

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 1.2.7 – Nutrition, health and related claims

Division 1 Preliminary

New section 1.2.7—1 Name

This section establishes that the instrument is the *Australia New Zealand Food Standards Code* – Standard 1.2.7 – Nutrition, health and related claims.

New section 1.2.7—2 Definitions

This section provides the definitions of ‘fruit’ and ‘vegetable’ that apply only in Standards 1.2.7 and 1.2.8. It also provides note references to definitions of ‘biomarker’, ‘claim’, ‘endorsement’, ‘endorsing body’, ‘food group’, ‘general level health claim’, ‘general level health claims table’, ‘health claim’, ‘health effect’, ‘high level health claim’, ‘high level health claims table’, ‘meet the NPSC’, ‘NPSC’, ‘nutrient profiling score’, ‘property of food’, ‘reference food’, ‘serious disease’ and ‘sugars’ that are in subsection 1.1.2—2(3), and the definition of ‘nutrition content claim’ that is in section 1.1.2—9.

Division 2 Outline of Standard

New section 1.2.7—3 Outline

New section 1.2.7—3 provides an outline of Division 2 that re-states the current content of the Purpose statement in Standard 1.2.7.

Division 3 Claims framework and general principles

New section 1.2.7—4 Nutrition content claims or health claims not to be made about certain foods

New section 1.2.7—4 re-states the current content of clause 3 of Standard 1.2.7.

New section 1.2.7—5 Standard does not apply to certain foods

This new section repeats clause 4 of current Standard 1.2.7.

New section 1.2.7—6 Standard does not apply to certain claims or declarations

This new section repeats clause 5 of current Standard 1.2.7.

New section 1.2.7—7 Form of food to which provisions of this Standard apply

This new section repeats the current content of clause 6 of Standard 1.2.7.

New section 1.2.7—8 Claims not to be therapeutic in nature

This new section repeats the current content of clause 7 of Standard 1.2.7.

New section 1.2.7—9 Claims not to compare vitamin or mineral content

This new section repeats the current content of clause 8 of Standard 1.2.7.

New section 1.2.7—10 Standard does not prescribe words

This new section repeats clause 9 of current Standard 1.2.7. The content of subclause 9(2) is now re-stated in subsection 1.1.1—8.

Division 4 Requirements for nutrition content claims

New section 1.2.7—11 Presentation of nutrition content claims

This new section repeats clause 10 of current Standard 1.2.7.

New section 1.2.7—12 Nutrition content claims about properties of food in section S4—3

This new section repeats the current requirements of clause 11 of Standard 1.2.7.

New section 1.2.7—13 Nutrition content claims about properties of food not in section S4—3

This new section repeats the current requirements of clause 12 of Standard 1.2.7.

New section 1.2.7—14 Nutrition content claims about choline, fluoride or folic acid

This new section repeats the current requirements of clause 13 of Standard 1.2.7.

New section 1.2.7—15 Nutrition content claims must not imply slimming effects

This new section repeats the current requirements of clause 14 of Standard 1.2.7.

New section 1.2.7—16 Comparative claims

This new section re-states the current requirements of clause 15 of Standard 1.2.7. The order of provisions has been varied to conform to modern drafting styles.

Division 5 Requirements for health claims

New section 1.2.7—17 Application or Proposal to vary section S4—5 taken to be a high level health claims variation

This new section repeats the current requirements of clause 16 of Standard 1.2.7.

New section 1.2.7—18 Conditions for making health claims

This new section re-states the current requirements of clause 17 of Standard 1.2.7. The provision has been re-ordered.

New section 1.2.7—19 Requirement when making a general level health claim under paragraph 1.2.7—18(3)(b)

This new section repeats the current requirements of clause 18 of Standard 1.2.7.

New section 1.2.7—20 How health claims are to be made

This new section repeats the current requirements of clause 19 of Standard 1.2.7. The subsections are re-ordered.

New section 1.2.7—21 Split health claims variation

This new section repeats the current requirements of clause 20 of Standard 1.2.7.

New section 1.2.7—22 Statements for claims about phytosterols, phytostanols and their esters

This new section repeats the current requirements of clause 21 of Standard 1.2.7.

Division 6 Endorsements

New section 1.2.7—23 Endorsing bodies

This new section repeats the current requirements of clause 22 of Standard 1.2.7.

New section 1.2.7.24 Criteria for endorsements

This new section repeats the current requirements of clause 23 of Standard 1.2.7.

Division 7 Additional labelling of food required to meet the NPSC

New section 1.2.7—25 Method for calculating a nutrient profiling

This new section repeats the current requirements of clause 24 of Standard 1.2.7.

New section 1.2.7—26 Labelling of food required to meet the NPSC

This new section repeats the current requirements of clause 25 of Standard 1.2.7.

New section 1.2.7—27 Labelling exemptions for certain

This new section repeats the current requirements of clause 26 of Standard 1.2.7.