

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 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

FSANZ accepted Application A1043 which seeks to adopt limits for certain chemical substances in packaged water that reflect the current limits in place in international Standards established by the World Health Organization. The Authority considered the Application in accordance with Division 1 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

Standard 2.6.2 of the Code currently specifies chemical limits for packaged water (Table to subclause 2(2) 2). The purpose of this variation to the Standard is to provide producers, bottlers, importers and marketers of packaged water with a more contemporary and comprehensive list of chemicals and their respective limits. This variation will enhance the safety of packaged water for consumers. The variation will result in the adoption by reference to the chemical limits listed in *Table A3.3 Guideline values for chemicals that are of health significance in drinking-water* of *Annex 3 Chemical summary tables* in the *Guidelines for drinking-water quality, 4th edition, 2011, World Health Organization, Geneva*. (WHO GDWQ).

This variation will come into force at gazettal but with a two year transitional period (plus the subsequent one year exemption provided by clause 2 of Standard 1.1.1 for stock in trade) to permit industry to clear current stock and to implement a testing regimen for the chemicals so listed in the WHO GDWQ. The variation therefore permits compliance with either the existing chemical limits in the Table to subclause 2(2) or the chemical limits adopted by reference to the WHO GDWQ. The latter will permit industry to comply with chemical limits of the WHO GDWQ during the above-mentioned 36 month period.

3. Documents incorporated by reference

The variations to the current food regulatory measure will be undertaken by reference to the appropriate section of the WHO guidelines.

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

4. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1043 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 3 August 2012 for a six-week consultation period.

A Regulation Impact Statement (RIS) was not required because the proposed variations to Standard 2.6.2 are likely to have a minor impact on business and individuals (OBPR Reference 12956).

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 97 of the FSANZ Act.

6. Variations

6.1 Standard 1.3.3

Item [1] amends Standard 1.3.3 to reduce the maximum permitted level for styrene listed in the Table to clause 11 from 0.03 mg/kg to 0.02 mg/kg.

6.2 Standard 1.4.1

Item [2] amends the Table to clause 3 in Standard 1.4.1 to provide that the maximum level for vinyl chloride imposed by that clause does not apply to packaged water.

6.3 Standard 2.6.2

Item [3.1] inserts two new clauses after clause 2 of Standard 2.6.2.

Clause 2AA introduces four subclauses.

Subclause 2AA(1) notes that packaged water may or may not contain added carbon dioxide.

Subclause 2AA(2) provides the prescribed maximum limits for certain chemical substances in packaged water by reference to the relevant chemical limits listed in *Table A3.3 Guideline values for chemicals that are of health significance in drinking-water* of *Annex 3 Chemical summary tables* in the *Guidelines for drinking-water quality, 4th edition, 2011, World Health Organization, Geneva*, (WHO GDWG).

Subclauses 2AA(3) and 2AA(4) provide that the maximum permitted level for naturally occurring fluoride in packaged water is 1.0 mg/L. That is, the fluoride maximum level listed in the WHO GDWQ does not apply to packaged water.

An editorial note is also inserted into this clause to highlight specific chemical limits in Standard 1.4.1.

Clause 2AB provides that packaged water must comply with either the current clause 2 or the new clause 2AA, but not a combination of both. This permits industry to comply with either the WHO GDWQ and the maximum level of 1.0 mg/L for fluoride or the current provisions in Standard 2.6.2 during the two year transition period.

Item [3.2] removes clause 2 and 2AB of Standard 2.6.2, two years after the gazettal of these variations. This effectively removes the current clause 2 (including the chemical limits in Table to clause 2(2)) two years after gazettal and leaving clause 2AA in its place (including the clauses related carbon dioxide and fluoride). The stock in trade exemption provided by clause 2 of Standard 1.1.1 will apply when Item [3.2] commences.

Item [3.3] updates the Standard's Table of Provisions to reflect the above changes.