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Call for submissions – Application A1257

Australian native bee honey

FSANZ has assessed an application made by the Australian Native Bee Association to amend the Australia New Zealand Food Standards Code to accept honey produced by Australian native stingless bees as a standardised food in Australia and New Zealand—in other words, to permit the sale and use of honey produced by stingless bees native to Australia in these two countries. FSANZ has prepared two draft food regulatory measures. Pursuant to section 31 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measures.

For information about making a submission, visit the FSANZ website at [current calls for public comment and how to make a submission](#).

All submissions on applications and proposals will be published on our website. We will not publish material that we accept as confidential. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1982*. Submissions will be published as soon as possible after the end of the submission period.

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Submissions should be made in writing; be marked clearly with the word 'Submission.' You also need to include the correct application or proposal number and name. Electronic submissions can be made by emailing your submission to submissions@foodstandards.gov.au. FSANZ also accepts submissions in hard copy to our Australia and/or New Zealand offices.

There is no need to send a hard copy of your submission if you have submitted it by email. FSANZ endeavours to formally acknowledge receipt of submissions within three business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 17 January 2024

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions about making a submission or application and proposal processes can be sent to standards.management@foodstandards.gov.au.

Submissions in hard copy may be sent to the following addresses:

Food Standards Australia New Zealand
PO Box 5423
KINGSTON ACT 2604
AUSTRALIA
Tel +61 2 6271 2222

Food Standards Australia New Zealand
PO Box 10559
WELLINGTON 6140
NEW ZEALAND
Tel +64 4 978 5630

Table of contents

EXECUTIVE SUMMARY	3
1. INTRODUCTION	4
1.1. THE APPLICANT.....	4
1.2. THE APPLICATION	4
1.3. THE CURRENT STANDARD	4
1.3.1. <i>Honey as a standardised food</i>	4
1.3.2. <i>Labelling requirements</i>	5
1.3.3. <i>Food for infants</i>	6
1.3.4. <i>Maximum Residue Limits for agricultural and veterinary chemicals</i>	6
1.3.5. <i>Natural contaminants</i>	7
1.4. INTERNATIONAL STANDARDS.....	7
1.5. REASONS FOR ACCEPTING APPLICATION.....	7
1.6. PROCEDURE FOR ASSESSMENT	8
2. SUMMARY OF THE ASSESSMENT	8
2.1. RISK AND TECHNICAL ASSESSMENT.....	8
2.2. RISK MANAGEMENT	9
2.2.1. <i>Definition</i>	9
2.2.2. <i>Compositional requirements</i>	10
2.2.3. <i>Name of the food</i>	11
2.2.4. <i>'No added sugar' claims</i>	11
2.2.5. <i>Other labelling requirements</i>	12
2.2.6. <i>Other parts of the Code referring to honey</i>	12
2.2.7. <i>Risk management conclusion</i>	13
2.3. RISK COMMUNICATION.....	13
2.3.1. <i>Consultation</i>	13
2.3.2. <i>World Trade Organization (WTO)</i>	14
2.4. FSANZ ACT ASSESSMENT REQUIREMENTS.....	14
2.4.1. <i>Section 29</i>	14
2.4.2. <i>Subsection 18(1)</i>	16
2.4.3. <i>Subsection 18(2) considerations</i>	16
3. DRAFT VARIATION	17
4. REFERENCES	17
ATTACHMENTS	17
ATTACHMENT A – DRAFT VARIATIONS TO THE AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE	18
ATTACHMENT B – DRAFT EXPLANATORY STATEMENTS.....	24

Supporting documents

The following document, which informed the assessment of this application, is available on the [FSANZ website](#):

SD 1 Risk and technical assessment

Executive summary

Food Standards Australia New Zealand (FSANZ) received an application from the Australian Native Bee Association Inc. to vary the Australia New Zealand Food Standards Code (the Code) to accept honey produced by Australian native stingless bees as a standardised food in Australia and New Zealand—in other words, to permit the sale and use of honey produced by stingless bees native to Australia in these two countries.

The Code currently includes a definition for ‘honey’ which specifies honey is produced by honeybees. It also includes compositional requirements for reducing sugar and moisture content of food sold as honey. The applicant claims that 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 or the compositional requirements for honey in Standard 2.8.2 – Honey.

FSANZ has undertaken an assessment to determine the differences between Australian native bee honey and European honeybee honey and to evaluate potential public health and safety concerns that may arise from the consumption of Australian native bee honey.

Australian native bees of interest are of the genera *Tetragonula* and *Austroplebeia* and therefore are not known as honeybees, which are within the genus *Apis* of the bee clade, all native to mainland Afro-Eurasia.

Australian native bee honey does not meet the compositional requirements for honey in the Code as follows:

- The minimum reducing sugar content of native bee honey is 50%, less than in honeybee honey (at least 60%).
- The maximum moisture content found in native bee honey is 28%, more than in honeybee honey (less than 21%).

The risk assessment concludes that consumption of Australian native bee honey at the requested compositional limits for moisture content and reducing sugars does not present a risk to public health if beekeepers apply good hygienic practices.¹ Risks to vulnerable people are comparable to those from the consumption of honey produced by European honeybees. Some individuals are allergic to pollen, propolis or royal jelly in honeybee honey. The risk posed by native bee honey to such individuals is comparable to honeybee honey. Infants are at risk from honey contaminated with *C. botulinum* spores, regardless of the source of that honey.

For reasons set out in this report, the risk management conclusion is to permit the sale and use of Australian native bee honey. This would include a definition for ‘native bee honey’ in the Code and setting associated compositional and labelling requirements for native bee honey. Additionally, consequential amendments to existing provisions in the Code are proposed as well as a description for Australian native bee honey in Schedule 22 for the purposes of requirements related to Maximum Residue Limits set out in Schedule 20.

For reasons set out in this report, to achieve the intended outcomes, FSANZ has prepared a draft new standard (Standard 2.8.3 Native bee honey) and a draft variation to the Code; and seeks submissions on both regulatory measures.

¹ FSANZ notes that requirements in Chapter 3 of the Code, which relate to food safety, would apply to the harvesting and processing of Australian native bee honey.

1. Introduction

1.1. The applicant

The applicant is the Australian Native Bee Association Inc. Information about the Australian Native Bee Association is provided in the application in Appendix 3.

1.2. The application

The applicant seeks to amend the Australia New Zealand Food Standards Code (the Code) to accept honey produced by Australian native stingless bees as a standardised food in Australia and New Zealand—in other words, to permit the sale and use of for honey produced by stingless bees native to Australia in these two countries.

The applicant claims that 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.

Currently, a food that is sold as ‘honey’ must meet the definition of honey in the Code and contain no less than 60% reducing sugars and no more than 21% moisture. However, the applicant claims that native bee honeys contain more water and less sugars than conventional honeys and may not meet the compositional requirements for food sold as honey. The applicant seeks a maximum moisture content of 28% in native bee honey and the lower limit of reducing sugars to be no less than 50%.

1.3. The current standard

Australian and New Zealand food laws require food for sale to comply with relevant requirements in the Code. The requirements relevant to this application are summarised below.

1.3.1. Honey as a standardised food

Requirements for food sold as honey are prescribed in Standard 2.8.2 – Honey. Section 2.8.2—3 specifies that a food sold as ‘honey’ must:

- (a) be honey; and
- (b) contain:
 - (i) no less than 60% reducing sugars; and
 - (ii) no more than 21% moisture.

Honey is defined in Standard 1.1.2 as *the natural sweet substance produced by honey bees from the nectar of blossoms or from secretions of living parts of plants or excretions of plant sucking insects on the living parts of plants, which honey bees collect, transform and combine with specific substances of their own, store and leave in the honey comb to ripen and mature.*

There are various provisions relating to honey (as defined in Standard 1.1.2) in the Code, e.g.:

- Honey is specifically allowed in foods such as jam and fruit wine and permitted to be used to make mead.
- If the monosaccharide and disaccharide content of added sugars and honey in food for infants is more than 4 g/100 g, the word ‘sweetened’ must be stated on the label of a package of food for infants (paragraph 2.9.2—7(3)(d)).

- Honey must not be included in food for infants, unless the honey has been treated to inactivate *Clostridium botulinum* spores, and specific labelling requirements apply.
- Schedule 15 specifically prohibits the use of food additives in 'honey and related products'.

1.3.2. Labelling requirements

1.3.2.1. Name of the food

Subsection 1.2.1—6(1) requires a food for sale in a package that is required to bear a label, to be labelled with the name of the food.² Subsection 1.2.2—2(1) states that the name of the food is the prescribed name if the food has a prescribed name. Section 2.8.2—4 specifies that 'Honey' is a prescribed name for honey as defined in the Code. If a name of a food is not prescribed, the food is required to have a name or description sufficient to indicate the true nature of the food (subparagraph 1.2.2—2(1)(b)(i), and that includes any additional words the Code requires to be included in the name of the food (subparagraph 1.2.2—2(1)(b)(ii)).

Based on the above Code requirements, a food for sale that meets the definition of honey must be named 'Honey' and must meet the compositional requirements for reducing sugars and moisture.

1.3.2.2. No added sugar claim conditions

The conditions for 'no added sugar' claims in Schedule 4 include that the food must not contain honey. For an 'unsweetened' nutrition content claim, one of the requirements is that the food must meet the conditions for a nutrition content claim about no added sugar.

1.3.2.3. Other labelling requirements

The Code generally requires packaged food for sale to be labelled with date-marking information³ (see subsections 1.2.1-6(1) and 1.2.1-8(1)). Date marking information is:

- a) the use-by date for the food (if any); or
- b) if there is no use-by date:
 - i. the best-before date of the food; or
 - ii. for bread that has a shelf life of less than 7 days:
 - A. the best-before date; or
 - B. the baked-for date; or
 - C. the baked-on date (see subsection 1.2.5-3(1)).

There are exceptions to those requirements. Unless the food is an infant formula product, the date marking information is not required if:

- a) the best-before date of the food is 2 years or more after the date it is determined; or
- b) the food is an individual portion of ice cream or ice confection.

Also, if the food is in a 'small package', the only date-marking information required is the use-by date (if any).

The Code generally requires the labels on packaged food for sale to contain information about storage conditions and directions for use (see subsections 1.2.1-6(1) and 1.2.1-8(1)).

Other relevant generic labelling requirements in the Code applying to packaged foods for

² See also subsection 1.2.1—8(1).

³ The terms 'use-by date', 'best-before date', 'baked-for date', 'baked-on date', and 'small package' are defined in Standard 1.1.2 – Definitions used throughout the Code

sale are:

- legibility requirements (see Division 6 of Standard 1.2.1)
- lot identification (see, in particular, Divisions 2 and 3 of Standard 1.2.1; and section 1.2.2—3)
- name and address of supplier in Australia or New Zealand (see, in particular, Divisions 2 and 3 of Standard 1.2.1; and section 1.2.2—4)
- statement of ingredients (see, in particular, Divisions 2 and 3 of Standard 1.2.1; and Standard 1.2.4)
- information relating to nutrition, health and related claims (see, in particular, Divisions 2 and 3 of Standard 1.2.1; and Standard 1.2.7)
- nutrition information requirement (see, in particular, Divisions 2 and 3 of Standard 1.2.1; and Standard 1.2.8)
- percentage of characterising ingredients and components labelling (see, in particular, Divisions 2 and 3 of Standard 1.2.1; and Standard 1.2.10).

1.3.3. Food for infants

Section 2.9.2—3 specifies that a food for infants cannot contain honey unless the honey has been treated to inactivate *C. botulinum* spores. Paragraph 2.9.2—7(3)(e) requires that if honey has been used as an ingredient in a food for infants, that food must be labelled with the word 'sterilised' in association with the word 'honey'.

Paragraph 2.9.2—7(3)(d) also requires that if the monosaccharide and disaccharide content of added sugars and honey in a food for infants is more than 4 g/100 g—the word 'sweetened' must be included on the label of a package of food for infants.

1.3.4. Maximum Residue Limits for agricultural and veterinary chemicals

In Australia, a range of approved agricultural and veterinary (agvet) chemicals are permitted to be used on plants and animals destined for human consumption, resulting in chemical residues in foods at the point of sale.

The Code requirements for maximum residue limits (MRLs⁴) for agvet chemicals relevant to this application are summarised below:

- Section 1.1.2—2 of the Code provides that an *agvet chemical* means 'an agricultural chemical product or a veterinary chemical product, within the meaning of the Agvet Code'.⁵
- Paragraph 1.1.1—10(6)(d) of the Code provides that, unless expressly permitted by the Code, food for sale must not have, as an ingredient or component, a detectable amount of an agvet chemical or a metabolite or degradation product of an agvet chemical.

⁴ A maximum residue limit (MRL) is the highest amount of an agricultural or veterinary (agvet) chemical residue that is legally allowed in a food product sold in Australia whether it is produced domestically or imported. MRLs are set based on how much of the chemical is needed to control pests and/or diseases.

⁵ The Agricultural and Veterinary (Agvet) Chemicals Code (Agvet Code) is set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth). The APVMA are responsible for the development and administration of the Agvet Code.

- Standard 1.4.2 and Schedules 20 and 21 of the Code set out the relevant permissions and permitted maximum and extraneous residue limits, for agvet chemicals in food for sale.
- These permissions and residue limits are set by reference to a particular food or food group. A reference in Standard 1.4.2, Schedule 20 and Schedule 21 to a particular food or food group is to the food as described in Schedule 22 – Foods and Classes of food (see subsection 1.4.2—3(4)).
- Currently Schedule 22 describes ‘honey’ as a commodity of animal origin. It does not include a reference to native bee honey.

Schedule 20 – Maximum Residue Limits⁶ currently lists single commodity MRLs for honey for amitraz, fipronil, flumethrin, fluvalinate, glyphosate, oxytetracycline and phosphine. The Australian Pesticides and Veterinary Medicines Authority (APVMA) has also established ten MRLs in Schedule 20 for ‘All other foods’⁷ which could be applied to honey. These MRLs were established by the APVMA as the agency responsible for regulating agvet chemical use in Australia. Where there is no MRL in the Code for a food, a zero tolerance approach applies, where there must be no detectable residues in or on the food.

1.3.5. Natural contaminants

There is limited information on contaminants in native bee honey. No evidence was located indicating that the risk of exposure to such contaminants is greater for native bee honey than for honeybee honey (see SD for details). While Schedule 19 of the Code sets out a maximum level for the neurotoxin tutin in honeybee honey, this contaminant is unique to New Zealand honey. The definition for honey in Schedule 19 therefore requires no amendments because native bee honey is not produced in New Zealand.

1.4. International standards

There is a Codex Alimentarius Standard for Honey (CXS 12-19811)⁸. This standard defines honey as *the natural sweet substance produced by honey bees from the nectar of plants or from secretions of living parts of plants or excretions of plant sucking insects on the living parts of plants, which the bees collect, transform by combining with specific substances of their own, deposit, dehydrate, store and leave in the honey comb to ripen and mature.*

It includes a requirement for a moisture content of not more than 20% (except for heather honey) and the sum of fructose and glucose content to be not less than 60 g per 100 g.

1.5. Reasons for accepting application.

The application was accepted for assessment because:

- it complied with the procedural requirements under subsection 22(2) of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), and
- it related to a matter that:

⁶ Schedule 20, compilation 75. Accessed on 4/10/2023: <https://www.legislation.gov.au/Series/F2015L00468>

⁷ All other foods MRLs are set on a case-by-case basis. The purpose of establishing these MRLs is to remove the zero tolerance to food commodities with low level inadvertent residues of chemicals that result from farming processes such as spray drift and crop rotation, following their legitimate use on animals and plants. See FSANZ Proposal P1027 for further information.

⁸ Available at [Standards | CODEXALIMENTARIUS FAO-WHO](#)

- (a) might be developed as a food regulatory measure, and
- (b) warranted the variation of food regulatory measures.

1.6. Procedure for assessment

The application is being assessed under the General Procedure in the FSANZ Act.

2. Summary of the assessment

FSANZ has carried out a risk and technical assessment. This is provided in the supporting document (SD) and summarised below.

2.1. Risk and technical assessment

In Australia, native bee honey has been used for thousands of years and continues to be used today.

Australian native bees of interest are of the genera *Tetragonula* and *Austroplebeia* and therefore are not known as honeybees, which are within the genus *Apis* of the bee clade, all native to mainland Afro-Eurasia.

Australian native bee honey does not meet the compositional requirements for honey in the Code as follows:

- The minimum reducing sugar content of native bee honey is 50%, less than in honeybee honey
- The maximum moisture content found in native bee honey is 28%, more than in honeybee honey
- The trehalulose content of native bee honey is at least 2%, more than in most honeybee honey.

The risk assessment concludes that consumption of Australian native bee honey at the requested compositional limits for moisture content and reducing sugars does not presents a risk to public health if beekeepers apply good hygienic practices.⁹ Risks to vulnerable populations are comparable to those from consumption of honeybee honey.

In particular:

- Trehalulose consumption does not appear to have any adverse effects in humans
- It is possible for honey from honeybees to contain hazardous natural substances such as alkaloids synthesized by plants. The risk of dietary exposure to such contaminants is similar for native bee honey
- Infants are at risk from honey contaminated with *C. botulinum* spores, regardless if the honey is produced by honeybees or native bees
- Fermentation and natural microflora in native bee honey are not a health risk for the general population
- Some individuals are allergic to pollen, propolis or royal jelly in honeybee honey. Native bee honey poses similar risks to such individuals.

⁹ As stated in section 2.2.2.1 below, requirements in Chapter 3 of the Code, which relate to food safety, would apply to the harvesting and processing of native bee honey.

2.2. Risk management

The risk management options available to FSANZ after assessment were to either:

- reject the application, or
- prepare a draft standard and/or variation of the Code.

For the reasons listed in this report, FSANZ decided to prepare two draft regulatory measures: a draft standard and a draft variation. The proposed new standard - Standard 2.8.3 – Native bee honey would require that food sold as native bee honey must be ‘native bee honey’ as defined in Standard 1.1.2; and set out associated compositional and labelling requirements for Australian native bee honey.

The draft variation would amend the Code to include a definition of ‘native bee honey’ (with specific reference to honey produced by Australian native stingless bees from the genera *Tetragonula* or *Austroplebeia*); and make other amendments to existing provisions in the Code as a consequence of the proposed new definition and proposed new Standard.

Risk management considerations for this application relating to the definition, composition, labelling and other parts of the Code that refer to ‘honey’ are discussed below.

2.2.1. Definition

The Code defines honey in Standard 1.1.2 as *the natural sweet substance produced by honey bees from the nectar of blossoms or from secretions of living parts of plants or excretions of plant sucking insects on the living parts of plants, which honey bees collect, transform and combine with specific substances of their own, store and leave in the honey comb to ripen and mature.*

FSANZ concludes that honey produced by Australian native bees does not meet the definition of honey in the Code because it is not produced by honeybees, which are commonly understood to belong to the genus *Apis*, which is a part of the family *Apidae* (see the SD). Native bees of interest are of the genera *Tetragonula* and *Austroplebeia*.

Additionally, native bees store their honey in honeypots which are not arranged in a honeycomb. The applicant considers that native bees do not collect nectar from the secretions of living parts of plants or excretions of insects, but rather the nectar from the blossoms of plants.

The applicant requested the following definition applies to native bee honey: *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.*

The applicant’s requested definition differs from the Code definition for honey because the feeding and diet, behaviour, honey storage and life history of native stingless bees differs from honeybees. FSANZ proposes to accept this definition because it reflects the differences in biology between native bees and honeybees and subsequently the honey they produce.

2.2.2. Compositional requirements

2.2.2.1. *Moisture content and reducing sugars*

The moisture content of honeys from Australian native bees ranges from 17 to 28%¹⁰. Not all honeys from native bees therefore meet the Code maximum limit for honey moisture content of 21%. The content of reducing sugars in honey from native bees ranges from 55 to 62 g/100 g⁷ (see the SD for more information).

Honeys from Australian native bees therefore commonly (though not always) exceed 21% moisture content and consist of less than 60% reducing sugars¹¹, the compositional requirements for honey in the Code.

Although microbiological fermentation can occur in native bee honey due to the higher moisture content and lower level of reducing sugars compared to honeybee honey, FSANZ has assessed that this is unlikely to cause illness (see SD and section 2.1 above).

FSANZ therefore proposes to amend the Code as requested by the applicant, to require that native bee honey contains:

- no less than 50% reducing sugars
- no more than 28% moisture.

While the consumption of native bee honey presents no health risks to the general population, keepers of native bees must apply good hygienic practice during harvest and processing to ensure the safety of their produce. FSANZ notes that the requirements in Chapter 3 relating to food safety would apply to the harvesting and processing of native bee honey.

2.2.2.2. *Trehalulose*

The most differentiating feature of native bee honey is the high concentration of trehalulose compared to conventional honeys. Trehalulose¹² is a type of reducing sugar.

While the levels of trehalulose vary between native bee honeys they are at least 2% and, can be much higher (see SD). The applicant requested a requirement that native bee honey contain no less than 2% trehalulose to provide an additional and directly measurable factor to distinguish native bee honey from honey produced by *Apis mellifera*. This level is high enough to differentiate native bee honey from honeybee honey.

FSANZ notes that although the levels of trehalulose in some *Apis* honey¹³ levels are like those of native bee honey, it is more common for native bee honey to contain much higher levels (as high as 49 g/100 g)¹⁴. FSANZ is proposing to require a minimum of 2% trehalulose in native bee honey as requested by the applicant, to provide a measurable factor to assist with distinguishing it from honeybee honey.

¹⁰ See SD for references and further details.

¹¹ Sugar that serves as a reducing agent due to its free aldehyde or ketone functional groups in its molecular structure. Examples are glucose and fructose.

¹² Trehalulose is a disaccharide made up of a molecule of fructose bound to a glucose molecule. Like isomaltulose, it is a structural isomer of sucrose, also found in small quantities in conventional honey. The trehalulose content of honey from *Tetragonula* is 18.5 g/100 g on average. Honey produced by *Austroplebeia* averages 4.5 g/100 g (Fletcher, Hungerford and Smith, 2021).

¹³ Also known as honey produced by honeybees.

¹⁴ See SD for details.

2.2.3. Name of the food

The applicant requested the term 'native bee honey' to be a prescribed name for the purposes of the name of the food labelling requirement (see section 1.3.2 above).

The reasons provided by the applicant for this were firstly, to assist allergy-sensitive individuals who may wish to avoid foods containing honey due to the potential presence of small quantities of pollen and/or propolis and, secondly, to assist consumers to make an informed choice between native bee honey and honey produced by *Apis mellifera* [honeybees], and to prevent misleading and deceptive conduct.

As outlined in the SD, native bee honey most poses similar risks to individuals allergic to pollen, propolis or royal jelly in honeybee honey. FSANZ therefore considers that the 'honey' component of the requested prescribed name is appropriate to be a prescribed name. This would ensure that consumers can readily identify the product as a honey, enabling ease of identification for people who may suffer adverse reactions to pollen or other bee products and therefore wish to avoid contact with bee products.

FSANZ agrees that native bee honey should be required to be labelled with the word 'honey' but has concerns about prescribing the full term 'native bee honey'. FSANZ does not consider it is necessary to prescribe the name 'native bee' because native bee honey presents very similar risks to honeybee honey.

Additionally, there are bees native to countries other than Australia¹⁵ that produce honey that can be harvested (Nordin et al. 2018). The requested term 'native bee honey' does not clarify that the bees in this instance are native to Australia or distinguish the honey from that produced by other native bees. Some suppliers of Australian native bee honey may therefore prefer to refer to 'Australian' in the name of the product.

Instead of the prescribed name 'native bee honey', FSANZ proposes that native bee honey must be labelled with the prescribed name 'honey' which must be presented in conjunction with a description that adequately describes the true nature of native bee honey. Examples provided in the draft new Standard are: 'Native bee honey', 'Native stingless bee honey', 'Australian native bee honey'¹⁶. This is because the 'honey' component of the requested prescribed name is appropriate to be a prescribed name to manage allergen related risks. However it is not considered necessary to prescribe the term 'native bee' as there are no safety risks that apply to native bee honey in particular. An adequate description of the product should be included in the name to enable consumers to make an informed choice between native bee honey and honey produced by honeybees.

2.2.4. 'No added sugar' claims

The conditions for 'no added sugar' nutrition content claims in Schedule 4 of the Code prohibit such claims on foods that contain honey.

The Australian Food Composition Database - Release 2.0¹⁷ lists the total sugar content of honeybee honey as 103.4 g/100 mL (72.8 g/100 g). The New Zealand Food Composition Data¹⁸ base list the sugar content of multifloral honeybee honey as 70.5 g/100 g.

The total sugar content of native bee honey reported is lower than honeybee honey:

¹⁵ Bees other than species of honeybees native to Europe and Asia.

¹⁶ There are 28 species of native bees in New Zealand (Hart 2007). They do not have hives or produce honey like honeybees. Therefore, native bee honey cannot be produced in New Zealand.

¹⁷ <https://www.foodstandards.gov.au/science/monitoringnutrients/afcd/pages/default.aspx>

¹⁸ <https://www.foodcomposition.co.nz/>

62.3 g/100 g for *T. carbonaria* honey, 65.5 g/100 g for *A. australis* honey (Oddo et al. 2008, Haley and Heard 2021).

Carbohydrates in the form of sugars are the single major constituents of honeybee as well as native bee honeys. FSANZ therefore proposes to add 'native bee honey' to condition (a) for 'no added sugar' nutrition content claims in Schedule 4 of the Code, so that a such claims could not be made about a food that contains native bee honey. FSANZ is currently considering Proposal P1062 – Defining added sugars for claims¹⁹. FSANZ will ensure that any amendments to the conditions in the Code for 'no added sugar' claims made by that proposal are taken into account in the draft variation for this application at the approval stage (subject to the timing of this application and P1062).

2.2.5. Other labelling requirements

There were no microbiological risks found that would justify requiring specific labelling requirements for reasons of health or safety, for example, storage instructions, on native bee honey over and above the current requirements in the Code (see sections 1.3.2.3 and 2.1 and the SD). The general labelling requirements in the Code will apply to native bee honey in the same way as they apply to honeybee honey, in accordance with Part 1.2 of the Code.

Of particular relevance, this includes the requirements for date marking, a statement of specific storage conditions if needed to ensure the food will keep until the use-by or best-before date, and, if the food must be used or stored in accordance with certain directions for health or safety reasons—those directions. It is up to the supplier of the food to decide whether such instructions are required for that particular food.

2.2.6. Other parts of the Code referring to honey

2.2.6.1. Food for infants

FSANZ concluded from the risk assessment that as with all honey, contamination of native bee honey with spores of *C. botulinum* represents a risk for infants (see section 2.1 above and the SD).

There are currently requirements in Standard 2.9.2 – Food for infants, that honey must not be included in food for infants, unless the honey has been treated to inactivate *C. botulinum* spores. To address this risk, FSANZ proposes to impose the same requirements applying to food for infants in relation to honey to native bee honey.

Additionally, as carbohydrates in the form of sugars are the single major constituents of both honeybee honey and native bee honey, FSANZ is proposing to amend paragraph 2.9.27(3)(d) of the Code.

If approved, this amendment would require the word 'sweetened' to appear on the label of a packaged 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

¹⁹ Information is available on the FSANZ website at [P1062 Defining added sugars for claims \(foodstandards.gov.au\)](https://www.foodstandards.gov.au/p1062)

2.2.6.2. Classification of honey as applied to Australian MRLs

A description for native bee honey is proposed to be included in Schedule 22 - Foods and classes of foods in the draft variation. This would have the effects of further delineating honey and native bee honey definitions, and clarifying that the existing Australian MRLs for honey do not apply to native bee honey. This would also avoid the need for future amendments by FSANZ to include native bee honey as a food in Schedule 22 in the event the APVMA includes MRLs for native bee honey in Schedule 20.

The applicant did not request, and we have not proposed, any amendments to the Code for MRLs applying to Australian native bee honey. If the Code is amended as requested, where there is no Australian MRL in the Code for native bee honey, a zero tolerance approach would apply i.e. there must be no detectable residues of the relevant agvet chemical in or on the native bee honey. However, where the APVMA has established MRLs in Schedule 20 for 'All other foods' in relation to certain agvet chemicals, FSANZ, in consultation with the APVMA, considers that, those MRLs would also apply to native bee honey as they currently do for honey.

2.2.6.3. Permission for use of food additives in honey

Schedule 15 specifically prohibits the use of food additives in 'honey and related products'. FSANZ considers that this would apply to native bee honey. The applicant did not request, and we have not proposed, any amendments to this prohibition or any other amendments relating to the use of food additives in native bee honey specifically.

2.2.7. Risk management conclusion

The risk management conclusion is to amend the Code to regulate the sale and use of Australian native bee honey.

For reasons set out in this report, FSANZ has prepared a draft new standard – Standard 2.8.3 – Native bee honey which would set out compositional and labelling requirements for native bee honey. In particular, a food that is sold as native bee honey would have to be 'native bee honey' as defined in the Code, the minimum reducing sugar content of native bee honey would have to be 50%, the maximum permitted moisture would have to be 28%, and native bee honey would be required to contain no less than 2% trehalulose.

For reasons set out in this report, FSANZ has also prepared a draft variation containing consequential amendments to existing provisions in the Code. The draft variation would contain amendments which include (but are not limited to) the following:

- amending subsection 1.1.2—3(2) to insert a definition of 'native bee honey'
- amending Standard 2.9.2 so that the current requirements applying to honey in food for infants would also apply to native bee honey
- amending Schedule 22 to include a description for Australian native bee honey for the purposes of requirements related to MRLs in Schedule 20.

2.3. Risk communication

2.3.1. Consultation

Consultation is a key part of FSANZ's standards development process. FSANZ developed and applied a fit for purpose communication strategy to this application. All calls for submissions are notified via the Food Standards Notification Circular, media release, FSANZ's social media channels and Food Standards News.

FSANZ recognises and appreciates the traditional knowledge and cultural practices of

Aboriginal and Torres Strait Islander peoples related to honeys and native bees. We invite and welcome input from the Indigenous community. We recognise and value the unique knowledge that Indigenous people possess about their land, environment and culture and seek to incorporate their insights into our decision-making.

The process by which FSANZ approaches standards development matters is open, accountable, consultative and transparent. Public submissions are called to obtain the views of interested parties on the draft new standard and draft variation.

The draft new standard and draft variation will be considered for approval by the FSANZ Board considering all public comments received from this call for submissions.

2.3.2. World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO members where proposed mandatory regulatory measures are not substantially the same as existing international standards and the proposed measure may have a significant effect on trade.

There are no relevant international standards for honey produced by stingless bees native to Australia and amending the Code as proposed for this type of honey is unlikely to have a significant effect on international trade.

Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade or Application of Sanitary and Phytosanitary Measures Agreement was not considered necessary.

2.4. FSANZ Act assessment requirements

When assessing this application and the subsequent development of both food regulatory measures, FSANZ has had regard to the following matters in section 29 of the FSANZ Act.

2.4.1. Section 29

2.4.1.1. Considering costs and benefits

Changes have been made to the Impact Analysis requirements by the Office of Impact Analysis (OIA)²⁰. 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 RIS is not required for this application, as the proposed changes of the sale of Australian native bee honey are not likely to create significant impacts. There may be small costs of compliance to industry, however, industry may benefit from regulatory certainty, and consumers may benefit from clear labelling requirements to make informed choices.

FSANZ, however, considered the costs and benefits that may arise from the proposed measures for the purposes of meeting FSANZ Act requirements. The FSANZ Act requires FSANZ to have regard to whether costs that would arise from the proposed measures outweigh the direct and indirect benefits to the community, government or industry that would arise from the proposed measures (paragraph 29 (2)(a)).

The purpose of this consideration is to decide if the community, government and industry is likely to benefit, on balance, from a move from the status quo, where the status quo is rejecting the application. This analysis considers the proposed permission to sell and use

²⁰ [Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies | The Office of Impact Analysis \(pmc.gov.au\)](https://www.pmc.gov.au/regulatory-impact-analysis-guide-for-ministers-meetings-and-national-standard-setting-bodies)

Australian native bee honey; including proposed requirements for the labelling and composition of Australian native bee honey; and proposed consequential amendments to existing provisions in the Code.

The consideration of the costs and benefits in this section is not intended to be an exhaustive, quantitative economic analysis of the proposed measures and, in fact, most of the effects that were considered cannot easily be assigned a dollar value. Rather, the assessment seeks to highlight the potential positives and negatives of moving away from the status quo by approving the proposed draft variation to the Code.

FSANZ's conclusions regarding the costs and benefits of the proposed measures are set out below. However, information received from the call for submissions may result in FSANZ arriving at a different outcome.

2.4.1.1.1 Costs and benefits of permitting the sale and use of native bee honey

For the native bee honey industry, there may be small costs to comply with new labelling requirements in the Code. However, the introduction of clear and standardised regulations for Australian native bee honey may provide the industry with regulatory certainty, reduced ambiguity, and consistent practices. This certainty may facilitate long-term planning and investment into the growth of the Australian native bee honey sector.

For consumers, while those with bee-related allergies may need to exercise caution when reviewing native bee honey product labels, clear labelling requirements could allow consumers to make informed choices about native bee honey products. Improved regulatory certainty for producers may benefit consumers through the increased availability of Australian native bee honey products, and could offer consumers greater confidence in the safety of these products.

This approach may result in a small, inconsequential cost to government in terms of an addition to the current range of foods that are already monitored for compliance. However, the proposed approach may support regulatory certainty, consumer safety and informed decision making, to align with efforts to promote transparency and protect public health.

2.4.1.1.2 Conclusions from cost benefit considerations

FSANZ's assessment is that the direct and indirect benefits that would arise from permitting the proposed sale and use of Australian native bee honey, most likely outweigh the associated costs.

2.4.1.2. Other measures

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than food regulatory measures developed and/or varied because of the application.

2.4.1.3. Any relevant New Zealand standards

The proposed new standard, and the standards which are the subject of the draft variation, apply in both Australia and New Zealand.

2.4.1.4. Any other relevant matters

Other relevant matters are considered below.

2.4.2. Subsection 18(1)

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

2.4.2.1. Protection of public health and safety

FSANZ has completed a risk and technical assessment (SD) which is summarised in section 2.1 above. The assessment concluded that there are no public health and safety concerns associated with consumption of native bee honey to the general population as proposed.

2.4.2.2. The provision of adequate information relating to food to enable consumers to make informed choices.

The labelling and information requirements relating to native bee honey are discussed in sections 2.2.3-2.2.5 and 2.2.6.1 above.

2.4.2.3. The prevention of misleading or deceptive conduct

Honey fraud is not only deceptive to consumers but also undermines the reputation of legitimate honey producers and potentially poses risks to public health due to the possible presence of contaminants or allergens in the adulterated honeys. Potentially, there is a greater risk of food fraud in honey products from Australian native stingless bees because of their scarcity and high value, unique characteristics and limited production areas.

As with any type of honey, native bee honey can be adulterated with additives like sugars, syrups or water to increase volume and lower production costs. Potentially, native bee honey could also be adulterated with conventional honeys. Adulteration can degrade the quality and authenticity of the honey.

FSANZ proposes to require native bee honey to contain at least 2% trehalulose to differentiate it from honeybee honey. While the levels of trehalulose vary between native bee honeys they usually stay above 2% and, typically, are much higher.

2.4.3. Subsection 18(2) considerations

FSANZ has also had regard to:

- **the need for standards to be based on risk analysis using the best available scientific evidence**

FSANZ used the best available scientific evidence to conduct the risk analysis. The applicant sent a dossier of information and scientific literature as part of its application. This dossier, together with other technical and scientific information, was considered by FSANZ in assessing the application. The risk assessment is provided in the SD and summarised in section 2.1 above.

- **the promotion of consistency between domestic and international food standards**

FSANZ considered the promotion of consistency between domestic and international food standards. No issues were identified for this application relevant to this objective.

- **the desirability of an efficient and internationally competitive food industry**

The proposed permission would support the native bee honey industry.

- **the promotion of fair trading in food**

No issues were identified for this application relevant to this objective.

- **any written policy guidelines formulated by the Forum on Food Regulation**

There are no ministerial policy guidelines relevant to the assessment of this application.

3. Draft variation

The draft standard and draft variation to the Code are at Attachment A and are intended to take effect on the date of gazettal.

Draft explanatory statements to the draft standard and draft variation are at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislation.

4. References

Codex Alimentarius Standard for Honey (CXS 12-19811 Available at [Standards | CODEXALIMENTARIUS FAO-WHO](#))

Hart, N. (2007). Industrious Native Bees: A Case Study in Whangarei. Masters Thesis. Auckland University of Technology.

National Residue Survey results and publications: <https://www.agriculture.gov.au/agriculture-land/farm-food-drought/food/nrs/nrs-results-publications>

Nordin, A., Sainik, N.Q.A.V., Chowdhury, S.R., Saim, A.B. and Idrus, R.B.H., 2018. Physicochemical properties of stingless bee honey from around the globe: A comprehensive review. *Journal of Food Composition and Analysis*, 73, pp.91-102.

Ruttner, F., 2013. Biogeography and taxonomy of honeybees. Springer Science & Business Media.

Shamsudin S, Selamat J, Sanny M, A R SB, Jambari NN, Khatib A. A Comparative Characterization of Physicochemical and Antioxidants Properties of Processed Heterotrigona itama Honey from Different Origins and Classification by Chemometrics Analysis. *Molecules*. 2019 Oct 29;24(21):3898. doi: 10.3390/molecules24213898. PMID: 31671885; PMCID: PMC6864699.

Attachments

- A. Draft variations to the Australia New Zealand Food Standards Code
- B. Draft Explanatory Statements

Attachment A – Draft variations to the Australia New Zealand Food Standards Code

Attachment A contains:

- draft new *Australia New Zealand Food Standards Code* - Standard 2.8.3 - Native bee honey; and
- a draft consequential variation to the Code to support the proposed new standard.

Standard 2.8.3 – Native bee honey

The Board of Food Standards Australia New Zealand gives notice of the making of this Standard under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on the date of gazettal.

Dated [To be completed by the Delegate]

[Insert Delegate's name and position]

Delegate of the Board of Food Standards Australia New Zealand

Note:

This Standard will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**. This means that this date is the gazettal date for the purposes of the above notice.

Standard 2.8.3 Native bee honey

Note 1 This instrument is a standard under the *Food Standards Australia New Zealand Act 1991* (Cth). The standards together make up the *Australia New Zealand Food Standards Code*. See also section 1.1.1—3.

Note 2 The provisions of the Code that apply in New Zealand are incorporated in, or adopted under, the *Food Act 2014* (NZ). See also section 1.1.1—3.

Division 1 Preliminary

2.8.3—1 Name

This Standard is *Australia New Zealand Food Standards Code – Standard 2.8.3 – Native Bee Honey*.

Note Commencement:
This Standard commences on the date of gazettal, being the date specified as the commencement date in notices in the *Gazette* and the *New Zealand Gazette* under section 92 of the *Food Standards Australia New Zealand Act 1991* (Cth). See also section 93 of that Act.

2.8.3—2 Definitions

Note: In this Code (see subsection 1.1.2—3(2) of Standard 1.1.2):

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.

Division 2 Requirements for food sold as native bee honey

2.8.3—3 Composition

A food that is sold as native bee honey must:

- (a) be native bee honey; and
- (b) contain:
 - (i) no less than 50% reducing sugars; and
 - (ii) no more than 28% moisture; and
 - (iii) no less than 2% trehalulose.

2.8.3—4 Labelling of native bee honey

For the labelling provisions:

- (a) 'honey' is a *prescribed name for native bee honey; and
- (b) the *prescribed name must be presented in conjunction with a description that adequately describes the true nature of native bee honey.

Examples 'Native bee honey', 'Native stingless bee honey', 'Australian native bee honey'

Note The labelling provisions are set out in Standard 1.2.1.

Food Standards (Application A1257 – Australian native bee honey – Consequential Amendments) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by the Delegate]

[Insert Delegate's name and position]

Delegate of the Board of Food Standards Australia New Zealand

Note:

This variation will be published in the Commonwealth of Australia Gazette No. FSC XX on XX Month 20XX. This means that this date is the gazettal date for the purposes of clause 3 of the variation.

1 Name

This instrument is the *Food Standards (Application A1257 – Australian native bee honey – Consequential Amendments) Variation*.

2 Variation to Standards in the *Australia New Zealand Food Standards Code*

The Schedule varies Standards in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on the date of gazettal.

Schedule

[1] Standard 1.1.1 Structure of the Code and general provisions

Subsection 1.1.1—2(2) (heading ‘Part 2.8 Sugars and honey’, after the entry relating to ‘Honey’)

Insert:

2.8.3 Native bee honey

[2] Standard 1.1.2 Definitions used throughout the Code

Subsection 1.1.2—3(2)

Insert:

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.

[3] Standard 1.2.2 Information requirements – food identification

Subsection 1.2.2—2(1) (Note 2, subparagraph (xii))

Repeal the subparagraph, substitute:

(xii) ‘honey’ (Standards 2.8.2 and 2.8.3);

[4] Standard 2.9.2 Food for infants

[4.1] Paragraph 2.9.2—3(1)(b)

Repeal the paragraph, substitute:

(b) the following types of food unless the food has been treated to inactivate *Clostridium botulinum* spores:

- (i) honey;
- (ii) native bee honey; or

[4.2] Paragraphs 2.9.2—7(3)(d) and (e)

Repeal the paragraphs, substitute:

(d) the word ‘sweetened’—if the food contains more than 4 g/100 g in total of monosaccharide and disaccharide from one or more of the following sources:

- (i) added sugars;
- (ii) honey;
- (iii) native bee honey; and

(e) the word ‘sterilised’ in association with the word ‘honey’—if any of the following food has been used as an ingredient:

- (i) honey;
- (ii) native bee honey.

[5] Schedule 4 Nutrition, health and related claims

Section S4—3 (table item related to ‘Sugar or sugars’, descriptor of ‘No added’ in

column 3, paragraph (a) in column 4)

Omit 'or malt extracts; and', substitute:

malt extracts, or native bee honey; and

[6] Schedule 22 Foods and classes of foods

Section S22—4 (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))

Insert:

Native bee honey

Commodity: Native bee honey.

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

Attachment B – Draft Explanatory Statements

DRAFT EXPLANATORY STATEMENT

Food Standards Australia New Zealand Act 1991

Australia New Zealand Food Standards Code - Standard 2.8.3 - Native bee honey

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 A1257 which seeks 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 prepared 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 draft explanatory statement relates to the draft Standard.

2. Variation will be a legislative instrument

If approved, the draft Standard would be a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and be publicly available on the Federal Register of Legislation (www.legislation.gov.au).

If approved, this instrument would not be 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 Food Ministers Meeting (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 prepared a draft new Standard, Standard 2.8.3 – Native bee honey, which would be included in the Code, if approved. If approved, the proposed measures in the draft Standard, along with proposed measures in the draft variation and existing measures in the Code, would permit and regulate the sale and use of native bee honey.

4. Documents incorporated by reference

The draft Standard 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 will include one round of public consultation following an assessment and the preparation of a draft Standard and draft variation. A call for submissions (including the draft Standard, draft variation and associated assessment summaries) will be open for an eight-week period.

Changes have been made to the Impact Analysis requirements by the Office of Impact Analysis (OIA)²¹. Impact analysis no longer must be finalised with the OIA. Under the new approach, FSANZ's assessment is that a regulatory impact statement is not required for this application, as the proposed changes address regulatory uncertainty surrounding the sale of Australian native bee honey and are not likely to create significant impacts. There may be small costs of compliance to industry, however, industry may benefit from regulatory certainty, and consumers may benefit from clear labelling requirements to make informed choices.

6. Statement of compatibility with human rights

If approved, this instrument would be exempt from the requirements for a statement of compatibility with human rights as it would be a non-disallowable instrument under section 44 of the *Legislation Act 2003*.

7. The draft Standard

The draft Standard would be introduced by two notes providing information about the place of the Standard within the Code and the application of the relevant draft Standard in New Zealand. The first note in the draft Standard explains that the instrument would be a standard under the FSANZ Act, and that the draft Standard and the other standards together make up the Code. The second note in the draft Standard explains that provisions of the Code that apply in New Zealand are incorporated in, or adopted under, the *Food Act 2014* (NZ).

The draft Standard would contain the following proposed provisions.

Division 1

This Division contains the following preliminary provisions of the draft Standard.

Section 1: This provision would establish the name of the draft Standard i.e.: *Australia New Zealand Food Standards Code – Standard 2.8.3 – Native Bee Honey*.

The note to section 1 in the draft Standard explains that, if approved, the draft standard would commence on the date of gazettal, being the date specified as the commencement date in notices in the Gazette and the New Zealand Gazette under section 92 of the *Food*

²¹ [Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies | The Office of Impact Analysis \(pmc.gov.au\)](https://www.pmc.gov.au/regulatory-impact-analysis-guide-for-ministers-meetings-and-national-standard-setting-bodies)

Standards Australia New Zealand Act 1991 (Cth) (see also section 93 of this Act).

Section 2: This provision would signpost to subsection 1.1.2—3(2) of Standard 1.1.2, where the definition of ‘native bee honey’ would be provided (see item [1] of the *Food Standards (Application A1257 – Australian native bee honey – Consequential Amendments) Variation*); and set out a copy of that definition.

Division 2

This Division contains the following provisions related to requirements for food sold as native bee honey (as proposed to be defined in the Code).

Section 3: This provision sets out the following compositional requirements of food sold as native bee honey.

A food that is sold as native bee honey must:

- be native bee honey (as per the proposed definition of this term in subsection 1.1.2—3(2)); and
- contain:
 - no less than 50% reducing sugars; and
 - no more than 28% moisture; and
 - no less than 2% trehalulose.

Section 4: This provision sets out the following labelling requirements for native bee honey.

For the labelling provisions, which (as explained in the note to this section) are set out in Standard 1.2.1:

- ‘honey’ is a prescribed name for native bee honey; and
- the prescribed name must be presented in conjunction with a description that adequately describes the true nature of native bee honey e.g. ‘Native bee honey’, ‘Native stingless bee honey’, and ‘Australian native bee honey’.

The ‘prescribed name’ of a particular food is defined in subsection 1.1.2—2, as meaning a name declared by a provision of the Code to be the prescribed name of the food.

DRAFT 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 Authority accepted Application A1257 which seeks 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 prepared 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 draft explanatory statement relates to the draft variation.

2. Variation will be a legislative instrument

If approved, the draft variation would be a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and be publicly available on the Federal Register of Legislation (www.legislation.gov.au).

If approved, this instrument would not be 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 Food Ministers Meeting (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 prepared the draft variation containing amendments proposed as a consequence of the draft Standard. If approved, the proposed measures in the draft variation, along with proposed measures in the draft Standard and existing measures in the Code, would permit and regulate the sale and use of native bee honey.

4. Documents incorporated by reference

The 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 will include one round of public consultation following an assessment and the preparation of a draft standard and draft variation. A call for submissions (including the draft Standard, draft variation and associated assessment summaries) will be open for an eight-week period.

Changes have been made to the Impact Analysis requirements by the Office of Impact Analysis (OIA)²². Impact analysis no longer must be finalised with the OIA. Under the new approach, FSANZ's assessment is that a regulatory impact statement is not required for this application, as the proposed changes address regulatory uncertainty surrounding the sale of Australian native bee honey and are not likely to create significant impacts. There may be small costs of compliance to industry, however, industry may benefit from regulatory certainty, and consumers may benefit from clear labelling requirements to make informed choices.

6. Statement of compatibility with human rights

If approved, this instrument would be exempt from the requirements for a statement of compatibility with human rights as it would be a non-disallowable instrument under section 44 of the *Legislation Act 2003*.

7. Variation

Clause 1 of the 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 draft variation provides that the Code is amended by the Schedule to the variation.

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

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

Item [1] of the Schedule to the draft variation would amend Standard 1.1.1 Structure of the Code and general provisions.

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

In particular, this item would insert 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 draft Standard proposed to be included

²² [Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies | The Office of Impact Analysis \(pmc.gov.au\)](https://www.pmc.gov.au/regulatory-impact-analysis-guide-for-ministers-meetings-and-national-standard-setting-bodies)

in the Code.

The reference to the draft Standard would be 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 draft variation would amend 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 would insert 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 draft variation would amend 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);'.

Proposed new subparagraph (xii) would refer to "honey' (Standards 2.8.2 and 2.8.3);'. If approved, this proposed amendment would have 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 draft variation would amend Standard 2.9.2 Food for infants as follows.

Item [4.1] would repeal paragraph 2.9.2—3(1)(b), and substitute it with proposed 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'.

Proposed new paragraph 2.9.2—3(1)(b) would include 'native bee honey' in that provision.

If approved, the effect of the proposed amendment would be 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] would repeal paragraphs 2.9.2—7(3)(d) and (e), and substitute 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.

Proposed new paragraph 2.9.2—7(3)(d) would require 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.

Proposed new paragraph 2.9.2—7(3)(e) would require 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 draft variation would amend Schedule 4 Nutrition, health and related claims.

In particular, this item proposes to amend 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, for sugar or sugars (as defined in Standard 1.1.2), subsection 1.2.7—12(3) requires that - if a claim is made in relation to a food about 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, honey, malt, or malt extracts.

The proposed amendment in item [5] would omit ‘or malt extracts; and’ in paragraph (a) in Column 4 of the table - for the descriptor of ‘No added’ in Column 3 of the table; and substitute that text with ‘malt extracts, or native bee honey; and’.

If the proposed amendment is approved, a ‘No added sugar’ claim could only be made if (among other things) the food does not contain added sugars, honey, malt, malt extracts, or native bee honey.

Item 6 would amend 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.

In particular, item [6] proposes to amend section S22—4, which describes the foods that are classed as animal food commodities. The amendment would insert 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 proposed new entry would consist 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.'