

Explanatory Statement

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 Authority accepted Application A1101 which seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims of the existing Code, for 12 months (that is, until and including 17 January 2017).

The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft Transitional Standard 1.1A.8 – Transitional Standard for Dietary Fibre Nutrition Content Claims and a draft consequential variation to Standard 1.2.7.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation¹, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the draft Standard and consequential variation.

Section 94 of the FSANZ 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 is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

2. Purpose

The Authority has approved draft Standard 1.1A.8 to permit nutrition content claims about dietary fibre to be made other than in accordance with Standard 1.2.7 during a transitional period. During the transitional period, suppliers will be able to comply with either clause 11 of Standard 1.2.7 or clause 2 of draft Standard 1.1A.8.

The transitional period established by draft Standard 1.1A.8 will commence on 18 January 2016 and continue until the Standard ceases to have effect on 1 March 2016, which is the date on which the revised Code takes effect. The revised Code will be amended before that date so that the revised Code continues the above transitional arrangement from 1 March 2016 until and including 17 January 2017.

3. Documents incorporated by reference

Draft Standard 1.1A.8 does not incorporate any documents by reference.

¹ convening as the Australia and New Zealand Food Regulation Ministerial Council

4. Consultation

A non-statutory round of public consultation was undertaken in October 2014 to gather cost-benefit information and seek stakeholder views to inform the assessment of the Application in accordance with the FSANZ Act, particularly paragraphs 29(2)(a) and (b). Submissions were called for on 23 October 2014 for a four-week consultation period.

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1101 included one round of public consultation following an assessment and preparation of a draft Standard, a draft consequential variation and associated report. Submissions were called for on 24 March 2015 for a six-week consultation period.

A Regulation Impact Statement was not required because the draft Standard 1.1A.8 of the existing Code is likely to have only a minor impact on business and individuals (OBPR ID: 17599).

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 94 of the FSANZ Act.

6. Variation

Clause 1 establishes a transitional arrangement for claims about the presence or absence of dietary fibre in a food.

Subclause 1(1) permits a claim about the presence or absence of dietary fibre in a food to be made during the transition period in accordance with either clause 11 of Standard 1.2.7 or clause 2 of Standard 1.1A.8, but not a combination of both.

Subclause 1(2) explains that Standard 1.1A.8 only relates to the application of clause 11 of Standard 1.2.7. That is, a claim made under or in accordance with Standard 1.1A.8 must comply with all applicable clauses of Standard 1.2.7 other than clause 11.

Subclause 1(3) provides that subclause 1(2) of Standard 1.1.1 does not apply to Standard 1.1A.8. This means, for example, there will be no stock in trade exemption when the Standard commences.

Subclause 1(4) defines the term 'transitional period' used in subclause 1(1). The definition provides that the transition period will commence on 18 January 2016 and will end on 1 March 2016, which is the date on which the revised Code takes effect and Chapters 1 and 2 of the current Code, including Standard 1.1A.8, will be revoked and replaced. The revised Code will be amended before 1 March 2016 to establish and continue the same transitional arrangement for claims about the presence or absence of dietary fibre in a food made during the period from 1 March 2016 until and including 17 January 2017.

Clause 2 lists the requirements for claims about the presence or absence of dietary fibre in a food that are permitted by clause 1 of Standard 1.1A.8.

Subclause 2(1) permits such a claim to use any descriptor that is not mentioned in subclause (2). This permission includes the use of a descriptor expressed as a number or in numeric form.

Subclause 2(2) imposes a specific condition for the use of the descriptor ‘increased’ or a synonym of that descriptor in such claims—the relevant food must contain at least 25% more dietary fibre than in the same quantity of reference food.

Subclause 2(3) provides definitions for terms used in clause 2 (“food group” and “reference food”).