

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 6—Non-alcoholic beverages)

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 2.6.2 – Non-alcoholic beverages and brewed soft drinks

New section 2.6.2—1 Name

This section establishes that the instrument is the *Australia New Zealand Food Standards Code* – Standard 2.6.2 – Non-alcoholic beverages and brewed soft drinks.

New section 2.6.2—2 Definitions

This section has no operative part. It provides a note reference to the definitions for 'brewed soft drink', 'electrolyte drink', 'electrolyte drink base', 'formulated beverage', 'mineral water' or 'spring water' and 'non-alcoholic beverage' that are currently in clause 1 of Standard 2.6.2 and are now in section 1.1.2—3.

New section 2.6.2—3 Composition requirement for packaged water

New section 2.6.2—3 repeats the permission that is currently in clause 2 of Standard 2.6.2 for packaged water to contain added carbon dioxide and the restriction on the content of packaged water of some natural chemicals.

New section 2.6.2—4 Addition of fluoride to packaged water

New section 2.6.2—4 re-states the content of clause 2A of Standard 2.6.2, which sets out the conditions under which fluoride may be added to packaged water.

New section 2.6.2—5 Labelling—composition of packaged water

New section 2.6.2—5 repeats the requirements that are currently in clause 2B of Standard 2.6.2 setting out the labelling requirements for packaged water, including the permission for a typical analysis statement.

New section 2.6.2—6 Requirement for food sold as brewed soft drink

This new section provides that a food sold as brewed soft drink must conform to the definition of brewed soft drink.

New section 2.6.2—7 Requirement for food sold as fruit drink

This new section provides that a food sold as fruit drink must conform to the definition of fruit drink and comply with a compositional requirement relating to fruit content.

New section 2.6.2—8 Non-alcoholic beverages not to be labelled or presented as alcoholic beverages

New section 2.6.2—8 repeats the current content of clause 5 of Standard 2.6.2, which prohibits the presentation, express or implicit, of non-alcoholic beverages as beverages that contain alcohol.

New section 2.6.2—9 Requirements for food sold as electrolyte drink or electrolyte drink base

This new section provides that a food sold as electrolyte drink or electrolyte drink base must, as a drink or when made up according to directions (as appropriate), conform to the definition of 'electrolyte drink'.

New section 2.6.2—10 Permission to add minerals to electrolyte drink or electrolyte drink base

This new section provides permissions to add minerals to a food sold as electrolyte drink or electrolyte drink base.

New section 2.6.2—11 Labelling of electrolyte drinks and electrolyte drink bases

This new section repeats the current requirement in clause 7 of Standard 2.6.2 that the label on an electrolyte drink or electrolyte drink base must provide information about energy value, total carbohydrate, added minerals and electrolytes and the recommended volume and frequency of consumption.

New section 2.6.2—12 Claims in relation to the tonicity of electrolyte drinks

New section 2.6.2—12 sets out the conditions under which a claim may be made that an electrolyte drink is isotonic and the labelling requirements if a claim is made that an electrolyte drink is isotonic, hypertonic or hypotonic. These matters are currently set out in clause 8 of Standard 2.6.2.

New section 2.6.2—13 Requirement for food sold as formulated beverage

This new section provides that a food sold as formulated beverage must conform to the definition of 'formulated beverage'.