

# Explanatory Statement

## EXPLANATORY STATEMENT

*Food Standards Australia New Zealand Act 1991*

### ***Food Standards (Proposal P1063 – Code Revision (2024) – Added Sugar(s) Claims) 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 P1063 to make minor amendments to the Code. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft variation: the *Food Standards (Proposal P1063 – Code Revision (2024) – Added Sugar(s) Claims) Variation* (the approved draft variation).

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

The approved draft 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)).

The 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 approved a draft variation to remove a redundant term from the Code and to amend section S4—3 of the Code to remove an error and clarify the conditions for making ‘no added sugar’ nutrition content claims.

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

The approved draft 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 P1063 included one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary.

A regulation impact statement (RIS) has not been prepared for this proposal. This is because the amendments in the approved draft variation are considered unlikely to have more than a minor regulatory impact. This is in line with previous advice from the Office of Impact Analysis (OIA) on similar proposals (for example Proposal P1061 – Code Maintenance Proposal 2023, OIA reference 22-03854). Under changes to impact analysis requirements, the Authority was not required to seek confirmation from the OIA that a RIS is not required.

### **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**

References to ‘the variation’ in this section are references to the approved draft variation.

Clause 1 of the variation provides that the name of the variation is the *Food Standards (Proposal P1063 – Code Revision (2024) – Added Sugar(s) Claims) Variation*.

Clause 2 provides that the Code is amended by the Schedule to the variation.

Clause 3 provides that the variation commences on the date of gazettal of the instrument.

Clause 4 provides a transitional arrangement.

The transitional arrangement mirrors the transitional arrangements provided for the amendments made to the Code by *Proposal P1062 - Defining added sugars for claims*. This is because the approved draft variation’s amendments are consequential to those amendments.

Subclause 4(1) provides that the stock-in-trade exemption provided by section 1.1.1—9 of Standard 1.1.1 will not apply to any of the amendments made by the approved draft variation.

Subclause 4(2) provides an initial transitional arrangement where, during a transition period, a food product may be sold if the food product complies with either the Code as in force without the amendments made by the instruments; or the Code as amended by the

instruments. Paragraph 4(4)(a) provides that ‘the instruments’ for this purpose are the approved draft variation and the *Food Standards (Proposal P1062 – Defining added sugars for claims) Variation*. Paragraph 4(4)(b) provides that the transition period is the period commencing on the date of commencement of the approved draft variation and ending 48 months after the date of commencement of the *Food Standards (Proposal P1062 – Defining added sugars for claims) Variation*.

Subclause 4(2) provides a subsequent transitional arrangement where during a post-transition period a food product that was packaged and labelled before the end of initial four year transition period, may be sold if the product complies with either the Code as in force without the amendments made by the instruments (as defined by paragraph 4(4)(a)); or the Code as amended by the instruments.

Paragraph 4(4)(c) provides that the post-transition period is a period of 24 months that commences on the day after the transition period ends.

Items [1] to [6] of the Schedule to the variation amend Standards and Schedules in the Code.

Item [1] amends the definition of *sugars* in subsection 1.1.2—2(2) of the Code. The Item removes the following words from paragraph (a) of that definition ‘(except where it appears with an asterisk as ‘sugars\*’). These words and the term ‘sugars\*’ were made redundant by amendments to the Code made by *Proposal P1062 - Defining added sugars for claims*. Those amendments in effect removed the provisions of the Code that used and relied on that term.

Item [2] removes the words ‘(except where it appears with an asterisk as ‘sugars\*’)’ from the definition of *sugars* in Note 1 to section 1.2.7—2. The reason for this amendment is explained above.

Item [3] amends Note 1 to section 1.2.8—4 by removing the following words from the definition of *sugars* in that Note ‘(except where it appears with an asterisk as ‘sugars\*’). The reason for this amendment is explained above.

Item [4] amends paragraph (a) of the definition of *sugars* in Note 1 to section 2.6.2—2 by removing the following words from that paragraph ‘(except where it appears with an asterisk as ‘sugars\*’). The reason for this amendment is explained above.

Item [5] repeals and replaces the Note to section S4—2. The amendment made by the Item replaces the current definition of *sugars* in that Note with a new definition of *sugars*. The effect of the amendment is to remove the words ‘(except where it appears with an asterisk as ‘sugars\*’)’ from the definition. The amendment also removes the Note to the definition of *sugars*, which states ‘*Sugars\** is relevant for claims about no added sugar.’

Item [6] of the Schedule amends the table to section S4—3 of the Code. The Item amends the entry in that table dealing with the property of food “Sugar or sugars”. It repeals and replaces the conditions listed in column 4 for the use of the descriptor ‘No added’.

The amendment:

- replaces condition (b)(i) with new condition (b), which provides that the food for sale must not contain an added sugar as an added ingredient;
- replaces condition (b)(ii) with new condition (c), which provides that the food for sale must not contain more sugars than: 10 g/100 g for solid food; or 7.5 g/100 mL for liquid food; and
- renumbers conditions (c) to (g) as (d) to (h) as a consequence of the above amendments.

The amendment's effect is to correct an error (that is, by removing the word 'and' in condition (b)(i)) and make clear the regulatory intent of the relevant provisions.