**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 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.

FSANZ prepared Proposal P1025 to revise the Code. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft revised Code.

Following consideration by the Legislative and Governance Forum on Food Regulation[[1]](#footnote-1), section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

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 sunsetting under the *Legislative Instruments Act 2003*.

**2. Purpose**

The Authority has approved variations of Chapters 1 and 2 of the C*o*de.

**3. Documents incorporated by reference**

The variations to food regulatory measures do not incorporate any documents by reference. The variations update some references to documents that are incorporated by reference.

**4. Consultation**

In accordance with the procedure in Subdivision F of Division 2 of Part 3 of the FSANZ Act, the Authority’s consideration of Proposal P1025 included two rounds of public comment following an assessment and the preparation of a draft Standard and associated reports. Submissions were called for on 23 May 2013 for a 12-week period, and on 10 July 2014 for an eight-week period.

A Regulation Impact Statement was not required, because the proposed variations to the Code are likely to have a minor impact on business and individuals.

**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**

***Schedule 23 – Prohibited plants and fungi***

Section S23—1 Name

Section S23—1 establishes that the instrument is the *Australia New Zealand Food Standards Code* – Schedule 23 – Prohibited plants and fungi.

Section S23—2 Prohibited plants and fungi

Section S23—2 repeats for new section 1.1.2—3, the current content of Schedule 1 of Standard 1.4.4, which lists prohibited plants and fungi.

1. Previously known as the Australia and New Zealand Food Regulation Ministerial Council [↑](#footnote-ref-1)