

## 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 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

The Authority accepted Application A1163 which sought to amend the definition of ‘herbs and spices’ in subsection 1.5.3—4(3) of the Code. The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation, 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 *Legislation Act 2003*.

### 2. Purpose

The Authority has approved a draft variation to amend subsection 1.5.3—4(3) of the Code to clarify the meaning of the terms ‘herbs’ and ‘spices’ for the purposes of food irradiation and to ensure consistent interpretation and enforcement.

### 3. Documents incorporated by reference

The variation to a food regulatory measures does not incorporate any documents by reference.

### 4. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority’s consideration of Application A1163 included one round of public consultation following an assessment; and the preparation of a draft variation and associated assessment summary. Submissions were called for on 6 June 2019 for a six-week consultation period.

A Regulation Impact Statement (RIS) was not required because the proposed variation to Standard 1.5.3 is likely to have a minor impact on business and individuals and is deemed to be deregulatory in nature (see OBPR reference number: 25085).

### 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**

Item [1] amends Standard 1.5.3 by omitting subsection 1.5.3—4(3) and substituting a new subsection 1.5.3—4(3). The new subsection will provide that, in section 1.5.3—4, the term ‘herbs and spices’ includes (but is not limited to) a herb or a spice described in Schedule 22.

This is an inclusive definition. Its effect will be that the terms ‘herb’ and ‘spice’ in section 1.5.3—4 include (but are not limited to): plant material that meets the general description of a ‘herb’ or ‘spice’ in Schedule 22; and/or plant material that is listed in the list of commodities provided in Schedule 22 for ‘herbs and spices’. The definition’s phrase ‘includes (but is not limited to)’ makes clear that a ‘herb’ and ‘spice’ for the purposes of section 1.5.3—4 also includes any plant derived material that is not covered by the latter description or list but which falls within the commonly accepted and ordinary meaning of ‘herb’ or ‘spice’