

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.

The Authority prepared Proposal P1029 to review the maximum levels for tutin in honey and comb honey. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft Standard.

Following consideration by the Australia and New Zealand Ministerial 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

The Authority has approved a draft variation to Standard 1.4.1 – Contaminants and Natural Toxicants to amend the maximum levels for tutin in honey and comb honey based on recent scientific evidence and set these as permanent levels. The amended maximum levels will protect consumers from the risks arising from tutin contamination of honey and comb honey.

The stock-in-trade provision provided for honey and comb honey packaged for retail sale prior to commencement of the draft variation is to assist in minimising the impacts of the draft variation on the honey industry.

A minor amendment to Standard 1.4.4 – Prohibited and Restricted Plants and Fungi aims to clarify the application of that Standard to substances, such as tutin, that are present in food and derive from a prohibited plant.

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 P1029 included one round of public consultation following an assessment and the preparation of a draft Standard and associated report. Submissions were called for on 10 July 2014 for a six-week consultation period.

¹ convening as the Australia and New Zealand Food Regulation Ministerial Council

A Regulation Impact Statement was required because the proposed variations to Standard 1.4.1 are likely to have an impact on business and individuals.

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. Variation

6.1 Standard 1.4.1

Subitem [1.1] inserts a definition of 'honey' in subclause 5(1). The definition defines honey to include comb honey. This definition applies for the purposes of clause 5.

Subitem [1.2] omits the current subclause 5(5) to remove the expiry date which applies to the current maximum levels prescribed for tutin in honey and comb honey in the Table to clause 5. This means that the new maximum level for tutin in honey will be a permanent measure in the Code.

The current subclause 5(5) is replaced with new subclauses 5(5) and 5(6).

New subclause 5(5) expressly provides that the stock-in-trade provision in subclause 1(2) of Standard 1.1.1 does not apply to honey for the purposes of the Table to clause 5.

New subclause 5(6) provides that honey packaged for retail sale before the commencement of this draft variation is taken to comply with the new maximum level for tutin in honey in clause 5 if the honey had complied with the maximum levels for tutin set out in the Code before the draft variation commenced.

Subitem [1.3] replaces the previous maximum levels for tutin in honey (2 mg/kg) and comb honey (0.1 mg/kg) in the Table to clause 5 with a new maximum level of 0.7 mg/kg for both honey and comb honey.

Subitem [1.4] inserts a new editorial note after the Table to clause 5 to explain that the *New Zealand Food (Tutin in Honey) Standard 2010* also regulates beekeepers, packers and exporters of honey in New Zealand and that it provides options for demonstrating compliance with the maximum level for tutin in honey set by clause 5 of Standard 1.4.1.

6.2 Standard 1.4.4

Item [2] omits the current Editorial Note to clause 1 of Standard 1.4.4 and substitutes a new Editorial Note. Standard 1.4.4 prohibits a prohibited plant, or any substance derived from such a plant, from being intentionally added to food or offered for sale as food. The new Editorial Note clarifies that this prohibition does not extend to the presence in food of a substance derived from a prohibited plant that occurs as a natural toxicant (e.g. tutu). The latter is instead regulated or permitted by Standard 1.4.1.