

# 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 P1021 to amend Standards in the Code to correct minor typographical errors and inconsistencies, update references, correct formatting issues, and correct cross references. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved draft variations to Standards in the Code.

Following consideration by COAG Legislative and Governance Forum on Food Regulation<sup>1</sup>, 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 variations to the Code to correct minor typographical errors and inconsistencies, update references, correct formatting issues, and correct cross references. The variations are minor in nature as defined under section 66 of the FSANZ Act, i.e., they do not:

- (a) impose, vary or remove an obligation on any person; or
- (b) create, vary or remove a right of any person; or
- (c) otherwise alter the legal effect of a food regulatory measure.

Therefore, the affected Standards continue to have the same legal effect as before the variations.

## 3. Documents incorporated by reference

Some of the variations to food regulatory measures update documents incorporated 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 P1021 includes one round of consultation with relevant government agencies. Submissions were called for on 18 June 2012 for three weeks.

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<sup>1</sup> Previously known as the Australia and New Zealand Food Regulation Ministerial Council

A Regulation Impact Statement was not required because the proposed variations are minor in nature as described in 2 above.

## **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.

## **6. Variations**

### *6.1 Updating references*

Items [1], [8.1], [8.2] and [15] update references in the Code.

### *6.2 Updating material from international sources*

Items [3.1] – [3.2], [3.4] – [3.5] and [6.3] – [6.10] update the name and additive number of *tocopherols concentrate, mixed* to match those in Codex Alimentarius. The amendment allows the continuation of the current description for two years followed by the usual one year for stock in trade in order that industry can update product labelling at minimal cost.

Item [7.4] updates the definition of the enzyme bromelain.

### *6.3 Correcting minor errors and omissions, and improving clarity*

Items [2], [5.2], [6.1], [6.11], [6.13], [7.1], [7.5] – [7.8], [9.1] – [9.3], [12.1], [14.1], [14.2], [16.1] and [16.2] correct minor errors and omissions in the Code.

Items [3.6], [5.1], [6.2], [6.14], [6.15], [7.3], [10], [11] and [12.2] improve clarity in the Code.

### *6.4 Removing material that is no longer required*

Items [8.3] and [8.4] remove specifications from the Code that are no longer required because the substances have now been evaluated by JECFA and their specifications published in a monograph which is a primary reference source for the Code.

### *6.5 Variation to Editorial Notes and Examples in the Australia New Zealand Food Standards Code*

Items [3.3], [3.7], [4], [6.2], [6.12], [7.2], [7.9] and [13] correct and update various examples and editorial notes in the Code.

The amendments to the Code include changes to Editorial notes and Examples. Editorial notes and Examples are not, by virtue of the definition of ‘standard’, part of a draft standard and are therefore not subject to the standards development process under part 3 of the FSANZ Act. The Editorial notes and Examples have only been provided for completeness.