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Food Standards Australia New Zealand Board Charter

December 2023

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1. Introduction

Food Standards Australia New Zealand (the Authority) is a statutory authority within the Australian Government Health portfolio, established by an Act of the Australian Parliament – the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). The Authority is governed by its Board.

As a partner in the Australia New Zealand food regulatory system, the Authority develops food standards for Australia and New Zealand.

The Authority operates under an Inter-Governmental Agreement between the Australian Government and the Australian states and territories, and a Treaty between the Australian Government and New Zealand Government that establishes FSANZ's role in setting and maintaining trans-Tasman food standards.

The Authority contributes to the cooperative bi-national food regulatory system by:

- developing evidence-based standards;
- providing evidence-based advice to regulators and coordinating regulatory responses; and
- providing information about food standards.

2. Purpose

This document (the Charter) sets out the roles, responsibilities and accountabilities of the Board. It should be read in conjunction with:

- the FSANZ Act;
- *Public Governance, Performance and Accountability Act 2013* (PGPA Act);
- Rules established by the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule); and
- Agreement between the Government of Australia and the Government of New Zealand establishing a System for the Development of Joint Food Standards (the Treaty).

The Charter has been prepared on the basis that good corporate governance underpins the performance of the Authority in developing and maintaining effective bi-national food standards.

3. Legal Framework

The Authority is a corporate Commonwealth entity established under section 115 of the FSANZ Act. Section 115 provides that the affairs of the Authority are to be conducted by a Board to be known as the Board of Food Standards Australia New Zealand. All acts and things done in the name of, or on behalf of, the Authority by the Board or with the authority of the Board are taken to have been done by the Authority.

The FSANZ Act prescribes:

- the functions of the Board;
- the composition of the Board;

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- the powers of the Board;
- the circumstances under which the Board may delegate one or more of its powers to a member of the Board, or to a senior member of the staff of the Authority; and
- operational matters with respect to Board meetings.

The PGPA Act regulates governance arrangements for corporate Commonwealth entities, and establishes planning, performance and accountability requirements.

The Board members collectively are the 'Accountable Authority' of the Authority (see section 12 of the PGPA Act). The PGPA Act imposes the following duties on Accountable Authorities collectively:

- Govern the Authority in a way that:
 - promotes the proper use and management of resources for which it is responsible;
 - promotes the achievement of the purposes of the Authority; and
 - promotes financial sustainability of the Authority (see section 15).
- Establish and maintain an appropriate system of risk oversight and management for the Authority and an appropriate system of internal control for the Authority, including by implementing measures directed at ensuring officials of the Authority comply with financial laws (see section 16).
- Encourage officials of the Authority to co-operate with others to achieve common objectives, where practicable (see section 17).
- Keep the Minister informed of the activities of the Authority (see section 19).

Members also have duties under the PGPA Act individually as 'officials' of the Authority, as follows:

- Duty of Care and Diligence (section 25);
- Duty to Act in Good Faith and for a Proper Purpose (section 26);
- Duty in relation to position (section 27) – not to improperly use position;
- Duty in relation to information (section 28) and
- Duty to disclose interests (section 29).

The Board also recognises its responsibilities including, but not limited to, those under the following legislation, agreements and guides:

- the Treaty, and the Australia and New Zealand Partnership Agreement;
- Food Regulation Agreement 2002;
- *Auditor-General Act 1997*;
- *Public Service Act 1999* (the PS Act); and
- Resource Management Guides and Better Practice Guides issued by the Department of Finance in relation to Commonwealth Corporate Entities, particularly RMG 200 Duties of Accountable Authorities; RMG 202 Audit committees; and RMG 203 General Duties of officials.

4. Functions

The functions of the Authority are set out in section 13 of the FSANZ Act and are listed at Appendix 1.

The Minister may give directions to the Authority as to the performance of its functions (section 15 of the FSANZ Act).

5. Powers

In accordance with sections 14 and 115 of the FSANZ Act, the Board has power to do all things that are necessary or convenient to be done in connection with the performance of the Authority's functions (see above). The Minister may give directions to the Authority as the exercise of its powers (section 15 of the FSANZ Act).

6. Accountability

The Board is accountable to:

- the Australian Government, as the establishing government;
- the New Zealand Government, through the Treaty and the New Zealand Partnership Agreement;
- the Food Ministers' Meeting (FMM), representing the governments of Australia – federal, state and territory – and New Zealand, through the Inter-Governmental Agreement;
- the communities of Australia and New Zealand, who trust the Board's independence and judgment on food standards; and
- the producers, manufacturers, processors, importers and retailers involved in the food supply chain.

7. Board Membership

Board members are appointed by the Australian Government in accordance with section 117 of the FSANZ Act. Section 116 of the Act outlines the composition of the Board.

The Board consists of:

- a Chairperson,
- the Chief Executive Officer (CEO) of the Authority;
- 3 members nominated by the lead New Zealand Minister on the FMM;
- 1 member nominated by consumer organisations;
- 1 member nominated by the CEO of the National Health and Medical Research Council;
- 3 members nominated by public bodies or organisations relating to science or public health; and
- 2 members nominated by bodies or organisations relating to the food industry.

All Board members are appointed on a part-time basis, with the exception of the CEO. Appointments are for a maximum of 4 years, with the possibility of reappointment for a second term. A third or subsequent term is not permitted.

The Chair of the Implementation Subcommittee for Food Regulation (ISFR), or nominated representative, attends Board meetings as an observer at the invitation of the Board.

8. Board roles and responsibilities

In accordance with section 15 of the PGPA Act, the Board must govern the Authority in a way that promotes the proper use and management of public resources for which the Authority is responsible; promotes the achievement of the purposes of the Authority, and promotes its financial sustainability. In making decisions for these purposes, the Board must take into account the effect of those decisions on public resources generally.

8.1 Board members

Board members (including the Chair) will:

- be independent;
- pursue the legislative objectives of the Authority;
- pursue agreed strategic priorities of the Authority;
- act with due diligence, care and good faith;
- be committed to act in the best interests of the Authority;
- be entitled to be heard at all meetings and bring independent judgment to bear in decision making;
- understand and work within the legal and administrative framework of the Authority, and comply with all applicable Australian laws;
- work to support public confidence in the Authority;
- develop, strengthen, maintain and expand professional networks with respect to the Authority;
- deal with other members, staff and stakeholders with courtesy and respect;
- maintain confidentiality;
- comply with any duty or obligation under the *Work Health and Safety Act 2011* (WHS Act);
- identify and declare any conflicts of interest;
- prepare for meetings, attend meetings and participate actively in discussions, raise concerns, and hold the Authority staff and management accountable; and
- not improperly use their position, or any information gained as a result of their position as a Board member, to gain, or seek to gain, a benefit or an advantage for themselves or any other person.

8.2 Chair

In addition to their duties and activities undertaken as a Board member, the Chair will:

- provide leadership for the Board and the Authority's staff;
- facilitate and, with the Board, set strategic priorities for the Authority;
- encourage the identification of issues that need to be discussed by the Board and ensure time is available either during or in association with Board meetings for these discussions to occur;

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- ensure meetings are managed efficiently and effectively and that all items on the agenda are appropriately discussed;
- encourage members to prepare for and participate in meetings fully and effectively;
- actively encourage members to maintain and improve their non-executive director skills;
- act as mentor and advisor, and facilitate professional development of skills of individual members;
- provide support for and liaise with the CEO on Board and other appropriate matters;
- liaise and communicate with the Minister, the Forum, and individual ministers;
- promote the effectiveness of the Board's deliberations and liaise with stakeholders;
- be the spokesperson for the Board;
- in accordance with agreed procedures, lead a recruitment process to select and appoint a Chief Executive Officer for the Authority; and
- monitor, assess and provide feedback on the performance of the CEO in consultation with Board members.

8.3 Chief Executive Officer (the CEO)

The CEO is appointed by the Board¹ and is responsible for the day-to-day administration of the Authority and the control of its operations². In undertaking their duties, the CEO must act in accordance with any policies determined, and any directions given, by the Board in writing³. The role of the CEO includes:

- providing leadership to the Authority's staff;
- maintaining regular contact with the Chair and keeping the Chair informed of developments which might require the Chair to take action on the Board's behalf;
- reporting regularly to the Board on key issues affecting the Authority including operational and strategic management matters;
- overseeing planning, including identifying aims and objectives and the strategies required to achieve the Authority's mission;
- presenting the Authority's budget, and assumptions behind the budget, for the Board's approval, and managing the Authority's resources;
- providing a link between the Board and staff;
- representing the Authority and its role to provide a strong, positive image to stakeholders;
- setting the standards of behaviour for the Authority's staff by example;
- articulating the Authority's vision and creating the right internal climate for staff; and
- attracting, recruiting and retaining high performing staff.

¹ For information about requirements of the appointment process, see section 128 of the FSANZ Act.

² Subsection 129(1) of the FSANZ Act.

³ Subsection 129(2) of the FSANZ Act.

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8.4 Corporate and performance planning

The Board will ensure corporate and performance planning is timely and effective by ensuring the Authority's planning is integrated, cohesive and reflects agreed priorities and strategies.

The Board will do this by:

- each financial year, setting guiding strategies for the Authority based on a consideration of anticipated environmental impacts and statutory objectives;
- each financial year, approving a rolling four-year financial plan (the Portfolio Budget Statement);
- each financial year, approving a corporate plan that is based on these guiding strategies for the purposes of section 35 of the PGPA Act;
- annually, but with periodic review, approving a budget for the Authority that is consistent with the corporate plan and the financial plan; and
- every three years (with annual review), approving a three-year internal audit plan.

8.5 Organisational performance management

The Board will ensure there is a structured and regular system of performance management, review and reporting aligned with organisational outcomes and outputs that generates information appropriate for both internal performance management needs and external reporting requirements.

The Board will do this by:

- ensuring the Authority has a robust system of performance monitoring, reporting and review;
- at each meeting, considering a report on progress against strategic directions and progress against the standards work plan;
- periodically, considering reports of expenditure and financial performance against agreed budgets;
- periodically, considering reports of organisational performance against agreed corporate goals and strategies;
- periodically, considering internal audit reports and associated management comments;
- publishing an annual report of progress against the corporate plan in accordance with the Australian Government's Performance Reporting Framework; and
- noting reporting to the New Zealand Minister on progress against the New Zealand Partnership Agreement.

8.6 Corporate governance

The Board will ensure corporate governance arrangements are appropriate, documented and reviewed periodically and its associated responsibilities are fulfilled.

The Board will do this by:

- every two years, considering a report into the Authority's corporate governance arrangements to ensure they align with best practice;
- reviewing and evaluating the performance of governance frameworks annually or whenever there is a significant event affecting the Authority's accountability or management arrangements;
- periodically requiring an internal audit of corporate governance arrangements; and
- establishing a People and Culture Committee, with appropriate terms of reference, to assist the Board in fulfilling its governance responsibilities in relation to the people and culture functions of the agency.

8.7 Systems relating to risk and control

In accordance with section 16 of the PGPA Act, the Board will establish and maintain:

- an appropriate system of risk oversight and management for the Authority; and
- an appropriate system of internal control for the Authority, including by implementing measures directed at ensuring officials of the Authority comply with finance laws.

The Board will do this by:

- establishing a Finance, Audit and Risk Management Committee, with appropriate terms of reference, and consider reports from the Committee; and
- every two years, considering a report into the Authority's fraud and enterprise risk management framework, processes and practices.

8.8 Development of Food Regulatory Measures

The Board will ensure there is a rigorous process for developing food regulatory measures (standards and codes of practice) consistent with statutory requirements, good regulatory practice and international standards and agreements.

For each regulatory measure, the Board will ensure that regulatory approaches are consistent with all relevant statutory requirements including (but not limited to):

- having regard to the following statutory objectives of the Authority in developing, reviewing or varying food regulatory measures:
 - the protection of public health and safety;
 - the provision of adequate information to consumers; and
 - the prevention of misleading or deceptive conduct (see subsection 18(1) of the FSANZ Act); and
- having regard to:
 - the need for standards to be based on risk analysis using the best available scientific evidence;
 - the promotion of consistency between domestic and international food standards;
 - the desirability of an efficient and internationally competitive food industry;
 - the promotion of fair trading in food;
 - all submissions received during the consultation period; and
 - any written policy guidelines formulated by the Forum on Food Regulation for the

purposes of this paragraph and notified to the Authority (see subsection 18(2) of the FSANZ Act).

For each regulatory measure, the Board will do this by:

- reviewing scientific assessments and technical discussions and ensuring, where appropriate, that external scientific reviews have been undertaken;
- ensuring standards are based on risk analysis using the best available scientific evidence;
- ensuring regulatory approaches are considered having regard to Ministerial Policy Guidelines;
- ensuring regulatory approaches are consistent with the Office of Best Practice Regulation's guidelines;
- critically analysing and, where necessary, challenging assessment reports and the proposed response to issues raised in public submissions and consultations;
- testing the thoroughness of consultation processes with jurisdictions, industry and consumers in both countries (where appropriate), and other stakeholders; and
- testing political sensitivities have been identified and appropriately managed.

9. Conduct and Ethics

9.1 Code of Conduct

Board members are 'statutory office holders'⁴ for the purposes of the PS Act and the *Public Service Regulations 1999* (the PS Regulations). Subsection 14(2) of the PS Act provides that the Australian Public Service (APS) Code of Conduct⁵ applies to statutory office holders subject to the PS Regulations⁶. Subregulation 2.2(3) of the PS Regulations provide that:

- a statutory office holder is bound by the Code of Conduct only to the extent to which the statutory office holder:
 - is assisted by APS employees in a supervisory capacity or another capacity related to the statutory office holder's day to day working relationship with APS employees; or
 - deals with APS employees in a supervisory capacity, or in another capacity related to the statutory office holder's day to day working relationship with APS employees; and
- if there is an inconsistency between the requirements of:
 - the Code of Conduct; and
 - an Australian law that relates to a statutory office holder's office or appointment;

⁴ For meaning of 'statutory office holder', see subsection 14(3) of the PS Act.

⁵ <https://www.apsc.gov.au/code-conduct>

⁶ See also regulation 2.2 of the PS Regulations.

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- the Code of Conduct does not bind the statutory office holder to the extent of the inconsistency.

The Code of Conduct requires the upholding of the APS Values⁷ and APS Employment Principles⁸, among other things.

The APS Values set out the standard of behaviour expected of agency heads, APS employees and statutory officers. The Authority has also developed a set of FSANZ-shared values and behaviours to complement the APS Values.

Each Board member must abide by the APS Code of Conduct and behave in a way that upholds the APS Values, and, as a Board, has also agreed to abide by the FSANZ values and behaviours.

Each Board member must also abide by the APS Employment Principles, and has also agreed, as a Board, to abide by the standard of respectful workplace behaviour as set out in the Authority's *Respectful Workplace Behaviour Policy*, which states that the Authority is committed to providing a safe, accountable and fair workplace which is free from disrespectful behaviour.

9.2 Conflicts

Board members must declare and manage certain interests, especially material personal interests. This is a legal requirement imposed by the FSANZ Act and the PGPA Act. Rules made under the PGPA Act detail when and how the required disclosure of a material personal interest must occur.

The duties imposed by the FSANZ Act and the PGPA Act are not exhaustive. Board members also owe duties under the general law. These include obligations known as fiduciary duties, which are generally owed to FSANZ. In summary, consistent with their fiduciary duties, Board members must not:

- put themselves in a position of conflict of interest; and
- profit or benefit from their position as a FSANZ Board member, or from opportunity or knowledge arising from that position, without the informed consent of FSANZ.

The possibility of a conflict of interest under the general law arises where 'a reasonable person looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict'⁹.

Public confidence in the integrity of decisions made by the Board also requires that there be no perception of bias or conflict of interest in Board members as decision-makers.

To comply with their legal duties:

- Board members must declare their interests in accordance with requirements in the FSANZ Act, PGPA Act, and PGPA Rule – this includes making and updating their declarations generally, as well as declaring interests specific to an agenda item for a Board meeting; and

⁷ See section 10 of the PS Act.

⁸ See section 10A of the PS Act.

⁹ *Boardman v Phipps* [1967] 2 AC 46 at 124.

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- at each Board meeting, the Board must manage those declarations in accordance with those requirements – this includes ensuring that declared interests and the outcomes for each agenda item are recorded and in the Minutes of the meeting.

The FSANZ Guide: *Management of conflicts of interest for FSANZ Board members* may assist the Board and Board members to comply with those requirements.

10. Board Meetings

10.1 Frequency

The Board must hold such meetings as are necessary for the efficient performance of its functions¹⁰. The Board has agreed to meet face to face at least four times a year and convene through videoconferences between meetings as required. A 12-month schedule of meetings is maintained by the Board Secretariat.

10.2 Presiding at Board meetings

The Chair of the Board will preside over all Board meetings at which they are present¹¹. If the Chair is not present at a Board meeting and is unable to nominate a deputy, the Board members present will appoint one of their number to preside over the meeting¹².

10.3 Voting at Board meetings

If a decision is to be determined by voting, it shall be decided by the majority of votes of Board members who are eligible to vote; and are present and voting¹³. The Chair, or the member presiding at a meeting if the Chair is not present, has a deliberative vote and, if necessary, also has a casting vote¹⁴.

10.4 Quorum

A majority of the members appointed to the Board shall constitute a quorum at a meeting of the Board¹⁵.

10.5 Agenda and Minutes

The CEO will discuss the draft agenda with the Chairperson ahead of each meeting or videoconference. The Secretariat will circulate the agenda and meeting papers to Board members two weeks prior to each meeting or videoconference.

The Secretariat will provide the draft minutes of meetings to the Chairperson and Board for clearance within two weeks of a meeting or videoconference. The minutes of the previous meeting are to be included in the package of papers provided for each meeting or videoconference.

¹⁰ Subsection 122(1) of the FSANZ Act. However, the Chair of the Board may convene a Board meeting at any time (paragraph 122(2)(a)), and must convene a Board meeting if at least three other members make a request in writing for a Board meeting to be held (paragraph 122(2)(b)).

¹¹ Subsection 122(3) of the FSANZ Act.

¹² Subsection 122(4) of the FSANZ Act.

¹³ Subsection 122(6) of the FSANZ Act.

¹⁴ Subsection 122(7) of the FSANZ Act.

¹⁵ Subsection 122(5) of the FSANZ Act.

10.6 Resolutions without meetings

The Board may consider and make a decision on any matter without a meeting. A resolution is taken to have been passed if:

- (a) without meeting, a majority of the number of members indicate agreement with the resolution in accordance with the method determined by the Board; and
- (b) that majority would, if present at a meeting of the Board, have constituted a quorum.

11. Board Committees

Under section 118 of the FSANZ Act, the Board may establish such committees as it thinks fit to assist it in carrying out its functions, and may abolish any such committee.

In accordance with the PGPA Act, the Board must ensure that the Authority has an audit committee which must be constituted, and perform functions, in accordance with any requirements prescribed by the PGPA rules.

The Board will adopt a charter for each Committee it establishes, setting out the responsibilities delegated by the Board to the Committee and the Committee's structure and operation. Each Committee may make recommendations to the Board for a decision in relation to any matter within its responsibility.

12. Confidentiality of Board proceedings and documents

All Board papers, reports (draft and final), research documents, verbal advice and discussions at the Board meetings, or provided to Board meetings, are confidential and must not be disclosed, unless that disclosure has been authorised by the entity or person (as the case may be) from whom the information is provided, or is required by law.

13. Additional Information

Board members are entitled to request and receive such additional information as they consider necessary to support informed decision making. Any Board member has the authority to seek any information required and the Authority must comply with such requests. All requests for information, and responses to requests, must be communicated through the Chair to the CEO. Board members should not contact staff directly unless that contact is approved by the Chair and CEO.

A Member is entitled to seek independent professional advice (including but not limited to legal, accounting and financial advice) at the Authority's expense on any matter connected with the discharge of his or her responsibilities, with the prior written approval of the Chair. If approved by the Chair, the CEO will facilitate the obtaining of the advice and its communication to all Board members.

14. Reporting

The Board has responsibility under the FSANZ Act to notify the FMM if it approves a draft standard or a draft variation of a standard.

A summary of key outcomes of each Board meeting is published on the Authority's website. This summary is not an official record of the decisions of the Board and does not provide full details of decisions. The minutes of each meeting of the Board are the official record of the decisions made by the Board and no reliance should be placed on the summary of key outcomes.

Annual reporting requirements are set out in section 152 of the FSANZ Act, Division 6 of the PGPA Act and the PGPA Rules. The Board will also note Authority reporting under the New Zealand Partnership Agreement.

15. Secretariat

The Authority will provide secretariat services (Board Secretariat) to the Board which includes (but is not limited to):

- effective and efficient operational management of the Board;
- organising Board meetings and Board member attendance;
- monitoring compliance with Board policies and procedures;
- coordinating the completion and dispatch of the Board agenda and supporting materials;
- preparing minutes of meetings and taking these to the Chair for approval and circulation;
- organising and facilitating the induction and professional development of Board members; and
- being a point of reference for dealings between the Board and the Authority.

16. Induction and ongoing training

New Board members will participate in an induction program, during which they will receive relevant information on their appointment and comprehensive briefings from management on the business and key issues of the Authority.

Each member of the Board is expected to participate in all continuing education programs conducted for members of the Board and/or a Board Committee, including regular briefings by internal and external specialists on subject matters relevant to their role as a member of the Board and/or Board.

17. Board and Committee performance evaluation

The Board will review its performance, and the performance of each of the Board Committees, from time to time as it deems appropriate, but in any event no less than biennially. The form of any such review will be at the discretion of the Chairperson but, at a minimum, will involve the members conducting a self-assessment of their performance against the Charter.

18. Review of Charter

The Board will periodically review the Board and Board Committee charters at least once in each two-year period and approve any amendments as it considers appropriate.

Appendix 1: Function of FSANZ as set out in section 13 of the FSANZ Act.

13 Functions

- (1) The functions of the Authority are:
- (a) in accordance with this Act, to develop standards and variations of standards, and to review standards and variations of standards; and
 - (b) in accordance with this Act, to develop codes of practice and variations of codes of practice for industry and to review codes of practice; and
 - (c) to develop guidelines to assist the interpretation of the Australia New Zealand Food Standards Code on its own initiative or in consultation with the States, the Territories and any other body or person that the Authority considers appropriate; and
 - (d) to promote consistency between standards in Australia and New Zealand with those used internationally, based on the best available scientific evidence; and
 - (e) in consultation with the States and Territories, or on its own initiative, to facilitate the harmonisation of State and Territory laws relating to food; and
 - (f) in consultation with the States and Territories, or on its own initiative, to co-ordinate the development of procedures required to implement requirements set out in standards; and
 - (g) in consultation with the States and Territories, to co-ordinate the monitoring, surveillance and enforcement of activities relating to food available in Australia; and
 - (h) in consultation with the States and Territories, or on its own initiative, to conduct research and surveys in relation to any of the matters that may be included in a standard; and
 - (i) in co-operation with the States and Territories, to develop food education initiatives, including the publication of information to increase public awareness of food standards and food labels; and
 - (ia) to provide information, on request by a member of the public, about the Australia New Zealand Food Standards Code; and
 - (j) in co-operation with the Department administered by the Minister administering Part 3-3 of Schedule 2 to the *Competition and Consumer Act 2010*, as that Part applies as a law of the Commonwealth, to co-ordinate the recall of food under that Part; and
 - (k) at the request of the States and Territories, to co-ordinate action by the States and Territories to recall food under State and Territory laws; and
 - (l) to develop assessment policies in relation to food imported into Australia; and
 - (m) to provide advice to the Minister on matters relating to food; and
 - (n) to participate in international, regional and bilateral negotiations on matters

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that may be included in standards; and

- (o) to make the Authority's knowledge, expertise, equipment, facilities and intellectual property available to other persons on a commercial basis; and
- (p) at the request of New Zealand, to perform functions for New Zealand similar to the functions that the Authority may perform in relation to the States and Territories; and
- (q) at the request of New Zealand, to perform functions for New Zealand similar to the other functions that the Authority may perform; and
- (qa) such other functions as are conferred on the Authority by this Act; and
- (r) any functions incidental to any of the foregoing functions.