

EXPLANATORY STATEMENT

Food Standards Australia New Zealand Act 1991

Food Standards (Application A1256 – Colour of pregnancy warning labels for corrugated cardboard packaging) 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 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 A1256 which seeks approval for pregnancy warning labels on corrugated cardboard packaging containing multiple individual units of alcoholic beverages to be in a single colour on a contrasting background. The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation – *the Food Standards (Application A1256 – Colour of pregnancy warning labels for corrugated cardboard packaging) Variation*.

Following consideration by the Food Ministers' Meeting (FMM), section 92 of the FSANZ Act stipulates that the Authority must publish a notice about 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).

This 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 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 has approved a draft variation to amend Standard 2.7.1 of the Code to permit the use of an alternative pregnancy warning mark for corrugated cardboard outer packaging of certain prescribed alcoholic beverages in specified circumstances.

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 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1256 included one round of public consultation following an assessment and the preparation of a draft variation and associated report. Submissions were called for on 6 October 2022 for a six-week consultation period.

The Office of Impact Analysis (OIA)¹ granted FSANZ an exemption from the requirement to develop a Regulation Impact Statement (RIS) for this application (correspondence dated 23 August 2022, OIA ID OBPR22-03128). This exemption was provided as the OIA assessed the proposed change was unlikely to have a more than minor regulatory impact on consumers, businesses and government.

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

The Schedule to the instrument varies Standard 2.7.1 of the Code.

Item [1] varies section 2.7.1—10 by inserting new subsection (2A) into that section. The new subsection provides that the pregnancy warning mark size requirements set by subsection 2.7.1—10(2) do not apply to a pregnancy warning mark to which section 2.7.1—13 applies.

Items [2] and [3] vary section 2.7.1—12 to allow for the different size, form and other requirements that new section 2.7.1—13 imposes for a pregnancy warning mark to which that new section applies.

Item [2] varies subsection 2.7.1—12(1) by replacing the word "A" where first occurring with the following text "Subject to subsection (10), a". This amendment provides that section 2.7.1—12 shall apply or operate subject to subsection 2.7.1—12(10).

Item [3] varies section 2.7.1—12 by inserting new subsection (10) into that section. The new subsection provides that section 2.7.1—12 does not apply to a pregnancy warning mark to which section 2.7.1—13 applies.

Item [4] inserts a new section 2.7.1—13 after section 2.7.1—12.

¹ Formerly known as the Office of Best Practice Regulation (OBPR)

The new section 2.7.1—13 provides for the use of an optional alternative pregnancy warning mark on the corrugated cardboard outer packaging of certain prescribed alcoholic beverages.

Subsection 2.7.1—13(1) provides that new section 2.7.1—13 applies to a pregnancy warning mark that:

- (a) is required by current subsection 2.7.1—10(1) to be displayed on the outer package of a prescribed alcoholic beverage; and
- (b) is displayed on a prescribed alcoholic beverage to which subsection 2.7.1—13(2) applies; and
- (c) has been printed on the outer package of that prescribed alcoholic beverage using a post-print (flexographic) printing process; and
- (d) complies with each requirement imposed by subsections 2.7.1—13(3) to (14).

If each of the above four conditions are not met, the alternative requirements provided in new section 2.7.1—13 for a pregnancy warning mark on corrugated cardboard outer package will not apply and cannot be used. In that case, the pregnancy warning mark must instead comply with the current requirements imposed by subsection 2.7.1—10(2) and section 2.7.1—12.

Subsection 2.7.1—13(2) states that it applies to a prescribed alcoholic beverage that has: packaging that includes more than one individual unit; and an outer package that is made of corrugated cardboard; and that the outer package has an outside liner made of kraft, recycled or white paper.

Subsection 2.7.1—13(3) requires that the pregnancy warning pictogram of the pregnancy warning mark must be at least 14 millimetres in diameter.

Subsection 2.7.1—13(4) requires that the size of type of the signal words of the pregnancy warning mark must be at least 4.4 millimetres.

Subsection 2.7.1—13(5) requires that the size of type of the statement of the pregnancy warning mark must be at least 3.4 millimetres.

Subsection 2.7.1—13(6) requires that the background of the pregnancy warning mark must be in the same colour as the outside liner. The Note to the subsection refers the reader to the requirement imposed by subparagraph 2.7.1—13(2)(b)(ii) that the outside liner be made of kraft, recycled or white paper, the colours of which are brown, grey or white.

Subsection 2.7.1—13(7) requires that the circle and strikethrough of the pregnancy warning pictogram must be in the colour black.

Subsection 2.7.1—13(8) requires that the silhouette of a pregnant woman on the pregnancy warning pictogram must be in the colour black.

Subsection 2.7.1—13(9) requires that the strikethrough of the pregnancy warning pictogram of the pregnancy warning mark must be displayed with a clear space on either side of the strikethrough so both the strikethrough and silhouette of a pregnant woman on the pictogram are clearly legible.

Subsection 2.7.1—13(10) prescribes the format of the signal words of the pregnancy warning mark (for example, colour, typography, English language).

Subsection 2.7.1—13(11) prescribes the format of the statement of the pregnancy warning mark (for example, colour, typography, English language).

Subsection 2.7.1—13(12) requires that the border of the pregnancy warning mark must be in the colour black.

Subsection 2.7.1—13(13) requires that the pregnancy warning mark must be displayed on the package with a clear space that: surrounds the outside of the border of the pregnancy warning mark; and is at least 3 millimetres in width.

Subsection 2.7.1—13(14) requires that the pregnancy warning mark must be displayed as a whole and without modification.

Subsection 2.7.1—13(15) defines the term ‘post-print (flexographic) printing process’ used in paragraph 2.7.1—13(1) to mean the process by which a pregnancy warning mark is printed directly on to the outside liner of corrugated cardboard packaging using flexible raised image printing plates.

Transitional arrangements

The approved draft variation commences or takes effect on the date of gazettal. See clause 3 of the instrument of variation.

The stock-in-trade exemption provided by section 1.1.1—9 of Standard 1.1.1 does not apply to the amendments to the Code made by approved draft variation. See clause 4 of the instrument of variation.

Clause 4 provides two transitional arrangements for a prescribed alcoholic beverage that is required by subsection 2.7.1—10(1) of the Code to display a pregnancy warning mark on its outer package; and to which subsection 2.7.1—13(2) applies.

Subclause 4(3) provides an initial transitional arrangement that commences on the date of gazettal and ends on 1st February 2024. During this period, the prescribed alcoholic beverage can be sold if the product complies with either:

- the Code as in force without the amendments made by both the approved draft variation and the variations made by the *Food Standards (Proposal P1050 – Pregnancy warning labels on alcoholic beverages) Variation*; or
- the Code as in force and as amended by both the approved draft variation and the variations made by the *Food Standards (Proposal P1050 – Pregnancy warning labels on alcoholic beverages) Variation*.

Subclause 4(4) provides a second transitional arrangement that commences on and from 2 February 2024 and in which the prescribed alcoholic beverage can be sold if the product:

- complies with the Code as in force and as amended by both the approved draft variation and the variations made by the *Food Standards (Proposal P1050 – Pregnancy warning labels on alcoholic beverages) Variation*; or
- was packaged and labelled before 2 February 2024 and the labelling on its outer package complies with the Code as in force without the amendments by both the approved draft variation and the variations made by the *Food Standards (Proposal P1050 – Pregnancy warning labels on alcoholic beverages) Variation*.

Subclause 4(5) preserves the operation of the clause 4 of the *Food Standards (Proposal P1050 – Pregnancy warning labels on alcoholic beverages) Variation*. That clause provides

specific transitional arrangements, including a stock in trade provision, for prescribed alcoholic beverages. These include prescribed alcoholic beverages to which clause 4 of the *Food Standards (Application A1256 – Colour of pregnancy warning labels for corrugated cardboard packaging) Variation* applies.