

## 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 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 Acts<sup>2</sup>; and
- compositional requirements that are relevant for both the Code<sup>3</sup> and the false description of foods provisions of the application Acts.

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

<sup>2</sup> Section 18 of the model food provisions

<sup>3</sup> 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 2.6.3 – Kava**

#### **New section 2.6.3—1 Name**

This section establishes that the instrument is the *Australia New Zealand Food Standards Code – Standard 2.6.3 – Kava*.

#### **New section 2.6.3—2—Definitions**

This section has no operative part. It provides a note reference to the definitions for 'kava' and 'kava root' that are now set out in section 1.1.2—3.

#### **New section 2.6.3—3—Exception to prohibition**

New section 2.6.3—3 repeats the exception, to the prohibition on sale or use, for a beverage obtained by cold water extraction or is kava that is dried or raw kava root. The exception is currently set out in paragraphs 2(1)(1) and (b) of Standard 2.6.3.

The prohibition on the sale of kava, or its use as an ingredient, is in paragraphs 1.1.1—10(3)(e) and (4)(i).

#### **New section 2.6.3—4 Labelling of foods containing kava**

New section 2.6.3—4 repeats the labelling requirements that are currently set out in clause 3 of Standard 2.6.3.