

Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

FSANZ prepared Proposal P1018 to remove restrictions on the presence of companion dogs in outdoor dining areas of food premises. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft Standard.

Following consideration by COAG Legislative and Governance Forum on Food Regulation¹, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

2. Purpose and operation

The Authority has approved amending Standard 3.2.2 to remove the restriction on the presence of companion dogs in outdoor dining areas. This move will allow for greater consistency across jurisdictions and would effectively be a deregulation.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1018 has included one round of public consultation following an assessment and the preparation of a draft Standard and associated report. Submissions were called for on 2 May 2012 for a six-week consultation period.

A Regulation Impact Statement (RIS) was not required because the proposed variations to Standard 3.2.2 are likely to have a minor impact on business and individuals and is deemed to be a de-regulation.

5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

¹ Previously known as the Australia and New Zealand Food Regulation Ministerial Council

6. Variation

Item 1 omits clause 24 in Standard 3.2.2 and substitutes a new clause to provide food businesses with the discretion to permit dogs other than assistance animals to be present in outdoor dining areas.

The new clause does not expressly limit the discretion to dogs that are companion animals. This avoids the need for the new clause to define a companion animal and to incorporate legal tests of ownership of or effective control over dogs that food businesses must apply in determining when to allow a dog to be present . In practice, the dogs present will be customers' companion animals and food businesses retain the right to exclude for any reason any dog that is not an assistance animal. Food businesses also remain subject to the Code's other food safety requirements.

The new clause prohibits a dog other than an assistance animal from being in an area used for the preparation of food. Assistance animals are restricted to areas used by customers.