

## **Food Standards (Proposal P1053 – Food Safety Management Tools – 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 P1053 to consider mandating three food safety management tools. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft Standard and this related draft consequential variation.

### **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](http://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 variation called *Food Standards (Proposal P1053 – Food Safety Management Tools – Consequential Amendments) Variation* to make a consequential amendment to Standard 1.1.1 to account for the commencement of approved draft Standard 3.2.2A.

#### **4. Documents incorporated by reference**

The approved draft 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 P1053 included one round of public consultation following an assessment and the preparation of a draft standard, consequential variation and associated report. Submissions were called for on 14 February 2022 for an eight-week consultation period.

A Decision Regulation Impact Statement (DRIS) was prepared by the Authority and has been approved by the Office of Best Practice Regulation (Reference - OBPR21-01217). A copy of the DRIS is available on the FSANZ website.

#### **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 of the approved draft consequential variation provides that the name of that variation is *Food Standards (Proposal P1053 – Food Safety Management Tools – Consequential Amendments) Variation*.

Clause 2 of the approved draft consequential variation provides that the Code is amended by the Schedule to that variation.

Clause 3 provides that the approved draft consequential variation will commence immediately after draft Standard 3.2.2A takes effect.

Item 1 of the Schedule to the approved draft consequential variation amends subsection 1.1.1—2(2) of Standard 1.1.1 of the Code to include in that subsection a reference to Standard 3.2.2A. The subsection lists all the standards of the Code arranged into Chapters, Parts and a set of Schedules. The list does not currently contain a reference to Standard 3.2.2A.

The effect of the amendment, when the Standard 3.2.2A and the variation both commence, will be that Standard 3.2.2A will be listed in subsection 1.1.1—2(2) of the Code immediately after the reference in that subsection to Standard 3.2.2.