

## **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.

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

#### ***Standard 1.2.5 – Information requirements – date marking of food for sale***

New section 1.2.5—1 Name

This section establishes that the instrument is the *Australia New Zealand Food Standards Code – Standard 1.2.5 – Information requirements – date marking of food for sale*.

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<sup>1</sup> Previously known as the Australia and New Zealand Food Regulation Ministerial Council

#### New section 1.2.5—2 Definitions

This section has no operative part. It provides note references to definitions for baked-for date, baked-on date, best-before date and use-by date that are in subsection 1.1.2—2(3).

#### New section 1.2.5—3 Food for sale must be date marked on labels

New subsection 1.2.5—3(1) repeats the current requirements:

- in subclause 2(1) of Standard 1.2.5, that a packaged food must include on the label either the use-by date or, if a use-by date is not appropriate, a best-before date, and
- in subclause 2(3) of Standard 1.2.5, that bread that has a shelf-life less than seven days may provide a baked-on date or a baked-for date instead of a best-before date.

New subsection (2) repeats the provisions, currently in paragraphs 2(1)(c) and (d)(i), that exempt:

- food for which the best-before date is greater than two years from the date of production; and
- individual portions of ice cream or ice confection;

from a requirement to bear a date marking.

The current reduced date marking requirement in paragraph 2(1)(d)(ii), for food in small packages, is re-stated in new subsection (3).

#### New section 1.2.5—4 Prohibition on sale of food after its use-by date

New section 1.2.5—4 repeats clause 3 of current Standard 1.2.5, which prohibits the sale of food after its use-by date. The provision is revised to provide a clearer basis for a prosecution for selling food after the use-by date.

#### New section 1.2.5—5 Required wording and form for dates for labels

New section 1.2.5—5 describes the way that date marking is to be set out on a package or label. The new section repeats the provisions currently in clauses 4, 5 and 7(1) of Standard 1.2.5.

#### New section 1.2.5—6 Packed-on dates and manufacturer's or packer's codes

New section 1.2.5—6 repeats the current requirements of subclause 7(2) of Standard 1.2.5 which states that a label may also contain a manufacturer's code or packed-on date, but the provision of such a marking does not avoid the requirement to provide date marking.