

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.

6. Variation (Chapter 2—Food standards for specific foods, Part 5—Dairy products)

Chapter 2 of the *Australia New Zealand Food Standards Code* establishes:

- prescribed standards for the purposes of the false description of foods provisions of the application Acts²; and
- compositional requirements that are relevant for both the Code³ and the false description of foods provisions of the application Acts.

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

² Section 18 of the model food provisions

³ Section 17 of the model food provisions

Definitions are provided in a Chapter 2 standard, also referred to as a commodity standard, if they can be justified on the grounds of protecting public health and safety, preventing misleading practices or facilitating market access.

Definitions may be included in a Chapter 2 standard to define the scope of the standard and to assist enforcement officers in their assessment of the provisions of the standard; to avoid confusion. When specific definitions are not included in a Chapter 2 standard, enforcement officers and manufacturers may refer to dictionaries for clarification.

Compositional requirements are stated when it is necessary that a food that is sold on the basis that it is a defined food have a particular composition.

Standard 2.5.1 – Milk

Note 3 refers to the requirement that in Australia dairy products must be processed in accordance with Standard 4.2.4.

New section 2.5.1—1 Name

This section establishes that the instrument is the *Australia New Zealand Food Standards Code – Standard 2.5.1 – Milk*.

New section 2.5.1—2 Definitions

This section has no operative part. It provides a note reference to the definitions of ‘milk’ and ‘skim’ milk that are set out in section 1.1.2—3.

New section 2.5.1—3 Requirement for food sold as milk

This provision sets out the requirement that a food sold with the name ‘milk’ must conform to the definition of ‘milk’.

New section 2.5.1—4 Requirement for retail sale as cow’s milk

New section 2.5.1—4 repeats the current content of clause 2 of Standard 2.5.1, which sets out the compositional requirement for cow’s milk that is for retail sale.

New subsection (2) sets out the requirement that a food that is sold at retail as cow’s milk must be milk (including milk from which milk components have been added or withdrawn) and comply with the compositional requirements set out in the subsection. Those requirements are currently set out in the Table to subclause 2(1).

New section 2.5.1—5 Requirement for food sold as skim milk

New subsection 2.5.1—5(1) sets out the requirement that a food that is sold with the name ‘skim milk’ must be skim milk, as defined, and comply with compositional requirements relating to milkfat and protein content. Those requirements are currently set out in the Table to subclause 3(1) of Standard 2.5.1.

New section 2.5.1—6 Compositional requirement for phytosterols, phytostanols and their esters in milk

New section 2.5.1—6 sets out the permission and requirements, currently in clause 5 of Standard 2.5.1, for phytosterols, phytostanols and their esters to be added to milk.