

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 P1025 to revise the Code. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft revised Code.

Following consideration by the 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

The Authority has approved variations of Chapters 1 and 2 of the Code.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference. The variations update some references to documents that are incorporated by reference.

4. Consultation

In accordance with the procedure in Subdivision F of Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1025 included two rounds of public comment following an assessment and the preparation of a draft Standard and associated reports. Submissions were called for on 23 May 2013 for a 12-week period, and on 10 July 2014 for an eight-week period.

A Regulation Impact Statement was not required, because the proposed variations to the Code are likely to have a minor 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.

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

6. Variation (Chapter 1—Introduction and standards that apply to all foods, Part 2—Labelling and other information requirements)

Standard 1.2.1 – Requirements to have labels or otherwise provide information

Division 1 Preliminary

New section 1.2.1—1 Name

This section establishes that the instrument is the *Australia New Zealand Food Standards Code – Standard 1.2.1 – Requirements to have labels or otherwise provide information*.

New section 1.2.1—2 Outline of Standard

This Standard sets out when a food that is being sold is required to bear a label or have other information provided with it. There are different requirements depending on the type of sale—for food for retail sale, food for sale to a caterer or other sales. The Standard also sets out the information that is to be provided, either on a label or in associated information.

Division 2 sets out the labelling and information requirements for a food that is for retail sale. Division 3 sets out the labelling and information requirements for a food that is sold to caterers and Division 4 sets out the labelling and information requirements for all other sales of foods (except intra-company transfers of food). Division 5 sets out general prohibitions relating to labels and advertising and Division 6 sets out the legibility requirements.

New section 1.2.1—3 Definitions

This section has no operative part. It provides note references to definitions for label, labelling, bear a label and caterer that are in section 1.1.1—6. The content of the definition of label in clause 2 of Standard 1.1.1 is restated and the other definitions are provided to give better context for the use of those terms within the Code.

In the context of the Code, the word 'label' has a very broad meaning. That meaning is not limited to words appearing on packaging, but includes information provided with food. The Commonwealth interpretation law provides that where a word or phrase is given a particular meaning in an Act, other parts of speech and grammatical forms of that word or phrase have corresponding meanings². This provision operates to ensure that a word such as label can be used as a verb or a noun, without there being any question as to the scope of each.

Accordingly, the definition for label is for the use of that word as a noun. When it is used as a verb the word relates to the action of affixing such a label or, given the broad scope of the noun, providing the information that is required in labelling.

The definition in relation to bear a label is an enabling definition that provides that a package will be taken to bear a label in certain circumstances. Otherwise, the words bear a label will have their common meaning.

Division 2 Retail sales

New section 1.2.1—4 When this Division applies

New section 1.2.1—4 provides that Division 2 applies to retail sales of food and to sales of foods that are not retail sales, but are sales that are made on the basis that the food is suitable for retail sale without further processing, packaging or labelling e.g. a wholesale transfer of an item packaged for retail sale. Put another way, the Division relates to sales that are not dealt with in the following two Divisions.

² Section 18A *Acts Interpretation Act 1901*

New section 1.2.1—5 Outline of Division

This new section provides an outline of Division 2 relating to labelling of food for retail sale.

New section 1.2.1—6 When the food for sale must bear a label

New section 1.2.1—6 sets out when a label is required on foods that are for retail sale. If a food for sale is in a package it must usually be labelled. The exceptions are if the food is:

- made and packaged on the premises where it is sold;
- packaged in the presence of the purchaser;
- whole or cut fresh fruit or vegetables (other than seed sprouts, or similar) sold in a clear package;
- delivered packaged and ready for consumption at the express order of a purchaser (eg take-away pizza), except in a vending machine;
- sold at a fund-raising event; or
- sold in an assisted service display cabinet.

The provision re-states paragraphs (c) to (h) of current subclause 2(1) of Standard 1.2.1. Paragraph (a) is re-stated in subsection (4) and paragraph (b) is restated in subsections (2) and (3).

If a food for sale has more than one layer of packaging, and is required to bear a label, the food need have only one label. However, if a food is sold in individual portion packs not designed for individual sale and with a package surface area greater than 30 cm², the individual portion pack and the outer package must each bear a label, although the label on the individual portion package is required to have only some of the information required on the outer label: see subsection 1.2.1—8(3).

Unpackaged food is not required to bear a label. However, information may have to be provided by another means.

The obligation to label food for retail sale and relevant exemptions are currently in subclause 2(1) of Standard 1.2.1.

New section 1.2.1—7 Australia only—country of origin labelling requirement

New section 1.2.1—7 sets out the basic requirement to provide country of origin information for packaged and unpackaged foods for retail sale in Australia. Details of the information that is to be provided are in sections 1.2.11—3 (unpackaged foods other than fruit and vegetables), 1.2.11—4 (packaged fresh fruit and vegetables) and 1.2.11—5 (other packaged foods).

The retail sale country of origin labelling requirement is currently stated in paragraph 2(2)(g) of Standard 1.2.1 and in Standard 1.2.11.

New section 1.2.1—8 Information required on food that is required to bear a label

New section 1.2.1—8 sets out the basic labelling requirement for foods that are required to bear a label. This section provides a listing of all of the provisions of the Code that set out more detailed labelling requirements.

General and additional requirements—retail sales

Subsection (1) lists the basic requirements for a food for retail sale that is required to bear a label. The provisions are currently listed in subclause 2(2) of Standard 1.2.1 and a range of other provisions in the Code. Subsection (1) lists two types of labelling requirement—general requirements, which apply to all foods and additional requirements, for particular foods.

Subsections (2)-(4) set out specific and additional labelling requirements for food sold in hampers, food in individual portion packs and food sold from vending machines.

Specific requirement—retail sales of food in hampers

Subsection (2) provides special requirements for foods for retail sale in a hamper. These arrangements are currently set out in subclause 2(4) of Standard 1.2.1 and the editorial note to that subclause. When food is sold for retail sale in a hamper any food in the hamper that is in a package must bear a label that provides all of the information required by the Code. Any food that is not in a package must be accompanied by documentation setting out the information required by the Code. This requirement exists even though the food might be exempt from the labelling requirement if not in a hamper, for example, if the sale is for a fund-raising activity.

Specific requirement—retail sales of food in individual portion packs

Subsection (3) sets out the requirement that is currently in paragraph 2(2)(b) of Standard 1.2.1, that if a food for sale is in an individual portion pack and required to bear a label only, the warning or advisory information required by Division 3 of this Part must be provided. The outer package will be subject to the general requirement that a food for sale in a package must be labelled.

Additional requirement—food sold from vending machines

Subsection (4) repeats the requirement in subclause 3(2) of current Standard 1.2.2 that the name and business address of the supplier of food sold from a vending machine must be displayed clearly and prominently on the vending machine.

New section 1.2.1—9 Information requirements for food for sale that is not required to bear a label

New section 1.2.1—9 sets out the basic requirements to provide information when a food for sale is not, because of the operation of section 1.2.1—6, required to bear a label. Different requirements apply to different categories of information. Depending on the type of information, the information is required to be provided in one of the following ways:

- accompanying or displayed in connection with the display of the of the food
- accompanying the food
- declared or provided to the purchaser
- accompanying or displayed in connection with the display of the food or provided to the purchaser on request.

These requirements are currently set out in isolated provisions of the Code.

New subsection 1.2.1—9(1) provides that the section applies to foods that are not required to bear a label.

Information that must accompany or be displayed with the food

Subsections (2) and (3) identify and restate the requirements in the current Code to provide warning statements or declarations and information about irradiation either with a food for sale or to display that information in connection with the sale of the food.

Information that must accompany food for sale

Subsection (4) identifies and re-states the requirements in the current Code to provide information about storage or use conditions with a food for sale.

Information that must be declared or provided to the purchaser

Subsection (5) identifies and re-states the requirements in the current Code to declare information to a purchaser of offal or provide information to a purchaser of joined or formed meat or fish.

Information that may either accompany or be displayed with the food or which must be provided to the purchaser on request

Subsections (6) and (7) identify and re-state the requirements in the current Code to either provide information with a food for sale or display the information in connection with the display of the food or provide the information to the purchaser on request. These requirements relate to the name of the food, nutrition or health claims, nutrition information, information about characterising ingredients, the maximum proportion of fat in minced meat and any advisory statements required for formulated caffeinated beverages.

Division 3 Sales of food to caterers

New section 1.2.1—10 When this Division applies

New section 1.2.1-10 provides that Division 3 relates to sales to caterers. Food that is sold to caterers is not required to be labelled in the same manner as food sold to the public, although the basic requirement is that all of the same information is to be provided or available.

New section 1.2.1—11 Outline of Division

This new section provides an outline of Division 3 relating to sales to caterers.

New section 1.2.1—12 When food sold to a caterer must bear a label

This section sets out the basic labelling requirement for a food that is sold to a caterer. This section sets out part of the requirement that is currently in clause 5 of Standard 1.2.1, other than the country of origin labelling requirement. The other part of clause 5, setting out the information to be provided, is in sections 1.2.1.1—14 and 1.2.1—15.

New section 1.2.1—13 When information must be provided with food sold to a caterer

New section 1.2.1—13 sets out the basic requirement to provide information with a food sold to a caterer if the food is not required to bear a label. This requirement is now in subclause 6(3) of Standard 1.2.1.

New section 1.2.1—14 Australia only—country of origin labelling requirement

New section 1.2.1—14 sets out the basic requirement to provide country of origin information for packaged food that is sold to a caterer. This section repeats the effect of paragraph 5(1)(e) of current Standards 1.2.1 and 1.2.11.

New section 1.2.1—15 Information required to be on labelling for food sold to a caterer

This new section sets out the balance of the provisions that are now in clause 5 of Standard 1.2.1. The section sets out the requirement that a label include the information required for food identification, mandatory warning or advisory statements, date marking, directions for use and storage, country of origin marking and identify food produced using gene technology or irradiated food. Subsection (2) sets out the requirement that is currently in paragraphs 5(2)(c) and (d) of Standard 1.2.1 relating to labelling of outer and inner packages of food sold to caterers etc.

New section 1.2.1—16 Other information that must be provided with food sold to a caterer

This new section sets out the requirement, for food sold to a caterer, that information that is required on a label for a food sold at retail sale, other than the information that is required by section 1.2.1—15 to be on a label for catering sale or characterising information, can be provided either on a label or in documentation accompanying the catering sale.

New section 1.2.1—17 Information that can be requested in relation to food sold to a caterer

This section repeats in amended form the current requirement, in subclause 6(4) of Standard 1.2.1, that a supplier must provide certain information about a food that is sold to a caterer if requested to provide that information by the caterer or a relevant authority. The supplier is required to provide sufficient information to enable the caterer to comply with compositional or labelling and declaration requirements in the Code.

Division 4 Other sales

New section 1.2.1—18 When this Division applies

New section 1.2.1—18 provides that Division 4 applies to transfers of food that are not retail sales, sales to caterers, or intra-company transfers.

New subsection (2) provides a definition for intra-company transfer.

New section 1.2.1—19 Outline of Division

This new section provides an outline of Division 4 relating to sales other than retail sales, sales to caterers or intra-company transfers.

New section 1.2.1—20 Labelling requirements

New section 1.2.1—20 sets out when a label is required in relation to a food that is sold in circumstances where Division 4 applies.

A food that is not for retail sale or for sale to a caterer etc is required by new section 1.2.1—20 to bear a label that provides the information about the name of the food, the lot identification and the name and address of the supplier.

New subsection (3) provides that the information may be on the package, on the outer layer of multi-layer packaging or visible through a transportation outer.

New section 1.2.1—21 When information can be requested

This new section repeats the current requirement in clause 4 of Standard 1.2.1, that a supplier must, if requested by a purchaser provide information about a food that is sold for purposes other than sale to the public or to a caterer. The supplier is required to provide sufficient information to permit the purchaser to comply with compositional or labelling and declaration requirements in the Code.

Division 5 General prohibitions relating to labels

New section 1.2.1—22 Prohibition on altering labels

This new section repeats the current general prohibition on altering a label on a food for sale, and the permission for over-labelling, that is now in clause 11 of Standard 1.1.1. The provision is moved within the Code to co-locate it with other labelling provisions and has been revised to improve clarity. The effect of the provision is that a label may not be altered before sale without the approval of a relevant authority, unless the label is replaced by a complying label.

New section 1.2.1—23 Application of labelling provisions to advertising

New section 1.2.1—23 repeats the current requirement in clause 13 of Standard 1.1.1, that an advertisement cannot include a statement, information, design or representation that the Code prohibits being on a label.

Division 6 Legibility requirements

New section 1.2.1—24 —General legibility requirements

New section 1.2.1—24 repeats the current general legibility requirements in clause 2 of Standard 1.2.9 in a modified form.

New section 1.2.1—25 Legibility requirements for warning statements

New subsection 1.2.1—25 repeats the current requirement in clause 3 of Standard 1.2.9 that warning statements must have a minimum type size. Other provisions about warning statements are listed in the definition of warning statement in subsection 1.1.2—2(2).