

# Explanatory Statement

## Food Standards (Proposal P1004 –Production & Processing Standard for Seed Sprouts – Consequential) Variation

### 1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the Act) provides that the functions of Food Standards Australia New Zealand (FSANZ) 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 Act specifies that FSANZ 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.

FSANZ prepared Proposal P1004 to develop food regulatory measures for seed sprouts. FSANZ considered Proposal P1004 in accordance with Division 2 of Part 3 and approved Standard 4.2.6. FSANZ notified the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) of the approval.

Following consideration by Ministerial Council, section 92 of the Act stipulates that FSANZ must publish a notice about the draft standard or draft variation of a standard.

Section 94 of the Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but section 42 and Part 6 of the *Legislative Instruments Act 2003* do not apply to the standard or variation.

### 2. Purpose and Operation

FSANZ approved variations to Standard 4.1.1 to minimise potential food safety risks and to reduce the incidence of foodborne illness from the consumption of seed sprouts.

Seed sprouts contaminated by pathogenic microorganisms present an unacceptable health risk to consumers. In recent years, outbreaks of foodborne illness have been associated with the consumption of seed sprouts both in Australia and overseas.

The food regulatory measures in Standard 4.1.1, along with existing measures in the Code, address the public health and safety problem identified with seed sprouts in the most cost effective manner.

### 3. Documents incorporated by reference

The food regulatory measures do not incorporate any documents by reference.

### 4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the Act, the FSANZ consideration of Proposal P1004 included two public consultation periods, following 1<sup>st</sup> Assessment and 2<sup>nd</sup> Assessment. The 1<sup>st</sup> Assessment Report for P1004 was released for public comment in July 2009 for a consultation period of 7 weeks. The 2<sup>nd</sup> Assessment Report for P1004 was released for public comment in September 2010 for a consultation period of 6 weeks.

FSANZ has had regard to all submissions.

A Standard Development Committee (SDC) was established with representatives from the industry sector, the relevant State and Territory government agencies and consumer organisations to provide ongoing advice to FSANZ throughout the standard development process. The SDC contributed a broad spectrum of knowledge and expertise covering industry, government, research and consumers

A Regulation Impact Statement (RIS) was prepared and is available on the FSANZ website. The RIS complies with the Council of Australian Governments (COAG) endorsed **Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies**, released in October 2007 (OBPR ID10351).

## 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 97 of the FSANZ Act.

## 6. Variations

**Item 1.1** amends the current definition of 'inputs' to include recycled water and make it clear that recycled water is an input into primary production and processing activities.

**Item 1.2** inserts definitions of 'food safety management statement' and 'general food safety management requirements' to ensure their consistent meaning throughout Chapter 4 of the Code.

**Item 1.3** inserts new provisions for when an animal or food is unacceptable (clause 3) as well as general food safety management requirements (Division 2).

Clause 3 specifies that an animal or food is unacceptable if they are 'unsuitable' or 'unsafe' as defined in clause 2 of 3.1.1. Clause 3 also specifies that an animal or food is unacceptable if it is in a condition, or contains a substance or an organism, that a reasonable person would regard as making the food or food derived from that animal unfit for human consumption. For example, seed sprouts would be unacceptable if they contain pathogenic organisms. In addition, seed sprouts would also be unacceptable if they were affected by mould. These clause 3 requirements must be considered along with any specific requirements in other standards of the Code. These other standards may include additional matters that relate to when an animal or food is unacceptable and this is made clear in the clause.

Division 2 deals with general food safety management requirements and generally specifies these requirements for application throughout Chapter 4. Clause 4 requires a business or person to have a food safety management statement and operate in accordance with it. The clause also requires a person or business to undertake further activities, including identifying potential hazards, implementing control measures to address them and verifying the effectiveness of the control measures.

Clause 5 of Division 2 sets out the elements that must be developed and incorporated into a food safety management statement by a business or person. This statement becomes the vehicle whereby the business or person demonstrates compliance with the Chapter 4 requirements of the Code.

Businesses with existing approved food safety arrangements (for example, HACCP-based food safety programs, Standard 3.2.1, AQIS-approved arrangements) would be considered to meet the outcomes of a food safety management statement. However, the relevant authority will need to verify that the existing food safety arrangement meets the requirements of this Division.

Some of the standards in Chapter 4 of the Code also contain definitions of 'food safety management statement'. These existing definitions will be progressively removed as the current standards are reviewed.