

**6 June 2014**  
**[11–14]**

## **Call for submissions – Proposal P1033**

### **Code Maintenance XII**

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FSANZ has assessed a proposal prepared to make minor amendments including the correction of typographical errors, inconsistencies and formatting issues and updating of references and has prepared a draft food regulatory measure. Pursuant to section 61 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measure.

For information about making a submission, visit the FSANZ website at [information for submitters](#).

All submissions on applications and proposals will be published on our website. We will not publish material that is provided in-confidence, but will record that such information is held. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1991*. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

Under section 114 of the FSANZ Act, some information provided to FSANZ cannot be disclosed. More information about the disclosure of confidential commercial information is available on the FSANZ website at [information for submitters](#).

Submissions should be made in writing; be marked clearly with the word 'Submission' and quote the correct project number and name. While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website via the link on [documents for public comment](#). You can also email your submission directly to [submissions@foodstandards.gov.au](mailto:submissions@foodstandards.gov.au).

There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

### **DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 4 July 2014**

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 submissions or the application process can be sent to [standards.management@foodstandards.gov.au](mailto:standards.management@foodstandards.gov.au).

Hard copy submissions may be sent to one of the following addresses:

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# Table of Contents

<b>EXECUTIVE SUMMARY</b> .....	<b>2</b>
<b>1 INTRODUCTION</b> .....	<b>3</b>
1.1 THE PROPOSAL .....	3
1.2 THE CURRENT STANDARD.....	3
1.3 REASONS FOR PREPARING THE PROPOSAL.....	3
1.4 PROCEDURE FOR ASSESSMENT .....	3
<b>2 SUMMARY OF THE ASSESSMENT</b> .....	<b>3</b>
2.1 RISK ASSESSMENT .....	3
2.2 RISK MANAGEMENT .....	4
2.3 RISK COMMUNICATION.....	4
2.3.1 <i>Consultation</i> .....	4
2.3.2 <i>World Trade Organization (WTO)</i> .....	4
2.4 FSANZ ACT ASSESSMENT REQUIREMENTS .....	4
2.4.1 <i>Section 59</i> .....	4
2.4.2 <i>Subsection 18(1)</i> .....	5
2.4.3 <i>Subsection 18(2) considerations</i> .....	5
<b>3 DRAFT VARIATIONS</b> .....	<b>5</b>
ATTACHMENT A – DRAFT VARIATIONS TO THE <i>AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE</i> .....	7
ATTACHMENT B – DRAFT EXPLANATORY STATEMENT.....	15

## Supporting documents

The following documents which informed the assessment of this Proposal are available on the FSANZ website at

<http://www.foodstandards.gov.au/code/proposals/Pages/P1033CodeMaintenanceXII.aspx>

SD1 List of proposed amendments

## **Executive summary**

FSANZ has prepared Proposal P1033 to make a number of amendments to the *Australia New Zealand Food Standards Code* (the Code) including the correction of typographical errors, inconsistencies and formatting issues, and updating of references.

The proposed amendments are all relatively minor in nature. No potential public health and safety concerns have been identified.

Each amendment is explained in SD1.

# 1 Introduction

## 1.1 The Proposal

Proposal P1033 was prepared to make a range of relatively minor amendments to the Code including the correction of typographical errors, inconsistencies and formatting issues, and updating of references.

## 1.2 The current Standards

A number of standards are affected by the proposed amendments. The Standards affected are listed in SD1 together with an explanation of each amendment.

## 1.3 Reasons for preparing the Proposal

Minor typographical and grammatical errors and cross-reference issues are identified in the Code from time-to-time. References in the Code also become superseded as the documents or they refer to are updated. This Proposal was prepared in writing to resolve such issues.

## 1.4 Procedure for assessment

The Proposal is being assessed under the General Procedure.

# 2 Summary of the assessment

## 2.1 Risk assessment

All of the issues considered are relatively minor in nature, and fall into the following broad categories:

- **correcting minor errors and omissions, and improving clarity**  
The amendments include the correction of typographical errors and incorrect spelling and punctuation, as well as re-wording of text to improve clarity.
- **updating references**  
References to the names of Standards or cross-references within the Code or to relevant Australian legislation have been amended or updated.
- **updating material from international sources**  
These changes include the replacement of references with more recent publications as well as the addition of new publications to give a further option for industry to utilise to comply with Code provisions. Also included are changes in nomenclature or INS numbering developed by international bodies. The inclusion of these references, numbering and nomenclature alters the legal effect of the affected Standards.

FSANZ has confidence in the specialist abilities of the internationally recognised scientific organisations or authorities producing these publications. FSANZ is satisfied that appropriate and rigorous assessments have been carried out by these bodies to ensure that there are no public health or safety issues and that these publications can be incorporated by reference in the Code.

- **omitting material that is no longer required**  
These amendments include the omission of provisions that have ceased to have effect and duplication of definitional text which is already located in Standard 1.1.1.

- **variations to Editorial notes**

Three editorial notes are to be deleted which reflect information which will be sunsetted in October 2014 and will therefore be no longer required by the time gazettal of any approved amendments resulting from this Proposal occur.

Other changes amend or delete Editorial notes to remove information that is not suitable for inclusion in an Editorial note or update cross-references within the Code.

Editorial notes are not, by virtue of the definition of a 'standard' in the FSANZ Act, part of a draft standard and are therefore not subject to the standards development process under part 3 of the FSANZ Act. The Editorial notes have only been provided for completeness.

No potential public health and safety concerns have been identified.

## **2.2 Risk management**

The proposed amendments will ensure that the Code remains current and that errors and inconsistencies are addressed. As mentioned above, due to the nature of the amendments, no potential public health and safety concerns have been identified..

## **2.3 Risk communication**

### **2.3.1 Consultation**

Consultation is a key part of FSANZ's standards development process. Members of the public will be notified of the call for submissions via the Notification Circular and on the FSANZ website and are welcome to make 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 member nations where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

Amending the Code to make minor corrections and updates 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 Sanitary and Phytosanitary Measures Agreement was not considered necessary.

## **2.4 FSANZ Act assessment requirements**

When assessing this Proposal and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in section 59 of the FSANZ Act:

### **2.4.1 Section 59**

#### **2.4.1.1 Cost benefit analysis**

As all the proposed variations are relatively minor in nature, FSANZ considers that there is likely that there would be no or low cost benefit issues. For example, the inclusion of new INS numbers for advantame and yeast mannoproteins is unlikely to have an effect on labelling costs as manufacturers can use either the name or number on their labels. The updating of references and the inclusion of new references provides a greater choice for industry.

If the amendments are not made, errors, inconsistencies and outdated references would continue to exist and FSANZ's credibility associated with retaining provisions that are known to be inadequate will be at risk.

The Office of Best Practice Regulation, in an email on 4 June 2014 and letter dated 8 May 2014 (reference 16997) advised that, on the basis of information provided by FSANZ, the Proposal did not appear to have a regulatory impact on businesses or individuals. As such, the preparation of a COAG regulation impact statement was not required.

#### **2.4.1.2 Other measures**

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure varied as a result of the Proposal.

#### **2.4.1.3 Any relevant New Zealand standards**

Most of the Standards affected by these amendments are joint food standards with New Zealand. Others are either Australia only or New Zealand only.

#### **2.4.1.4 Any other relevant matters**

There are no other relevant matters.

#### **2.4.2. Subsection 18(1)**

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment and has concluded that due to the nature of the proposed variations, they do not have any impact on measures in place for:

- the protection of public health and safety
- the provision of adequate information relating to food to enable consumers to make informed choices
- the prevention of misleading or deceptive conduct.

#### **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
- the desirability of an efficient and internationally competitive food industry
- the promotion of fair trading in food
- any written policy guidelines formulated by the Ministerial Council<sup>1</sup>.

As all the proposed variations are relatively minor, these considerations are not relevant.

In relation to the promotion of consistency between domestic and international food standards, several amendments update or include references to internationally recognised publications.

## **3 Draft variations**

The draft variations are at Attachment A. The draft variations are intended to take effect on gazettal.

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<sup>1</sup> Now known as the Legislative and Governance Forum on Food Regulation

A draft explanatory statement is at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislative Instruments.

The draft food regulatory measures included in this Proposal have been reflected in those that are under consideration in Proposal P1025 – Code Revision.

## **Attachments**

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

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



### Food Standards (Proposal P1033 – Code Maintenance XII) Variation

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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 Standard commences on the date specified in clause 3 of this variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer  
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 (Proposal P1033 – Code Maintenance XII) Variation*.

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

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

## 3 Commencement

The variation commences on gazettal.

### SCHEDULE

#### [1] Standard 1.1.1 is varied by

[1.1] omitting the definition of **bulk cargo container** in clause 2 and substituting

“**bulk cargo container** means –

- (a) an article of transport equipment, being a lift van, movable tank, shipping container, aircraft cargo container or other similar structure –
  - (i) of a permanent character and accordingly strong enough to be suitable for repeated use; and
  - (ii) specifically designed to facilitate the carriage of goods by one or more modes of transport, without immediate repacking; and
  - (iii) fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and
  - (iv) so designed as to be easy to fill and empty; and
  - (v) having an internal volume of one cubic metre or more; and
  - (vi) includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; and
- (b) does not include any vehicle, or any ordinary packing case, crate, box, or other similar article used for packing.”

[1.2] inserting “a” before “package” in subclause 11(1)

#### [2] Standard 1.1A.6 is varied by omitting subclause 2(3) and substituting

“(3) This Standard –

- (a) does not apply to food for special medical purposes; and
- (b) ceases to have effect in relation to other special purposes food, including food formulated and represented as being for the dietary management of obesity or overweight, two years from the commencement of any alternative applicable provisions in this Code.”

#### [3] Standard 1.2.1 is varied by

[3.1] omitting from paragraph 2(2)(da) “24(5)” and substituting “25(5)”

[3.2] omitting from paragraph 3(1)(f) “discernable” and substituting “discernible”

[3.3] omitting from clause 4

“(1) Where a purchaser or relevant authority has so requested, a package of food, other than food for –

- (a) retail sale; or

(b) catering purposes; or”

and substituting

“(1) Where a purchaser or relevant authority has so requested, a package of food, other than food –

- (a) for retail sale; or
- (b) for catering purposes; or”

[3.4] omitting paragraph 5(1)(e) and substituting

“(e) Standard 1.2.11 – Country of Origin Labelling; and”

**[4] Standard 1.2.4 is varied by**

[4.1] omitting from Schedule 2, Part 2

“

Tocopherols concentrate, mixed	306
--------------------------------	-----

”

[4.2] omitting from Schedule 2 (twice occurring)

“

Aluminium, calcium, sodium, magnesium, potassium and ammonium salts of fatty acids	470
--	-----

”

[4.3] inserting in Part 1 of Schedule 2 in alphabetical order

“

Fatty acid salts of aluminium, ammonia, calcium, magnesium, potassium and sodium	470
--	-----

”

[4.4] inserting in Part 2 of Schedule 2 in numerical order

“

Fatty acid salts of aluminium, ammonia, calcium, magnesium, potassium and sodium	470
--	-----

”

[4.5] omitting from Schedule 2 (twice occurring)

“

Ammonium bicarbonate	503
----------------------	-----

”

[4.6] inserting in Part 1 of Schedule 2 in alphabetical order

“

Ammonium carbonate	503
--------------------	-----

”

[4.7] inserting in Part 2 of Schedule 2 in numerical order

“

Ammonium carbonate	503
--------------------	-----

”

[4.8] omitting from Schedule 2 (twice occurring)

“

Advantame	–
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”

[4.9] inserting in Part 1 of Schedule 2 in alphabetical order

“

Advantame	969
-----------	-----

”

[4.10] inserting in Part 2 of Schedule 2 in numerical order

“

Advantame	969
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”

[4.11] inserting in Part 1 and in Part 2 of Schedule 2 in alphabetical and numerical order respectively

“

Yeast mannoproteins	455
---------------------	-----

”

[4.12] omitting the Editorial note following Part 1 of Schedule 2

[4.13] omitting the Editorial note following Part 2 of Schedule 2

**[5]** **Standard 1.2.5** is varied by omitting the Editorial note following subclause 2(2) and substituting

“

<b>Editorial note:</b> Standard 1.2.1 sets out the exemptions to the general labelling requirements in this Code.
--

”

**[6]** **Standard 1.2.7** is varied by

[6.1] omitting from clause 18 “A person who gives the notice mentioned in paragraph 17(4)(b) is required to –” and substituting

“(1) A person who gives the notice mentioned in paragraph 17(4)(b) is required to –”

[6.2] omitting from Part 1 of Schedule 3 under the entry for Selenium “utilization” and substituting “utilisation”

[6.3] omitting from Schedule 6 where occurring “.” and substituting “–”

**[7]** **Standard 1.2.8** is varied by

[7.1] inserting “.” at the end of the definition of **average energy content** in clause 1

[7.2] omitting paragraph 5(1)(h) and substituting

“(h) any other matter which this Code requires to be included;”

[8] **Standard 1.2.9** is varied by

[8.1] omitting from the Editorial note following subclause 2(1)

“Within 24 months of the gazettal of this Editorial note, Standard 1.2.9 – Legibility Requirements will be reviewed.”

[8.2] inserting “of” before “type” in paragraph 3(b)

[8.3] omitting the Editorial note following clause 3

[9] **Standard 1.3.1** is varied by

[9.1] omitting paragraph 11(a) and substituting

“(a) Flavouring substances which are listed in at least one of the following publications –

- (i) Generally Recognised as Safe (GRAS) lists of flavouring substances published by the Flavour and Extract Manufacturers’ Association of the United States from 1960 to 2013 (edition 26); or
- (ii) Chemically-defined flavouring substances, Council of Europe, November 2000; or
- (iii) Annex 1 of Council Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances [2012] OJ L267/1; or
- (iv) 21 CFR § 172.515; or ”

[9.2] omitting from Schedule 1 the heading “**13.3 Formula meal replacements and formulated supplementary foods\***” and substituting “**13.3 Formulated meal replacements and formulated supplementary foods\***”

[9.3] omitting from Schedule 1

“  
- Yeast mannoproteins 400 mg/kg  
”

[9.4] inserting in numerical order under the heading for **Wine, sparkling wine and fortified wine** in Item 14.2.2 in Schedule 1

“  
455 Yeast mannoproteins 400 mg/kg  
”

[9.5] omitting from Schedule 1

“  
- Aspartame 150 mg/kg  
”

[9.6] inserting in numerical order under the heading **electrolyte drink and electrolyte drink base** in Item 14.1.13 in Schedule 1

“  
951 Aspartame 150 mg/kg  
”

[9.7] omitting the Editorial note following Schedule 1

[9.8] omitting from Schedule 2 (twice occurring)

“  
– Advantame ”

[9.9] inserting in Part 1 and in Part 2 of Schedule 2 in alphabetical and numerical order respectively

“  
969 Advantame ”

[10] **Standard 1.3.2** is varied by omitting from the Table to clause 3 “refer to clause 8” where occurring in Column 4 and substituting “refer to clause 5”

[11] **Standard 1.3.3** is varied by omitting from the entry for “Hydrogen peroxide” in the Table to clause 14

“ Control of lactic acid producing microorganisms to stabilise the pH during the manufacture of –  
  
(a) fermented milk;  
(b) fermented milk products;  
(c) cheese made using lactic acid producing microorganisms; and  
(d) cheese products made using lactic acid producing microorganisms. ”

and substituting

“ Control of lactic acid producing microorganisms to stabilise the pH during the manufacture of –  
  
(a) fermented milk; or  
(b) fermented milk products; or  
(c) cheese made using lactic acid producing microorganisms; or  
(d) cheese products made using lactic acid producing microorganisms. ”

[12] **Standard 1.3.4** is varied by

[12.1] omitting paragraph 2(c) and inserting

- “(c) United States Pharmacopeial Convention (2014) Food chemicals codex. 9<sup>th</sup> ed, United States Pharmacopeial Convention, Rockville, MD.; or
- (d) Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives.”

[12.2] omitting paragraph 3(i) and inserting

- “(i) the Specifications and Standards for Food Additives, 8<sup>th</sup> Edition (2007), Ministry of Health and Welfare (Japan); or”

[12.3] omitting from the Schedule the heading “**Specification selenium-enriched yeast**” and substituting “**Specification for selenium-enriched yeast**”

[13] **Standard 1.5.3** is varied by

[13.1] omitting from column 1 of the Table to clause 4

“Longan  
Litchi”

and substituting

“Litchi  
Longan”

[13.2] omitting from subclause 6(3) “clause” and substituting “subclause”

[14] **Standard 1.6.1** is varied by omitting from the Schedule “dessicated” and substituting “desiccated”

[15] **Standard 2.1.1** is varied by

[15.1] omitting from the Table of Provisions “Flour” and substituting “Wheat flour”

[15.2] inserting in the Table of Provisions in numerical order

“1A Definition of bread for certain purposes”  
“5 Mandatory addition of iodised salt to bread”

[15.3] omitting from subclause 5(3) “:” and substituting “–”

[16] **Standard 2.5.3** is varied by inserting after the Table to subclause 2(2)

“(3) The protein requirements in the Table to subclause 2(2) apply exclusively to fermented milk made from cow’s milk.”

[17] **Standard 2.5.7** is varied by omitting from subclause 2(1) “dried milks” and substituting “dried milks, evaporated milks”

[18] **Standard 2.6.2** is varied by inserting in the Table of Provisions in numerical order

“2A Addition of fluoride to packaged water”  
“2B Labelling of packaged water”

[19] **Standard 2.7.4** is varied by omitting from the Editorial note “*Australian Wine and Brandy Corporation Act 1980*” and substituting “*Wine Australia Corporation Act 1980*”

[20] **Standard 2.9.1** is varied by inserting in the Table of Provisions in numerical order

“9A Permitted inulin-type fructans and galacto-oligosaccharides”

[21] **Standard 2.9.2** is varied by omitting from subclause (6(2) “of 3 g/100 kJ of protein” and substituting “3 g of protein / 100 kJ”

[22] **Standard 2.9.5** is varied by omitting subclause 3(2) and substituting

“(2) Subclause 6(3) of Standard 1.5.3 applies to a food for special medical purposes as if such food were subject to Standard 1.2.1.”

[23] **Standard 2.10.3** is varied by omitting the Editorial note following clause 5 and substituting

“

**Editorial note:**

See clauses 8 and 8A of Standard 1.2.8 for labelling requirements when claims requiring nutrition information, other than calcium claims, are made on small packages of chewing gum suitable for added calcium.

”

[24] **Standard 3.2.2** is varied by

[24.1] omitting subclause 3(2) and substituting

“(2) Subclause (1) does not apply to a food business in relation to persons undertaking food handling operations for fundraising events at which only food is sold that is not potentially hazardous or which is to be consumed immediately after thorough cooking.”

[24.2] omitting from paragraph 5(2)(b) “of the food of the food” and substituting “of the food”

[24.3] omitting from subclause 24(4) the definition of **outdoor dining area** and substituting

“**outdoor dining area** means an area that –

- (a) is used for dining, drinking or both drinking and dining; and
- (b) is not used for the preparation of food; and
- (c) is not an enclosed area; and
- (d) can be entered by the public without passing through an enclosed area.”

## **Attachment B – Draft Explanatory Statement**

### **1. Authority**

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

FSANZ prepared Proposal P1033 to make a number of relatively minor amendments to the Code. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared draft variations to a number of Standards.

### **2. Purpose**

The Authority has prepared draft variations. The issues considered are relatively minor in nature, and fall into the following broad categories:

- correcting minor errors and omissions, and improving clarity
- updating references
- updating material from international sources
- omitting material that is no longer required
- variations to Editorial notes.

### **3. Documents incorporated by reference**

Some of the variations to food regulatory measures update documents incorporated by reference. The documents are as follows:

- Generally Recognised as Safe (GRAS) lists of flavouring substances published by the Flavour and Extract Manufacturers' Association of the United States from 1960 to 2013 (edition 26)
- Chemically-defined flavouring substances, Council of Europe, November 2000
- Annex 1 of Council Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances [2012] OJ L267/1
- 21 CFR § 172.515
- United States Pharmacopeial Convention (2014) Food chemicals codex. 9<sup>th</sup> ed, United States Pharmacopeial Convention, Rockville, MD.
- Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives
- the Specifications and Standards for Food Additives, 8<sup>th</sup> Edition (2007), Ministry of Health and Welfare (Japan).

### **4. Consultation**

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1032 includes one round of public consultation following an assessment and the preparation of draft variations to a number of Standards and an associated assessment summary. Submissions were called for in June 2014 for four weeks.



A Regulation Impact Statement was not required because of the nature of the proposed variations as described in section 2 above.

## **5. Statement of compatibility with human rights**

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

## **6. Variations**

### *6.1 Correcting minor errors and omissions, and improving clarity*

Items [1], [3.1]–[3.3], [6], [7], [8.2], [9.2], [9.5]–[9.6], [11], [12.3], [13]–[18], [20], [21] and [24.2]–[24.3] include amendments to correct minor errors and omissions to text and punctuation, as well improving clarity of some text.

### *6.2 Updating references*

Items [3.4], [10], [19] and [22] update references including changes to the names of Standards or cross-references within the Code or to relevant Australian legislation.

### *6.3 Updating material from international sources*

Items [4.2]–[4.11], [9.1], [9.3]–[9.4], [9.8]–[9.9] and [12.1]–[12.2] reflect changes to documents incorporated by reference or changes in nomenclature or INS numbering developed by international bodies. Additional references are included in paragraphs 11(a) of Standard 1.3.1 and 2(c) of Standard 1.3.4.

### *6.4 Omitting material that is no longer required*

Items [2] and [4.1] omit provisions that have ceased to have effect or which have an incorrect sunset date.

Item [24.1] removes duplication of definitional text which is already located in Standard 1.1.1.

### *6.5 Variations to Editorial notes*

Items [4.12]–[4.13] and [9.7] delete three editorial notes that are out-of-date.

Items [5], [8.1], [8.3] and [23] amend or delete Editorial notes to remove information that is not suitable for inclusion in an Editorial note or update cross-references within the Code.

Editorial notes are not, by virtue of the definition of a ‘standard’ in the FSANZ Act, part of a draft standard and are therefore not subject to the standards development process under part 3 of the FSANZ Act. The Editorial notes have only been provided for completeness.