

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.

The Authority prepared Proposal P1057 to consider whether existing Code provisions for kava needed to be amended to better reflect and implement stated regulatory policy and to ensure that they continue to protect public health and safety given the potential increased availability of kava in the wider community following the Australian Government's decision to allow the commercial importation of kava into Australia from 1 December 2021.

Following its preparation, Proposal P1057 was declared an Urgent Proposal for the purposes of the Division 4 of Part 3 of the FSANZ Act.

The Authority considered the proposal in accordance with sections 96 and 97 of the FSANZ Act and has approved a variation.

2. Purpose

The Authority has approved a variation that amends Standard 1.1.2 and to Standard 2.6.3 of the Code. The variation will amend Standard 1.1.2 to require that kava for food use be obtained from a Noble cultivar of the species of *Piper methysticum* that is named in the Codex Regional Standard for Kava. The variation will amend Standard 2.6.3 to include an express prohibition on the presence, as an ingredient or component, in kava or kava beverages permitted by the Code of substances used as a food additive or as a processing aid.

3. Documents incorporated by reference

The variation in this instrument incorporates a document by reference.

The variation will amend the Code to define kava by reference to a specific document that is or will be in force or existing at the commencement of the variation; namely, the *Regional Standard for Kava Products for use as a Beverage When Mixed with Water* (CXS 336R-2020) as adopted by the 43rd Session of the joint Food and Agriculture Organization and World Health Organization Codex Alimentarius Commission (2020). The approved draft variation amends the definition of kava in subsection 1.1.2—3(2) of the Code to provide that kava for food use be obtained from a Noble cultivar of the species of *Piper methysticum* that is named in section 3.1 of that specific edition of the Regional Standard.

This reference by incorporation is consistent with the current practice in the Code, such as in section S11—4 and Schedule 3.

4. Consultation

The Authority considered the proposal in accordance with the procedure in Division 4 of Part

3 of the FSANZ Act. That consideration included one round of public consultation following an initial consideration and the preparation of a draft variation and associated assessment summary. After that public consultation, the Authority had regard to all submissions received and approved an amended version of the draft variation.

The approved variation must be reviewed by the Authority within 12 months of its notification in accordance with Subdivision B of Division 4 of Part 3 of the FSANZ Act. Further public consultation is required as a part of that assessment.

Correspondence has been received from the Office of Best Practice Regulation (OBPR) related to this Proposal. The OBPR has advised that the changes being proposed to the Code are consequential changes to give effect to the intention of the Commonwealth Government's decision to conduct a 2-year trial on the commercial importation of kava into Australia. That is, FSANZ's proposed changes to the Code are not new or independent regulatory decision. The proposed changes support the trial being run in a fashion consistent with the Government's intention.

The Government's decision to proceed with the trial was subject to a Regulation Impact Statement (RIS) process, which has been assessed as adequate by the OBPR. Therefore, the OBPR did not consider a separate RIS is required in this case, because the decision around importation has already been subject to regulatory analysis.

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

The Schedule to the approved variation will vary Standards 1.1.2 and 2.6.3 of the Code.

Item [1] of the Schedule varies the definition of 'kava root' in subsection 1.1.2—3(2). The Item repeals and substitutes that definition with amended definition. The amended definition states that kava root means the peeled root or peeled rootstock of a Noble variety of kava that is named in section 3.1 of the *Regional Standard for Kava Products for use as a Beverage When Mixed with Water* (CXS 336R-2020) as adopted by the 43rd Session of the joint Food and Agriculture Organization and World Health Organization Codex Alimentarius Commission (2020). The effect of the amended definition will be that kava food products permitted by the Code can only be obtained from Noble varieties listed in that specific edition of the Codex Regional standard.

Item [2] of the Schedule to the variation repeals and substitutes the note to section 2.6.3—2 to reflect the amendment made by Item [1] above.

Item [3] of the Schedule adds a new section 2.6.3—5 to Standard 2.6.3. The effect of the new section is to prohibit a food referred to in paragraphs 2.6.3—3(a) and 2.6.3—3(b) from having, as an ingredient or a component, a substance used as a food additive and/or a substance used as a processing aid. The phrases 'used as a food additive' and 'used as a processing aid' as stated in the new section are currently defined in the Code by sections 1.1.2—11 and 1.1.2—13 respectively.

Transitional arrangements

The above variations will commence on the date of public notice of the approval of the variation. See clause 3 of the instrument of variation.

The stock-in-trade exemption provided by section 1.1.1—9 of Standard 1.1.1 will not apply to any of the above variations. See clause 4 of the instrument of variation.