

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, 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 1.2.12 – Transitional standard for dietary fibre nutrition content claims.

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 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 sunseting under the *Legislative Instruments Act 2003*.

2. Purpose

The Authority has approved draft Standard 1.2.12 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 section 1.2.7—12 of Standard 1.2.7 or section 1.2.12—3 of draft Standard 1.2.12.

The transitional period established by draft Standard 1.2.12 will commence on 1 March 2016, and cease on 18 January 2017.

3. Documents incorporated by reference

Draft Standard 1.2.12 does not incorporate any documents by reference.

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.

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

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 1.2.12 of the revised 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

Section 1.2.12—1 provides the name of the Standard is the *Australia New Zealand Food Standards Code* – Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims.

Sections 1.2.12—2 to 1.2.12—4 establish a transitional arrangement for claims about the presence or absence of dietary fibre in a food.

Subsection 1.2.12—2(1) permits a claim about the presence or absence of dietary fibre in a food to be made in accordance with either section 1.2.7—12 or section 1.2.12—3, but not a combination of both.

Subsection 1.2.12—2(2) explains that Standard 1.2.12 only relates to section 1.2.7—12 and does not affect the application of any other provision of Standard 1.2.7. That is, a claim made under or in accordance with Standard 1.2.12 must comply with all applicable sections of Standard 1.2.7 other than section 1.2.7—12.

Subsection 1.2.12—2(3) provides that subsection 1.1.1—9(1) does not apply to Standard 1.2.12. This means, for example, there will be no stock in trade exemption when Standard 1.2.12 commences.

Section 1.2.12—3 lists the requirements for claims about the presence or absence of dietary fibre in a food that are permitted by section 1.2.12—2.

Subsection 1.2.12—3(1) permits such a claim to use any descriptor that is not mentioned in subsection 1.2.12—3(2). This permission includes the use of a descriptor expressed as a number or in numeric form.

Subsection 1.2.12—3(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.

Subsection 1.2.12—3 (3) provides definitions for terms used in section 1.2.12—3 ("food group" and "reference food").

Section 1.2.12—4 provides that Standard 1.2.12 ceases to have effect on 18 January 2017.