FEDERAL COURT OF AUSTRALIA

GENE ETHICS PTY LTD (ACN 104 140 918) and
THE SAFE FOOD INSTITUTE LTD (ACN 145 106 547)

v

FOOD STANDARDS AUSTRALIA NEW ZEALAND

[2012] FCA 1137

SUMMARY

1 This summary is intended to assist in understanding the decision of the Court. It is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons. The authoritative reasons for judgment are published on the Court's website at http://www.fedcourt.gov.au.

2 In this application, the applicants sought judicial review of a decision by Food Standards Australia New Zealand ("the Authority") to approve a draft variation to Standard 1.5.3 of the Australia New Zealand Food Standards Code. The Standard deals with the irradiation of food.

3 The Queensland Department of Primary Industries and Fisheries ("QDPIF") had requested an amendment to Standard 1.5.3 to allow the irradiation of persimmons. The applicants claimed that when the Authority proposed a draft variation to Standard 1.5.3 in light of this application, the Authority had no legal power to add further amendments unrelated to the irradiation of persimmons. The applicants also claimed that the Authority did not give proper public notice of these additional amendments.

4 Divisions 1 and 2 of Part 3 of the *Food Standards Australia New Zealand Act 1991* (Cth) provide separate pathways for changing the Standard, depending on whether changes are put forward by third parties or the Authority itself. This did not, however, prevent the Authority from proposing its own amendments in the course of assessing a third party application. The Act expressly requires the Authority to consider additional matters, and permits it to propose variations that were not requested. The absence of any essential difference between the procedures set out in the two Divisions further indicates that the

legislative purpose was to provide flexibility to the Authority rather than to prevent it from introducing its own amendments when dealing with an application.

5 The public notice that the Authority gave was required to comply with s 31(2) of the Act and it met the requirements imposed by that section. The notice stated that a draft variation had been prepared. It provided links to documents setting out an assessment of the application and the full extent of the proposed changes. It called for written submissions by a specified date. This was all that s 31(2) required and there were no other statutory requirements. Accordingly, the notice was not invalid. Despite this, the use of the label "Application A1038 — Irradiation of Persimmons", without more, to identify the draft variation had the capacity to mislead readers and was not within the spirit of the legislation. This may have consequences for the costs orders made in these proceedings although it does not strictly affect the legal validity of the notice under the legislation.

6 The result is that the application for judicial review of the Authority's decisions is dismissed. The parties have seven days to file written submissions on the appropriate costs orders for this proceeding. If they make no such submissions, it will be ordered that there be no order as to costs.

KENNY J
19 OCTOBER 2012
MELBOURNE