

## **EXPLANATORY STATEMENT**

### *Food Standards Australia New Zealand Act 1991*

#### ***Food Standards (Application A1257 – Australian native bee honey – Consequential Amendments) 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 purpose of the application was to amend the Code to permit the sale and use of honey produced by stingless bees native to Australia.

The Authority considered the Application in accordance with Division 1 of Part 3 and has approved two draft regulatory measures: a draft Standard (*Australia New Zealand Food Standards Code* – Standard 2.8.3 – Native bee honey); and a draft variation (*Food Standards (Application A1257 – Australian native bee honey – Consequential Amendments) Variation*). This explanatory statement relates to the approved draft consequential amendments 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 draft variations.

##### **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](http://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

Honey from Australian native stingless bees cannot currently be sold in Australia and New Zealand as it does not meet the definition of honey in the Code and the compositional requirements for honey in Standard 2.8.2 – Honey.

The Authority has approved the draft variation containing amendments as a consequence of the draft Standard. The measures in the approved draft variation, along with measures in the approved draft Standard and existing measures in the Code, permit and regulate the sale and use of native bee honey.

### 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 A1257 included one round of public consultation following an assessment and the preparation of a draft Standard, a draft variation and an associated report. Submissions were called for on 22 November 2023 for an 8-week consultation period.

Changes have been made to the Impact Analysis requirements by the Office of Impact Analysis (OIA). Impact analysis no longer must be finalised with the OIA. FSANZ has developed a Risk-based Framework to help decide whether preparation of a regulatory impact statement (RIS) is required. Under the new approach, FSANZ's assessment is that a Regulatory Impact Statement is not required for this application.

### 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

Clause 1 of the approved draft variation provides that the name of the variation is the *Food Standards (Application A1257 – Australian native bee honey – Consequential Amendments) Variation*

Clause 2 of the approved draft variation provides that the Code is amended by the Schedule to the variation.

Clause 3 of the approved draft variation provides that the variation commences on the date of gazettal of the instrument.

**Items [1] – [6]** of the Schedule to the approved draft variation contain amendments to existing provisions to the Code, which are consequential to the draft Standard.

**Item [1]** of the Schedule to the approved draft variation amends Standard 1.1.1 Structure of the Code and general provisions.

Section 1.1.1—2 contains provisions related to the structure of the Code.

This item inserts a reference '2.8.3 Native bee honey' into the list of standards in the Code, which are set out in subsection 1.1.1—2(2).

'Standard 2.8.3 Native bee honey' is the name of the approved draft Standard to be included in the Code.

The reference to the approved draft Standard is inserted in that list under the heading 'Part 2.8 Sugars and honey' and after the entry relating to 'Honey.'

**Item [2]** of the Schedule to the approved draft variation amends Standard 1.1.2 Definitions

used throughout the Code – in particular, section 1.1.2—3, which sets out definitions for particular foods applying throughout the Code, unless a contrary intention appears.

This item inserts the following definition of ‘native bee honey’ into subsection 1.1.2—3(2):

**Native bee honey** means the natural sweet substance produced by Australian native stingless bees from the genera *Tetragonula* or *Austroplebeia* following the collection of nectar from the blossoms of plants.

**Item [3]** of the Schedule to the approved draft variation amends Standard 1.2.2 Information requirements – food identification, by repealing subparagraph (xii) in Note 2 to subsection 1.2.2—2(1) and substituting it with proposed new subparagraph (xii).

Note 2 lists prescribed names and their location in the Code.

Subparagraph (xii) in Note 2 currently refers to ‘honey’ (Standard 2.8.2);’.

New subparagraph (xii) refers to ‘honey’ (Standards 2.8.2 and 2.8.3);’. This amendment has the effect of including the prescribed name for native bee honey in the list of prescribed names and their location in the Code in Note 2 to subsection 1.2.2—2(1).

**Item [4]** of the Schedule to the approved draft variation amends Standard 2.9.2 Food for infants as follows.

**Item [4.1]** repeals paragraph 2.9.2—3(1)(b), and substitutes it with new paragraph 2.9.2—3(1)(b).

Subsection 2.9.2—3(1) lists foods that food for infants must not contain. Paragraph 2.9.2—3(1)(b) currently refers to ‘honey, unless it has been treated to inactivate *Clostridium botulinum* spores; or’.

New paragraph 2.9.2—3(1)(b) includes ‘native bee honey’ in that provision.

The effect of the amendment is that food for infants must not contain (among other things) the following types of food unless the listed food has been treated to inactivate *Clostridium botulinum* spores:

- honey;
- native bee honey.

**Item [4.2]** repeals paragraphs 2.9.2—7(3)(d) and (e) and substitutes them with new paragraphs 2.9.2—7(3)(d) and (e).

Subsection 2.9.2—7(3) lists, for the purposes of the labelling provisions in Standard 1.2.1, the required information relating to composition of food for infants.

Current paragraph 2.9.2—7(3)(d) requires the word ‘sweetened’ to be stated on the label on a package of food for infants if the food contains more than 4 g/100 g in total of monosaccharide and disaccharide from added sugars and/or honey.

New paragraph 2.9.2—7(3)(d) requires the word ‘sweetened’ to be stated on the label on a package of food for infants if the food contains more than 4 g/100 g in total of monosaccharide and disaccharide from one or more of the following sources:

- added sugars;
- honey;
- native bee honey.

Current paragraph 2.9.2—7(3)(e) requires the word ‘sterilised’ to be stated in association with the word ‘honey’ on the label on a package of food for infants if honey has been used as an ingredient in the food.

New paragraph 2.9.2—7(3)(e) requires the word ‘sterilised’ to be stated in association with the word ‘honey’ on the label on a package of food for infants if honey and/or native bee honey has been used as an ingredient in the food.

**Item [5]** of the Schedule to the approved draft variation amends Schedule 4 Nutrition, health and related claims.

This item amends the table entry related to ‘Sugar or sugars’ in the table to section S4—3 which sets out conditions for nutrition content claims for the purposes of subsection 1.2.7—12(1).

Subsection 1.2.7—12(1) requires that if a property of food (as defined in Standard 1.1.2) is mentioned in Column 1 of the table to section S4—3, a nutrition content claim may only be made about that property of food in accordance with section 1.2.7—12.

For example, subsection 1.2.7—12(3) requires that if a claim is made in relation to a food about the property ‘sugar’ or ‘sugars’ referred to in Column 1 of the table to section S4—3 and the claim uses the descriptor ‘No added’ mentioned in Column 3 of the table, or a synonym of that descriptor, the food must meet:

- any general claim conditions for the relevant property of food in Column 2 of the table (of which there are none); and
- the specific claim conditions in Column 4 of the table for that descriptor.

Currently, paragraph (a) in Column 4 of the table - for the descriptor of ‘No added’ in Column 3 of the table provides that one condition of a ‘No added sugar’ claim is that the food must not contain added sugars. Paragraph (e) lists the sources of added sugars for the purposes of condition (a), including honey at subparagraph (x).

The amendment in item [5] repeals subparagraphs (xi) – (xiii) from paragraph (e) in column 4 of the above described table item related to ‘Sugar or sugars’, descriptor of ‘No added’ in column 3, and substitutes those subparagraphs with:

(xi) native bee honey;

(xii) malt;

(xiii) malt extracts;

(xiv) any of the following unless the food for sale is a prescribed beverage:

(A) concentrated fruit juice;

(B) concentrated vegetable juice;

(C) deionised fruit juice;

(D) deionised vegetable juice.

The effect of the amendment is to add ‘native bee honey’ to the list of added sugars for the purposes of ‘no added’ sugar or sugars claims. This means that a ‘no added’ sugar(s) claim cannot be made if (among other things) the food contains native bee honey.

**Item [6]** amends Schedule 22 – Food and classes of foods.

Schedule 22 contains descriptions of various classes of food commodities and specifies the portions of food commodities for the purposes of certain standards in the Code, including Standard 1.4.2 – Agvet chemicals. Although Schedule 22 applies in both Australia and New Zealand, Standard 1.4.2 applies only in Australia. New Zealand has its own standards for agvet chemical residues in food, which are enforced by the New Zealand Government (through the Ministry of Primary Industries). Under the Trans-Tasman Mutual Recognition Arrangement (a non-treaty arrangement between New Zealand and Australia’s Commonwealth, state and territory governments), food which is produced in New Zealand and complies with relevant New Zealand food laws may be imported to and sold in Australia; and food which is produced in Australia and complies with relevant Australian food laws may be imported to and sold in New Zealand.

Paragraph 1.4.2—3(2)(a) requires that when calculating the amount of a permitted residue in a food, only the amount that is in the portion of the commodity specified in Schedule 22 must

be calculated.

Item [6] amends section S22—4, which describes the foods that are classed as animal food commodities. The amendment inserts a new entry relating to native bee honey into this section, under the heading ‘Honey and other miscellaneous primary food commodities of animal origin,’ after the statement dealing with the portion of honey to which the MRL and ERL apply (and which is analysed).

The new entry consists of:

***Native bee honey***

*Commodity:* Native bee honey.

*Portion of the commodity to which the MRL and ERL apply (and which is analysed):* whole commodity.’