**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[[1]](#footnote-1), 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 sunsetting under the *Legislative Instruments Act 2003*.

**2. Purpose**

The Authority has approved variations of Chapters 1 and 2 of the C*o*de.

**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 6— Microbiological limits and processing requirements)**

***Standard 1.6.1 – Microbiological limits in food***

New section 1.6.1—1 Name

This section establishes that the instrument is the *Australia New Zealand Food Standards Code* – Standard 1.6.1 – Microbiological limits in food.

New section 1.6.1—2 Unacceptable microbiological levels

New section 1.6.1—2 combines the provisions currently in clauses 1 and 5 of Standard 1.6.1.The section provides that a lot of food that is listed in Schedule 27 has an unacceptable level of a microorganism that is listed in the corresponding row of the Schedule if sampling reveals a level of the microorganism that is greater than permitted in the Schedule. A food with an unacceptable level of a microorganism poses a risk to human health and safety.

New section1.6.1—3 Assessment of microbiological levels

New section 1.6.1—3 repeats the content of clauses 3 and 4 of Standard 1.6.1, which provide sampling methodology and prescribed methods of analysis.

New section1.6.1—4 Food in which growth of *Listeria monocytogenes* will not occur

New section 1.6.1—4 repeats the current content of clause 6 of Standard 1.6.1, which establishes criteria for determining when a food is a ready-to eat-food in which growth of *Listeria monocytogenes* will not occur.

1. Previously known as the Australia and New Zealand Food Regulation Ministerial Council [↑](#footnote-ref-1)