

Food Standards (Proposal P1052 – Primary Production and Processing Requirements for Horticulture (Berries, Leafy Vegetables and Melons) – Consequential Amendments) Variation

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 P1052 to consider mandating the use of primary production and processing requirements for horticulture (berries, leafy vegetables and melons). The Authority considered the Proposal in accordance with Division 2 of Part 3; and has approved three new draft standards and this draft consequential variation to Standard 1.1.1.

2. Variation is a legislative instrument

The approved draft consequential variation is a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and is publicly available on the Federal Register of Legislation (www.legislation.gov.au).

This instrument is not subject to the disallowance or sunset provisions of the *Legislation Act 2003*. Subsections 44(1) and 54(1) of that Act provide that a legislative instrument is not disallowable or subject to sunset if the enabling legislation for the instrument (in this case, the FSANZ Act): (a) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made for the purposes of the scheme. Regulation 11 of the *Legislation (Exemptions and other Matters) Regulation 2015* also exempts from sunset legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Act gives effect to an intergovernmental agreement (the Food Regulation Agreement) and facilitates the establishment or operation of an intergovernmental scheme (national uniform food regulation). That Act also gives effect to Australia's obligations under an international agreement between Australia and New Zealand. For these purposes, the Act establishes the Authority to develop food standards for consideration and endorsement by the Food Ministers Meeting (FMM). The FMM is established under the Food Regulation Agreement and the international agreement between Australia and New Zealand, and consists of New Zealand, Commonwealth and State/Territory members. If endorsed by the FMM, the food standards on gazettal and registration are incorporated into and become part of Commonwealth, State and Territory and New Zealand food laws. These standards or instruments are then administered, applied and enforced by these jurisdictions' regulators as part of those food laws.

3. Purpose

The Authority has approved a draft consequential variation called *Food Standards (Proposal P1052 – Primary Production and Processing Requirements for Horticulture (Berries, Leafy Vegetables and Melons) – Consequential Amendments) Variation* to make a consequential

amendment to Standard 1.1.1 to account for the commencement of approved new Standards 4.2.7, 4.2.8 and 4.2.9.

4. Documents incorporated by reference

The approved consequential variation does not incorporate any documents by reference.

5. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1052 included two rounds of public consultation following an assessment; targeted communication with key stakeholders; and the preparation of three draft standards, a draft consequential variation, and associated assessment summaries.

The first call for submissions was held between February and March 2020. Targeted consultation was undertaken in December 2020–January 2021. The second call for submissions was held between November 2021 and February 2022.

A Standards Development Advisory Group was established with representatives from the industry sector and State, Territory and Commonwealth government agencies to provide ongoing advice to FSANZ throughout the standard development process. A Horticulture Implementation Working Group comprised of State, Territory and Commonwealth government regulators was established by the Implementation Sub-committee for Food Regulation to work with FSANZ and ensure a nationally consistent approach to implementation of the standards.

A Decision Regulation Impact Statement (DRIS) was prepared by the Authority and has been approved by The Office of Best Practice Regulation (Reference - OBPR22-01822).

6. 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 44 of the *Legislation Act 2003*.

7. Variation

Clause 1 provides that the name of the Variation is *Food Standards (Proposal P1052 – Primary Production and Processing Requirements for Horticulture (Berries, Leafy Vegetables and Melons) – Consequential Amendments) Variation*.

Clause 2 provides that the Schedule to the Variation varies a standard in the Code.

Clause 3 provides that the Variation commences immediately after all of the approved new standards, i.e. Standards 4.2.7, 4.2.8 and 4.2.9, take effect.

Item [1] of the Schedule to the Variation amends subsection 1.1.1—2(2) by omitting the reference to 'Standard 4.2.6 Production and Processing Standard for Seed Sprouts' in the list of standards in that subsection and replacing that reference with the following:

'Standard 4.2.6 Production and Processing Standard for Seed Sprouts
Standard 4.2.7 Primary Production and Processing Standard for Berries
Standard 4.2.8 Primary Production and Processing Standard for Leafy Vegetables
Standard 4.2.9 Primary Production and Processing Standard for Melons'

Subsection 1.1.1—2(2) lists all the standards of the Code arranged into Chapters, Parts and

a set of Schedules. The list does not currently contain references to the approved new standards.

The effect of this amendment is that the approved new standards will be listed in subsection 1.1.1—2(2), under Chapter 4 (Primary production standards), in numerical order according to the number of the relevant standard.