

## **EXPLANATORY STATEMENT**

*Food Standards Australia New Zealand Act 1991*

### ***Australia New Zealand Food Standards Code – Standard 2.8.3 – Native bee honey***

#### **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 purpose of the application was to amend the Code to permit the sale and use of honey produced by stingless bees native to Australia.

The Authority considered the Application in accordance with Division 1 of Part 3 and has approved two draft regulatory measures: a draft Standard (*Australia New Zealand Food Standards Code – Standard 2.8.3 – Native bee honey*); and a draft variation (*Food Standards (Application A1257 – Australian native bee honey – Consequential Amendments) Variation*). This draft explanatory statement relates to the approved draft Standard.

Following consideration by the Food Ministers' Meeting (FMM), section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the draft Standard.

#### **2. Variation is a legislative instrument**

The approved draft Standard 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 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**

Honey from Australian native stingless bees cannot currently be sold in Australia and New Zealand as it does not meet the definition of honey in the Code and the compositional requirements for honey in Standard 2.8.2 – Honey.

The Authority has approved a draft new Standard, Standard 2.8.3 – Native bee honey which will be included in the Code. The measures in the draft Standard, along with measures in a draft variation and existing measures in the Code, permit and regulate the sale and use of native bee honey.

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

The approved draft Standard does not incorporate any documents by reference.

### **5. Consultation**

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1257 included one round of public consultation following an assessment and the preparation of a draft Standard, a draft variation and an associated report. Submissions were called for on 22 November 2023 for an 8-week consultation period.

Changes have been made to the Impact Analysis requirements by the Office of Impact Analysis (OIA)<sup>1</sup>. Impact analysis no longer must be finalised with the OIA. Under the new approach, FSANZ's assessment is that a regulatory impact statement is not required for this application, as the proposed changes address regulatory uncertainty surrounding the sale of Australian native bee honey and are not likely to create significant impacts. There may be small costs of compliance to industry, however, industry may benefit from regulatory certainty, and consumers may benefit from clear labelling requirements to make informed choices.

### **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. The draft Standard**

The approved draft Standard is introduced by two notes providing information about the place of the Standard within the Code and the application of the relevant draft Standard in New Zealand. The first note in the approved draft Standard explains that the instrument is a standard under the FSANZ Act, and that the draft Standard and the other standards together make up the Code. The second note in the approved draft Standard explains that provisions of the Code that apply in New Zealand are incorporated in, or adopted under, the *Food Act 2014* (NZ).

The approved draft Standard contains the following provisions.

#### **Division 1**

This Division contains the following preliminary provisions of the approved draft Standard.

**Section 1:** This provision establishes the name of the draft Standard i.e.: *Australia New Zealand Food Standards Code – Standard 2.8.3 – Native Bee Honey*.

The note to section 1 in the approved draft Standard explains that the draft Standard

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<sup>1</sup> [Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies | The Office of Impact Analysis \(pmc.gov.au\)](https://www.pmc.gov.au/regulatory-impact-analysis-guide-for-ministers-meetings-and-national-standard-setting-bodies)

commences on the date of gazettal, being the date specified as the commencement date in notices in the Gazette and the New Zealand Gazette under section 92 of the *Food Standards Australia New Zealand Act 1991* (Cth) (see also section 93 of this Act).

**Section 2:** This provision signposts to subsection 1.1.2—3(2) of Standard 1.1.2, where the definition of ‘native bee honey’ is provided (see item [1] of the *Food Standards (Application A1257 – Australian native bee honey – Consequential Amendments) Variation*); and sets out a copy of that definition.

## **Division 2**

This Division contains the following provisions related to requirements for food sold as native bee honey (as defined in the Code).

**Section 3:** This provision sets out the following compositional requirements of food sold as native bee honey.

A food that is sold as native bee honey must:

- be native bee honey (as per the definition of this term in subsection 1.1.2—3(2)); and
- contain:
  - no less than 50% reducing sugars; and
  - no more than 28% moisture; and
  - no less than 2% trehalulose.

**Section 4:** This provision sets out the following labelling requirements for native bee honey.

For the labelling provisions, which (as explained in the note to this section) are set out in Standard 1.2.1:

- ‘honey’ is a prescribed name for native bee honey; and
- the prescribed name must be presented in conjunction with a description that adequately describes the true nature of native bee honey e.g. ‘Native bee honey’, ‘Native stingless bee honey’, and ‘Australian native bee honey’.

The ‘prescribed name’ of a particular food is defined in subsection 1.1.2—2, as meaning a name declared by a provision of the Code to be the prescribed name of the food.