

## **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 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**

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.

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<sup>1</sup> 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 1.2.8 – Nutrition information requirements***

#### *Division 1 Preliminary*

##### New section 1.2.8—1 Name

This section establishes that the instrument is the *Australia New Zealand Food Standards Code – Standard 1.2.8 – Nutrition information requirements*.

##### New section 1.2.8—2 Purpose

New section 1.2.8—2 repeats the first part of the current Purpose statement for Standard 1.2.8.

##### New section 1.2.8—3 Application of Standard

New section 1.2.8—3 re-states the current content of clause 1A of Standard 1.2.8.

##### New section 1.2.8—4 Definitions

New section 1.2.8—4 repeats in two notes, the definitions of average energy content, available carbohydrate, available carbohydrate by difference, biologically active substance, claim, claim requiring nutrition information, dietary fibre, fat, fruit, monounsaturated fatty acids, polyunsaturated fatty acids, saturated fatty acids, sugars, trans fatty acids, unit quantity and vegetable that apply in this Standard. The definitions are set out formally in subsection 1.1.2—2(3) and Standard 1.2.7.

#### *Division 2 Nutrition information panels*

##### New section 1.2.8—5 When nutrition information panel is required

The basic requirement to provide a nutrition information panel on the label on packaged food is in subsection 1.2.8—5(1). The only requirement to provide nutrition information on a label is in relation to food for retail sale. The information may be provided on a label or in documentation with food sold to a caterer. In other sales, the information must be provided if requested by a purchaser.

New subsection 1.2.8—5(2) re-states that part of clause 3 of the current Standard 1.2.8 that lists when a nutrition information panel is not required, in a revised format. The purpose of the re-statement is to provide a clearer statement of the exceptions.

##### New section 1.2.8—6 What must be on nutrition information panel

New subsection (1) provides that a nutrition information panel must contain certain information. This repeats the first part of the requirement currently stated in subclause 5(1) of Standard 1.2.8.

New subsection (2) provides that a nutrition information panel is to be set out in the format described in section S12.01 in Schedule 12. This repeats the second part of the requirement currently stated in subclause 5(1) of Standard 1.2.8.

##### *Declaration of fatty acids required for certain claims*

New subsection (3) repeats the additional requirements, currently in subclause 5(4) of Standard 1.2.8, which sets out what must be in a nutrition information panel if a nutrition claim is made in relation to certain fatty acids.

##### *Voluntary declaration of fatty acids in edible oils and edible oil spreads*

New subsection (4) re-states the current content of subclauses 5(1A) and (1B) of Standard 1.2.8, which provide a permission to state the minimum and maximum quantity of fatty acids in a nutrition information panel if a nutrition content claim has been made.

*Claims in respect of dietary fibre, sugars or carbohydrate*

New subsection (5) repeats the additional requirements, currently in subclause 5(5) of Standard 1.2.8, which set out what must be in a nutrition information panel if a nutrition claim is made in relation to fibre, monosaccharides or disaccharides or other carbohydrates.

New subsection (6) repeats the current provision in subclause 5(5A) of Standard 1.2.8 requiring zero (0) to be used in a nutrition information panel to indicate the absence of dietary fibre.

*Declarations about carbohydrates*

New subsections (7) and (8) re-state the content of current subclauses 5(6) and (6A) of Standard 1.2.8, which provide that if carbohydrate has been expressed as carbohydrate by difference the unavailable carbohydrate, not including dietary fibre, must be declared separately.

*Declarations about certain substances*

New subsection (9) re-states the current content of subclauses 5(6B) and (6C) of Standard 1.2.8. The provision requires the nutrition information panel to declare the substances listed in subsection S11—2(2) if they are present, separately or in aggregate, at more than 5 g/100 g and one of two calculation events has occurred.

*Claims about phytosterols, phytosterols or their esters*

New subsection (10) re-states subclause 6(5) of existing Standard 1.2.8. The provision sets out how to declare phytosterols, phytosterols and their esters in a nutrition information panel consistently with the advisory statements that are required by subsection 1.2.3—2(1).

**New section 1.2.8—7 How to express particular matters in nutrition information panel**

This section sets out how information is to be provided in a nutrition information panel. The requirements are currently set out in clauses 5 and 6 of Standard 1.2.8.

New subsection (1) repeats the content of subclause 5(2) of Standard 1.2.8, which requires clear statements as to whether amounts are average, minimum or maximum amounts.

New subsection (2) repeats the content of subclause 5(3) and (3A) of Standard 1.2.8, which permits words such as slice, pack or package to replace 'serving' and 'Carbohydrate, total' to replace 'Carbohydrate' in a nutrition information panel.

New subsection (3) re-states the requirement in subclause 6(1) of Standard 1.2.8 that average energy content and average, minimum or maximum quantities of biologically active substances and nutrients should be expressed to no more than three significant figures.

New subsections (4) to (6) re-state the content of subclauses 6(2) to (4) of Standard 1.2.8. These provisions enable low average quantities to be expressed in simple terms.

New subsection (7) repeats the content of subclause 5(8) of Standard 1.2.8.

New subsection (8) repeats the 'declared as' component of the fatty acid definitions in subsection 1.1.2—2(3).

**New section 1.2.8—8 Percentage daily intake information**

New section 1.2.8—8 sets out information that can be included in a nutrition information panel, but is not mandatory. The information relates to the percentage daily intake of nutrients. The permission is currently in clause 7 of Standard 1.2.8.

New subsection (3) sets out the method of determining percentage daily intake—currently in subclause 7(3) of Standard 1.2.8.

The optional format for a nutrition information panel for use when percentage daily intakes are provided is given as an example at section S12—4.

**New section 1.2.8—9 Percentage recommended dietary intake information**

New section 1.2.8—9 repeats the current content of clause 7A of Standard 1.2.8, which provides that percentage recommended dietary intake information must be provided if a claim is made.

**New section 1.2.8—10 Information referred to in sections 1.2.8—8 and 1.2.8—9 may be presented outside nutrition information panel**

New section 1.2.8—10 repeats the current content of clause 7B of Standard 1.2.8, which provides that the percentage RDI may in some circumstances be also provided elsewhere on the label.

**New section 1.2.8—11 Requirement for dehydrated or concentrated food**

**New section 1.2.8—12 Food intended to be drained before consumption**

**New section 1.2.8—13 Food intended to be prepared or consumed with other food**

The requirements that are now set out in clauses 9 to 11A of Standard 1.2.8, for food in dehydrated or concentrated form, food intended to be drained before consumption and food intended to be prepared or consumed with other food are set out in new subsections 1.2.8—11 to 1.2.8—13.

**New section 1.2.8—14 Requirement for food for sale in small packages**

New section 1.2.8—14 sets out the information that must be provided if a nutrition claim is made in relation to a food for sale in a small package. This repeats the current content of clauses 8 and 8A of Standard 1.2.8.