 2002 No 26
Date of assent 17 June 2002

Food Amendment Act 2002: repealed, on 1 March 2016, pursuant to section 420(2) of the Food Act 2014 (2014 No 32).

Contents

	Page
1 Title	2
2 Commencement	2
3 Purpose	2

Part 1

Administration of enactments relating to food safety

Amendments relating to administration of principal Act

4 Interpretation	3
5 Appointment of analysts and officers	3
6 Regulations for fees and charges	3

Amendments to other enactments

7 Administration of Dairy Industry Act 1952	4
8 Administration of Meat Act 1981	4
9 Consequential amendments	5

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

This Act is administered by the Ministry for Primary Industries.

	<i>Transitional matters</i>	
10	Restriction of compensation for technical redundancy arising from transfer of functions under principal Act	5
11	Application of State Sector Act 1988 to employees affected by transfer of functions under principal Act	5
12	Application of certain collective agreements to employees affected by transfer of functions under principal Act	6
13	Continuation of existing proceedings	7
14	References to functions being transferred	7
	Part 2	
	Safety of certain appliances	
15	Interpretation	7
16	Regulations	7
17	Validations	8
	Schedule 1	8
	Consequential amendments to principal Act	
	Schedule 2	10
	Consequential amendments	
	Schedule 3	10
	Consequential amendments to regulations	

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Food Amendment Act 2002.
- (2) In this Act, the Food Act 1981 is called “the principal Act”.

2 Commencement

- (1) Part 1 and the Schedules come into force on 1 July 2002.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is—

- (a) to amend certain enactments relating to the safety of food so as to provide for their administration; and
- (b) to amend the Food Act 1981 in certain other respects.

Part 1

Administration of enactments relating to food safety

Amendments relating to administration of principal Act

4 Interpretation

- (1) Section 2 of the principal Act is amended by repealing the definitions of **Director-General**, **Minister**, and **officer**, and inserting, in their appropriate alphabetical order, the following definitions:

designated officer, in any provision of this Act, means an officer for the time being designated by the Director-General for the purposes of that provision, or any provision or provisions of which it forms part; and includes the Director

Director-General means the chief executive of the Ministry

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

officer means an officer for the time being appointed under section 7.

- (2) Section 25(5) of the Wine Makers Act 1981 is amended by repealing the definition of the term **Director**, and substituting the following definition:

Director has the meaning given to it by section 2 of the Food Act 1981.

5 Appointment of analysts and officers

Section 7 of the principal Act is amended by inserting, after subsection (2), the following subsection:

- (2A) Officers may be appointed under subsection (1) or subsection (2)—
- (a) individually; or
 - (b) as members of a stated class.

6 Regulations for fees and charges

Section 42A of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

- (1) The Governor-General may, by Order in Council made on the advice of the Minister (given after consultation with all organisations or bodies appearing to the Minister to be representative of persons likely to be substantially affected by the regulations), make regulations prescribing all or any of the following:
- (a) fees to meet, or help meet, any of the costs and expenses described in subsection (1A):

- (b) charges to meet, or help meet, any of the costs and expenses described in subsection (1A):
 - (c) means by which there may be calculated or ascertained—
 - (i) fees to meet, or help meet, any of the costs and expenses described in subsection (1A); or
 - (ii) charges to meet, or help meet, any of the costs and expenses described in subsection (1A).
- (1A) The costs and expenses referred to in subsection (1) are—
- (a) the costs and expenses incurred by the Director-General, the Director, analysts, the Crown, or any other person, in exercising powers, or performing functions or duties, or providing services, under this Act; and
 - (b) the costs and expenses incurred by the Director in exercising powers, or performing functions or duties, or providing services, under any enactment other than this Act (whether the Director has incurred any cost or expense directly, or by arranging for another person to act on the Director's behalf, or help the Director, in exercising, performing, or providing, a power, function, duty, or service).
- (1B) Subsection (1) does not limit the power to make regulations conferred by section 42.

Amendments to other enactments

7 Administration of Dairy Industry Act 1952

Section 2 of the Dairy Industry Act 1952 is amended by repealing the definitions of **Director** and **Minister**, and substituting, respectively, the following definitions:

Director means the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act.

8 Administration of Meat Act 1981

Section 2 of the Meat Act 1981 is amended by repealing the definitions of **Director-General**, **Minister**, and **Ministry**, and substituting, respectively, the following definitions:

Director-General means the chief executive of the Ministry

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

9 Consequential amendments

- (1) The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.
- (2) The regulations specified in Schedule 3 are amended in the manner indicated in that schedule.

Transitional matters

10 Restriction of compensation for technical redundancy arising from transfer of functions under principal Act

- (1) An employee of the Ministry of Health is not entitled to receive any payment or other benefit on the ground that his or her position in the Ministry of Health has ceased to exist if—
 - (a) the position ceases to exist because of the transfer of the Ministry of Health's functions under the principal Act to the Ministry of Agriculture and Forestry; and
 - (b) in connection with the transfer of functions,—
 - (i) the employee is made an offer of equivalent employment in the Ministry of Agriculture and Forestry; or
 - (ii) the employee is made an offer of other employment in the Ministry of Agriculture and Forestry, and accepts it.
- (2) An **offer of equivalent employment**, in relation to the employee's position in the Ministry of Health, is an offer of employment—
 - (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions of employment no less favourable than those applying to the employee immediately before the offer (including any service-related, redundancy, and superannuation conditions); and
 - (d) on terms that treat the period of service with the Ministry of Health (and any other period of service recognised by the Ministry of Health as continuous service) as if it were continuous service with the Ministry of Agriculture and Forestry.

11 Application of State Sector Act 1988 to employees affected by transfer of functions under principal Act

Sections 60 to 61B and 65 of the State Sector Act 1988 do not apply to the appointment of an employee of the Ministry of Health to a position in the Minis-

try of Agriculture and Forestry if the employee's position in the Ministry of Health ceases or will cease to exist because of the transfer to the Ministry of Agriculture and Forestry of the Ministry of Health's functions under the principal Act.

12 Application of certain collective agreements to employees affected by transfer of functions under principal Act

- (1) This section limits which employees may be bound by a collective agreement—
 - (a) that—
 - (i) binds the chief executive of the Ministry of Health before the transfer to the Ministry of Agriculture and Forestry of its functions under the principal Act; and
 - (ii) as a consequence of section 14, binds the chief executive of the Ministry of Agriculture and Forestry after that transfer (**collective agreement A**); or
 - (b) binds the chief executive of the Ministry of Agriculture and Forestry before that transfer (**collective agreement B**).
- (2) After the transfer,—
 - (a) the only employees of the Ministry of Agriculture and Forestry who are entitled to be bound by or enforce collective agreement A are those employees who are appointed to a position in the Ministry of Agriculture and Forestry that has been established (whether or not previously existing in the Ministry of Health) to enable the Ministry of Agriculture and Forestry to perform the functions transferred; and
 - (b) the only employees of the Ministry of Agriculture and Forestry who are entitled to be bound by or enforce collective agreement B are those employees who hold, or are appointed to, a position other than a position referred to in paragraph (a).
- (3) Subsection (2) does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee would not otherwise be bound by, or entitled to be bound by or enforce, that agreement.
- (4) This section limits which employees may be bound by collective agreements (including collective employment contracts), and the coverage of those agreements under Part 6 of the State Sector Act 1988 and sections 56(1), 57, 62(3), 63(3), and 243 of the Employment Relations Act 2000.
- (5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

13 Continuation of existing proceedings

- (1) Any proceedings that, before the commencement of this Act, the Minister of Health has initiated or become a party to in the Minister's capacity as the Minister responsible for the administration of the principal Act may be continued, completed, and enforced by or against the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the principal Act.
- (2) Any proceedings in relation to the administration of the principal Act or the Wine Makers Act 1981 that the Director-General of Health has initiated or become a party to before the commencement of this Act may be continued, completed, and enforced by or against the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of that Act.

14 References to functions being transferred

Unless the context otherwise requires, every reference to the Director-General of Health (or the chief executive of the Ministry of Health), in any regulation, rule, order, agreement, deed, instrument, application, notice, direction, contract, lease, or other document in force at the commencement of this Act, when used in relation to the employee's functions, duties, or powers under the principal Act or the Wine Makers Act 1981, is a reference to the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the principal Act.

Part 2

Safety of certain appliances

15 Interpretation

The definition in section 2 of the principal Act of **appliance** is amended by inserting, after the word "utensil," the words "container, vessel,".

16 Regulations

- (1) Section 42(1) of the principal Act is amended—
 - (a) by adding to paragraphs (d), (f), and (g) the words "or appliance"; and
 - (b) by inserting in paragraph (e), after the word "food", the words "or appliance"; and
 - (c) by omitting from paragraph (j) the words ", containers, or instruments" and ", container, or instrument"; and
 - (d) by inserting in paragraph (q), after the word "food", the words "or appliances".
- (2) Section 42(1) of the principal Act is amended by repealing paragraph (u), and substituting the following paragraph:

- (u) prohibiting, restricting, or regulating the sale or supply of appliances intended for use in carrying, delivering, manufacturing, packing, preparing, processing, selling, or storing, food that are—
 - (i) made of any material containing any substance capable of imparting any poisonous or injurious property to any food that might be cooked, prepared, served, or stored in those appliances, or prepared with those appliances; or
 - (ii) reasonably suspected by any designated officer of being made of any such material:

17 Validations

- (1) All regulations made under the principal Act before the commencement of this section are as valid and effectual as if the amendments effected by sections 15 and 16 had come into force on 14 October 1981.
- (2) All actions undertaken, or purportedly undertaken, by any person before the commencement of this section under the principal Act or any regulations made under the principal Act are as valid and effectual as if the amendments effected by sections 15 and 16 had come into force on 14 October 1981.
- (3) Any issue arising in proceedings relating to the principal Act or any regulations made under it commenced before 17 December 1998 must be determined as if subsections (1) and (2) had not been enacted.

Schedule 1 Consequential amendments to principal Act

s 2(2)

Section 7A

Repeal the section, and substitute:

7A Designation of Director

The Director-General must from time to time designate an employee as Director for the purposes of this Act.

Section 8

Repeal subsection (1) and substitute the following subsection:

- (1) The Director and every officer must exercise and perform the powers and functions conferred by this Act—
 - (a) under the direction of the Director-General; and
 - (b) in the case of the Director, and every officer appointed under the State Sector Act 1988, under the control of—
 - (i) the Director-General; and

- (ii) every other employee of the Ministry to whom the Director or officer is subordinate.

Section 8D(2)

Omit the words “Medical Officer of Health” and substitute the words “designated officer”.

Section 8ZS(2)(a)

Omit the words “of Health”.

Section 8ZZF(2)(a)

Omit the words “of Health”.

Section 13

Repeal subsection (3) and substitute:

- (3) Every local authority—
 - (a) must give to the designated officer designated for the district of the local authority all reports on the exercise in its district of the powers under this section of local authority inspectors that the designated officer asks for; and
 - (b) must give the Director all reports on the exercise in its district of the powers under this section of local authority inspectors that any designated officer asks for.

Section 14(4)(a)

Omit from section 14(4)(a) the words “of Health”.

Section 17(1)

Insert, after the words “Medical Officer of Health”, the words “or the Director”.

Section 17(2)

Insert, after the words “Medical Officer of Health”, the words “or the Director”.

Section 42(1)(i)

Repeal section 42(1)(i) and substitute:

- (i) prohibiting, restricting, or regulating the sale or supply for human consumption of any food that is infected or contaminated, or is reasonably expected by a designated officer to be infected or contaminated.

Schedule 2

Consequential amendments

s 9(1)

Dairy Industry Act 1952 (1952 No 55)

Omit from section 23(1) the words “of Agriculture and Forestry”.

Wine Makers Act 1981 (1981 No 125)

Insert in section 2, before the definition of **fruit wine**:

designated officer means the officer (within the meaning of the Food Act 1981) designated under the Food Act 1981 to enforce this Act in the locality concerned.

Omit from section 8(4) the words “Medical Officer of Health” and substitute the words “designated officer”.

Omit from section 8(5) the words “Medical Officer of Health” and substitute the words “designated officer”.

Omit from section 12(2) the words “Medical Officer of Health” and substitute the words “designated officer”.

Omit from section 12(3) the words “Medical Officer of Health” and substitute the words “designated officer”.

Omit from section 14(3) the words “Medical Officer of Health” and substitute the words “designated officer”.

Omit from section 14(4) the words “Medical Officer of Health” and substitute the words “designated officer”.

Omit from section 25(2)(b) the words “of Justice”.

Omit from section 31(2) the words “of Justice”.

Schedule 3

Consequential amendments to regulations

s 9(2)

Fish Export Processing Regulations 1995 (SR 1995/54)

Revoke the definition in regulation 2(1) of **Director-General** and substitute:

Director-General means the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Act.

Food Hygiene Regulations 1974 (SR 1974/169)

Revoke the definition in regulation 2(1) of **Inspector** and insert in their appropriate alphabetical order:

Director-General means the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Food Act 1981

designated officer, in a provision of these regulations,—

- (a) means a person who is—
 - (i) an officer within the meaning of the Food Act 1981; and
 - (ii) for the time being designated by the Director-General for the purposes of that provision, any provision or provisions of which it forms part, or these regulations; and
- (b) includes the Director within the meaning of the Food Act 1981

Inspector means a person who is—

- (a) a designated officer; or
- (b) the environmental health officer of a territorial authority within the meaning of the Local Government Act 1974.

Omit from regulation 5(5) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from regulation 5(7) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from regulation 6(7) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from the proviso to regulation 35(a) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from the proviso to regulation 36 the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from the proviso to regulation 37(c) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from the proviso to regulation 37A(f) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from regulation 41(2) the words “Medical Officer of Health” and substitute the words “designated officer”.

Omit from the proviso to regulation 47(5) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from regulation 47(6) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from the proviso to regulation 54(g) the words “Medical Officer of Health” and substitute the words “designated officer”.

Omit from regulation 56 the words “Any officer within the meaning of subsection (1) of section 2 of the Food and Drug Act 1969” and substitute the words “A designated officer”.

Omit from regulation 60(f) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from regulation 66 the words “Medical Officer of Health” and substitute the words “designated officer”.

Omit from regulation 82 the words “Medical Officer of Health” and substitute the words “designated officer”.

Revoke regulation 84 and substitute:

84 Appeals to Director-General

- (1) An occupier of food premises in respect of which a designated officer has made a decision or requirement under these regulations may, within 14 days of being notified in writing of it, appeal in writing against it to the Director-General.
- (1A) The Director-General may authorise a designated officer not involved in the decision or requirement to hear and determine the appeal.
- (2) The Director-General or designated officer may confirm, reverse, or modify the decision or requirement.
- (3) An uncompleted appeal to a Medical Officer of Health under the former regulation 84 may, at the Director-General’s discretion, be completed—
 - (a) by the Medical Officer of Health, as if the former regulation 84 had not been replaced by this regulation; or
 - (b) by the Director-General, or a designated officer authorised under sub-clause (1A).

Omit from regulation 85(1)(a) the words “by a Medical Officer of Health”.

Omit from regulation 85(1)(b) the words “Medical Officer of Health or by a local authority” and substitute the words “designated officer”.

Omit from regulation 85(4) the words “made by the Medical Officer of Health or local authority” and substitute the word “concerned”.

Food Regulations 1984 (SR 1984/262)

Insert in regulation 2(1), in their appropriate alphabetical order:

Director-General means the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Food Act 1981

designated officer, in a provision of these regulations,—

- (a) means a person who is—
 - (i) an officer within the meaning of the Food Act 1981; and
 - (ii) for the time being designated by the Director-General for the purposes of that provision, any provision or provisions of which it forms part, or these regulations; and
- (b) includes the Director within the meaning of the Food Act 1981.

Omit from regulation 64(2) the words “the Medical Officer of Health for the Invercargill Health District”, and substitute the words “a designated officer in Invercargill for the time being designated by the Director-General for the purpose”.

Omit from regulation 64(3) the words “Medical Officer of Health” in both places where they occur and substitute in each case the words “designated officer”.

Omit from regulation 80(3) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from regulation 113(2C) the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Omit from regulation 258 the words “the Medical Officer of Health” and substitute the words “a designated officer”.

Insert in subclauses (1) and (2) of regulation 260 after the words “Medical Officer of Health” (in the case of subclause (2), in both places where they occur), the words “or designated officer”.

Insert in subclauses (1), (1)(a), (2), (3), and (4) of regulation 262 after the words “Medical Officer of Health”, the words “or designated officer”.

Omit from subclauses (1) and (3) of regulation 263 the words “Medical Officer of Health” and substitute in each case the words “designated officer”.

Omit from regulation 272(3) the words “the Director” and substitute the words “a designated officer”.

Insert in paragraphs (a) and (b) of regulation 275, after the words “Medical Officer of Health”, the words “or designated officer”.

Health (Registration of Premises) Regulations 1966 (SR 1966/73)

Revoke regulation 8(3), and substitute:

- (3) The record must be available at all reasonable times for inspection—
 - (a) by any employee of the Director-General of Health; and
 - (b) by any person designated under section 7A of the Act as a Medical Officer of Health, a Health Protection Officer, or an officer who has functions, duties, or powers under an enactment administered by the Ministry of Health; and
 - (c) in respect of food premises (within the meaning of the Food Hygiene Regulations 1974), by any officer (within the meaning of the Food Act 1981).

Game Industry Board Regulations 1985 (SR 1985/184)

Revoke the definition in regulation 2(1) of Director-General and substitute:

Director-General means the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Primary Products Marketing Act 1953.

Meat Regulations 1969 (SR 1969/192)

Revoke the definition in regulation 2(1) of Assistant-Director and substitute:

Assistant-Director means an employee of the Director-General designated by the Director-General for the purposes of these regulations.

Wine Makers Regulations 1990 (SR 1990/77)

Revoke the definition of Medical Officer of Health in regulation 2(1)(c), and substitute the following definition:

Director-General means the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Food Act 1981.

Omit from regulation 8(3) the words “Medical Officer of Health for the district in which the premises are situated” and substitute the word “Director-General”.

Omit from regulation 8(4) the words “Medical Officer of Health” and substitute the word “Director-General”.

Omit from regulation 10(3)(b) the words “Medical Officer of Health” and substitute the word “Director-General”.

Omit from regulation 10(4) the words “Medical Officer of Health” and substitute the word “Director-General”.

Omit from Forms 12, 13, 14, 15, and 16 in the Schedule the words “Director, Division of Public Health, Ministry of Health” and substitute in each case the words “Director-General”.

Eprint notes

1 *General*

This is an eprint of the Food Amendment Act 2002 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Food Act 2014 (2014 No 32): section 420(2)